ACTS

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STATE OF NEW JERSEY

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CHAPTER 222

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 cost 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.1994, c.105, section 1 of P.L.1995, c.218 and section 1 of P.L.1996, c.87 for the purpose of making loans, to the extent sufficient funds are available, to local government units to finance a portion of the cost 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; and

(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.

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; and

(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).

d. The trust is also authorized to increase the loan amount in the future to compensate for a refunding of the issue, provided adequate savings are achieved, for the loans issued pursuant to P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87 and P.L.1997, c.222.

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

Project No.	**Local Government Unit**	**Estimated Allowable Project Cost**
881-01-1	Hawthorne Borough	$300,000
	TOTAL	$300,000

b. The loan authorized in this section shall be made for the difference between the allowable loan amount required by this project based upon low bid building costs or final building costs pursuant to subsection a. of section 7 of this act and the loan amount certified by the chairman of the trust in State fiscal year 1995 and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loan authorized in this section shall be made to the local government unit listed, up to the individual amount indicated and in the priority stated, to the extent sufficient funds are available, except as the project fails to meet the requirements of section 6 of this act.

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

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

4. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1998 Project Priority List":

Project Number	**Project Name**	**Estimated Allowable Project Cost**
437-07	New Brunswick City	$ 1,450,000

958-02	Gloucester City	$ 1,400,000
809-06	Atlantic County UA	$ 1,500,000
518-03	Buena Borough MUA	$ 950,000
818-04	Burlington County BCF	$ 5,200,000
700-07	Northwest Bergen County UA	$ 3,450,000
437-09	New Brunswick City	$ 1,000,000
336-01	Camden City	$ 800,000
640-05	Camden County MUA	$ 2,700,000
667-01	Ventnor City	$ 350,000
663-02	North Wildwood City	$ 1,100,000
361-01	Roseland Borough	$ 100,000
367-01	Merchantville Borough	$ 650,000
437-10	New Brunswick City	$ 2,750,000
433-09	Woodbridge Township	$ 650,000
703-04	Florham Park SA	$ 500,000
923-01	Hackensack City	$ 1,400,000
706-03	Washington Borough	$ 6,600,000
526-05	Harrison Township	$ 300,000
498-01	Mine Hill Township	$ 850,000
700-08	Northwest Bergen County UA	$ 1,900,000
945-06	Old Bridge Township MUA	$ 1,450,000
834-01	Nutley Township/Clifton City	$ 3,950,000
921-03	Millville City	$ 2,650,000
378-01	Bergenfield Borough	$ 950,000
809-07	Atlantic County UA	$ 3,750,000
706-04	Washington Borough	$ 1,050,000
362-02	Harrison Township	$ 1,250,000
665-01	Longport Borough	$ 850,000
536-04	East Windsor Township	$ 500,000
374-01	Cresskill Borough	$ 250,000
901-03	Highlands Borough	$ 650,000
504-03	Stanhope Borough	$ 150,000
	TOTAL	$53,050,000

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; 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 or P.L.1992, c.88 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 the "1992 Wastewater Treatment Fund" established pursuant to section 27 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88;

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, and increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27);

e. The loan shall bear interest, exclusive of any 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, 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, 1998, and any local government unit which has not executed and delivered a loan agreement with the trust for a loan authorized in this act shall no longer be entitled to that loan.

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

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

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

8. The New Jersey Wastewater Treatment Trust is authorized to increase the individual amount of loan funds made available to local government units by the trust pursuant to P.L.1989, c.190, P.L.1990, c.97, P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87, or P.L.1997, c.222, provided that adequate savings are achieved, to compensate for a refunding of trust bonds issued to make loans authorized by the aforementioned acts.

9. The expenditure of funds authorized pursuant to this act is subject to the provisions of P.L.1985, c.329, P.L.1992, c.88 and P.L.1985, c.334 (C.58:11B-1 et seq.) and any rules and regulations adopted pursuant thereto.

10. This act shall take effect immediately.

Approved August 20, 1997.

CHAPTER 223

AN ACT amending and supplementing the "Water Supply Bond Act of 1981," as amended by P.L.1983, c.355, to authorize the Department of Environmental Protection and the "New Jersey Environmental Infrastructure Trust" to use bond moneys therefrom to provide loans and loan guarantees to local government units to plan, design, and construct water supply facilities to comply with State and federal safe drinking water standards; providing for the submission of this amendatory and supplementary act to the people at a general election and making an appropriation.

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

1. Section 3 of P.L.1981, c.261 is amended to read as follows:

3. As used in this act:

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

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

"Commissioner" means the Commissioner of Environmental Protection;

"Construct" and "construction" mean, in addition to the usual meaning thereof, acts of construction, reconstruction, replacement, extension, improvement and betterment;

"Cost" means the cost incurred by the department for planning and feasibility studies for ground and surface water programs, water delivery and treatment programs, analysis and implementation of water conservation practices, for updating the New Jersey Statewide Water Supply Plan, for the cost of acquisition or construction of all or any part of a project and all or any real or personal property, agreements and franchises deemed by the department to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, costs of issuance of bonds, cost of geological and hydrological services, administrative cost, interconnection testing, engineering and inspection costs and legal expenses, costs of financial, professional and other estimates and advice, organization, operating and other expenses prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such project or part thereof and the placing of the same in operation, and

also such provisions for a reserve fund, or reserves for working capital, operating, maintenance or replacement expenses and for the payment or security of principal of or interest on bonds during or after such acquisition or construction as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine;

"Department" means the Department of Environmental Protection;

"Local government unit" means a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption;

"Project" or "water supply project" means any work relating to water supply facilities;

"Real property" means lands, within or without the State, and improvements thereof or thereon, any and all rights-of-way, water, riparian and other rights, and any and all easements, and privileges in real property, and any right or interest of any kind or description in, relating to or connected with real property;

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

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.).

2. Section 4 of P.L.1981, c.261 is amended to read as follows:

4. a. Bonds of the State of New Jersey are authorized to be issued in the aggregate principal amount of $350,000,000.00 for the purposes of covering the costs of the department for planning and feasibility studies for ground and surface water programs, water delivery and treatment programs, the

analysis and implementation of water conservation practices, or the updating of the New Jersey Statewide Water Supply Plan for planning, designing, and constructing State water supply facilities; and for providing loans to local government units to plan, design, and construct water supply facilities and to comply with the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.) and the federal "Safe Drinking Water Act Amendments of 1996," Pub. L.104-182; and for the rehabilitation, repair or consolidation of antiquated, damaged or inadequately operating water supply facilities, all as identified pursuant to the water supply project priority list adopted by the commissioner pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1) and section 7 of P.L.1997, c.223.

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

3. Section 5 of P.L.1981, c.261 is amended to read as follows:

5. a. The commissioner shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as are necessary and appropriate to implement the provisions of this act, as amended and supplemented by P.L.1983, c.355 and P.L.1997, c.223. The commissioner shall review and consider the findings and recommendations of the commission in the administration of the provisions of this act.

b. The department, or the New Jersey Water Supply Authority, as the case may be, shall develop a program to charge water supply users which benefit from any projects funded pursuant to this act, for the full cost of planning, designing, acquiring, constructing and operating that project. The department shall determine the appropriate proportion, if any, of planning and feasibility study costs directly attributable to a particular project to be included as part of the cost of that project.

4. Section 10 of P.L.1981, c.261 is amended to read as follows:

10. a. The bonds shall recite that they are issued for the purposes set forth in subsection a. of section 4 of this act and that they are issued pursuant to this act and that this act was submitted to the people of the State at the general election held in the month of November, 1981, and that it received the approval of the majority of votes cast for and against it at the election. The bonds shall also recite, if issued after the effective date of P.L.1997, c.223, that the amendments and supplements to P.L.1981, c.261, as amended by P.L.1983, c.355, were submitted to the people of the State

at the general election held in the month of November, 1997, and were approved by a majority of the legally qualified voters of the State voting thereon. These recitals shall be conclusive evidence of the authority of the State to issue the bonds and of their validity. Any bonds containing the recitals shall in any suit, action or proceeding involving their validity be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed and delivered in conformity therewith and with all other provisions of laws applicable thereto, and shall be incontestable for any cause.

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

5. Section 14 of P.L.1981, c.261 is amended to read as follows:

14. The proceeds from the sale of the bonds authorized pursuant to section 4 of P.L.1981, c.261 shall be paid to the State Treasurer for deposit in a separate nonlapsing revolving fund, which fund shall be known as the "Water Supply Fund."

6. Section 15 of P.L.1981, c.261 is amended to read as follows:

15. a. The moneys in the "Water Supply Fund" are hereby specifically dedicated and shall be applied to the cost of the purposes set forth in subsection a. of section 4 of P.L.1981, c.261, and all such moneys are hereby appropriated for such purposes. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided notwithstanding that the Legislature shall not have then adopted an act making specific appropriation of any of the moneys. Any act appropriating moneys from the "Water Supply Fund" shall identify the particular project to be funded by the moneys. Payments of principal and interest on loans made from the "Water Supply Fund" shall be returned to that fund for use for any authorized purpose to which moneys in the fund may be used pursuant to subsection a. of section 4 of P.L.1981, c.261.

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

State Treasurer. A maximum of $50,000,000 may be made available to the trust for these purposes.

Any moneys made available to the trust pursuant to this paragraph shall be deposited in a separate nonlapsing revolving fund, which shall be known as the "Water Supply Trust Fund," for use by the trust as hereinafter provided. The trust shall repay to the "Water Supply Fund" any moneys made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(2) The moneys in the "Water Supply Trust Fund" are specifically dedicated and allocated to, and shall be applied to the cost of, the establishment by the trust of reserve and loan guarantee accounts within that fund. The reserve account is to be used to secure debt issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.); and the guarantee account is to be used by the trust to secure debt issued by a local government unit. The trust shall not directly or indirectly use any moneys paid to it pursuant to this paragraph for the purpose of issuing a loan guarantee in connection with the financing of a water supply project, unless the project, and the amount and the terms or conditions of the loan guarantee, shall have been approved by the Legislature. Moneys in the reserve and loan guarantee accounts may be made available to the department, with the concurrence of the trust, for temporary use by the department in implementing the provisions of P.L.1981, c.261, under terms and conditions established therefor by the commissioner and the trust and approved by the State Treasurer. The department shall repay to the "Water Supply Trust Fund" any sums made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(3) Moneys in the "Water Supply Fund" may be transferred to the trust for use as set forth in paragraph (2) of this subsection.

If the "New Jersey Environmental Infrastructure Trust Act" has not been enacted into law by the date of the approval of this act by the voters, paragraphs (1) (2) and (3) of this subsection shall be inoperative.

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

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

invested and reinvested by the trust as are other trust funds in the custody of the trust. Net earnings received from the investment or deposit of moneys in the "Water Supply Fund" shall be paid to that fund, and net earnings received from the investment or deposit of moneys in the "Water Supply Trust Fund" shall be paid to that fund for use by the trust to cover administrative expenses incurred in administering that fund. Any moneys not required for administrative expenses shall be used for any other authorized purpose to which moneys in the "Water Supply Trust Fund" may be used.

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

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

As part of the annual submission required by this subsection, the department and the trust shall each provide a financial accounting of all project expenditures made in the preceding year, and of all administrative expenses incurred by the trust from interest earnings from the "Water Supply Trust Fund" in connection therewith.

8. Section 26 of P.L.1981, c.261 is amended to read as follows:

26. Not less than 30 days prior to the commissioner or the trust entering into any contract, lease, obligation, or agreement to effectuate the purposes of this act, the commissioner or the trust shall report to and consult with the Joint Budget Oversight Committee, or its successor.

9. a. All appropriations from the "Water Supply Fund" shall be by specific allocation for each project, and any transfer of any funds so appropriated shall require the approval of the Joint Budget Oversight Committee or its successor.

b. Notwithstanding any other provision of P.L.1981, c.261, as amended and supplemented, the department is authorized to use moneys in the

"Water Supply Fund" for direct program administrative costs incurred in implementing the provisions of P.L.1981, c.261, as amended and supplemented, subject to the annual appropriation thereof by the Legislature. In no event may the Legislature appropriate to the Department of Environmental Protection or to any other State department or entity from the "Water Supply Fund," either directly or indirectly, any moneys for indirect program costs or fringe benefit costs. The total sum of all appropriations to the Department of Environmental Protection and to any other State department or entity from the "Water Supply Fund" for direct program administrative costs may not exceed in any fiscal year the total sum of all appropriations that were made to the Department of Environmental Protection from the proceeds of bonds, interest, and loan repayments pursuant to P.L.1981, c.261, for direct program administrative costs, pursuant to P.L.1996, c.42, plus an annual increase of not more than three percent. In calculating the total sum of all appropriations made to the Department of Environmental Protection for direct program administrative costs pursuant to P.L.1996, c.42, the Legislature may not include any appropriations made for indirect program administrative costs and fringe benefit costs. The provisions of this subsection shall not affect the ability of the Trust to use moneys for its administrative expenses as specifically provided in P.L.1981, c.261, as amended and supplemented.

10. For the purpose of complying with the provisions of the State Constitution, this act shall be submitted to the people at the general election to be held in the month of November, 1997. To inform the people of the contents of this act, it shall be the duty of the Secretary of State, after this section takes effect, and at least 60 days prior to the election, to cause this act to be published at least once in one or more newspapers of each county, if any newspapers are published therein, and to notify the clerk of each county of this State of the passage of this act; and the clerks respectively, in accordance with the instructions of the Secretary of State, shall have printed on each of the ballots the following:

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

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

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

	YES	AMENDS AND SUPPLEMENTS WATER SUPPLY BOND ACT OF 1981 Shall the amendments and supplementary language to the "Water Supply Bond Act of 1981," which authorize the Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust to use moneys from such bonds to provide loans and loan guarantees to local governments to plan, design, and construct water supply facilities, which limit the authority of the State to use bond moneys to cover administrative costs incurred therewith, which authorize the trust to use interest earnings on bond moneys to cover administrative costs incurred therewith, and which establish reserve and guarantee accounts in conjunction therewith, be approved?
	NO	INTERPRETIVE STATEMENT If approved, moneys from bonds issued under the "Water Supply Bond Act of 1981" could be used to make loans to local governments to finance the costs of water supply projects. The "Water Supply Bond Act of 1981" was approved by the voters in 1981 and again in 1983 in revised form. These proposed changes allow the Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust to use the bond moneys for a combined loan and loan guarantee program for water supply projects. The bill provides that the State would be limited in using bond moneys for administrative expenses and that the trust would be permitted to use interest earnings on bond moneys to cover its administrative expenses. Approval of these revisions to the "Water Supply Bond Act of 1981" would not involve any new State bonded indebtedness.

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

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

11. There is appropriated, from the General Fund, the sum of $5,000 to the Department of State for expenses in connection with the publication of the notice required pursuant to section 10 of P.L.1997, c.223.

12. Sections 10 and 11 of this act shall take effect immediately, and the remainder of the act shall take effect as and when provided in section 10 of this act.

Approved August 20, 1997.

CHAPTER 224

AN ACT concerning the financing of environmental infrastructure projects, and amending and supplementing the title and body of P.L.1985, c.334.

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

1. The title of P.L.1985, c.334 is amended to read as follows:

Title amended.

AN ACT establishing the New Jersey Environmental Infrastructure Trust, defining the functions, duties and powers thereof, including the authorization to issue bonds, notes and other obligations and to establish any reserve funds necessary therefor, and to make loans to and guarantee debt incurred by local government units for environmental infrastructure projects.

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

C.58:11B-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Environmental Infrastructure Trust Act."

3. Section 2 of P.L.1985, c.334 (C.58:11B-2) is amended to read as follows:

C.58:11B-2 Findings, determinations.

2. a. The Legislature finds that the steady deterioration of older sewage and sewer systems and wastewater treatment plants endangers the availability and quality of uncontaminated water resources of the State, thereby

posing a grave danger to the health, safety and welfare of the residents of the concerned communities and the State; 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 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 in the "Federal Water Pollution Control Act Amendments of 1972," Pub.L.92-500 (33 U.S.C. s.1251 et al.) 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 the collective needs of the State and local governments for capital financing of wastewater treatment systems far exceed the sums of money presently available through revenue initiatives and State and federal aid programs; and that it is fitting and proper for the State to encourage local governments to undertake wastewater treatment projects through the establishment of a State mechanism to provide loans at the lowest reasonable interest rates and to guarantee or insure local capital improvement bonds.

b. The Legislature finds that stormwater runoff and combined sewer overflows are among the major sources of ocean pollution, contributing to beach closings; that combined sewer systems discharge untreated wastewater and stormwater into rivers, streams and coastal waters during wet weather, resulting in water pollution; that some combined sewer systems have deteriorated to the point that overflows occur regularly, even during dry weather; that many sewer systems are on inadequate repair and replacement programs, which may cause disturbances at sewage treatment plants; that many municipalities are under building moratoriums due to the inadequacy of their sewage and stormwater collection systems, which severely affect municipal budgets; and that large unmet capital expenses exist for combined sewer system separation and abatement projects.

The Legislature further finds that funding at the federal level for wastewater treatment, stormwater management and combined sewer system rehabilitation projects is insufficient; that State funds available for these projects are inadequate to meet current needs; that local revenues are insufficient to meet these expenses; and that additional funding at the State level is necessary to meet this financial obligation.

c. The Legislature finds that construction, rehabilitation, operation and maintenance of modern and efficient water supply facilities are essential to protecting and improving the State's water quality; that the citizens of this State, in recognition of the crucial role the construction of new and the upgrading of existing water supply facilities play in maintaining and augmenting the natural water resources of the State, and with an understanding that the cost of financing and constructing these systems is beyond the limited financial resource capabilities of local governments and authorities and must be subsidized by the State and repaid through a system of water supply user charges, approved the enactment of the "Water Supply Bond Act of 1981" (P.L.1981, c.261); that the water supply needs of the State are so great that the funds allocated for this purpose from the "Water Supply Fund" established by that 1981 bond act should be augmented and maximized, to the extent practicable, through the use of alternative methods of State financing to offset the costs of water supply projects and for the construction of new or the rehabilitation of antiquated or inadequate existing water supply facilities; that the United States Congress in recognition of the essential role that safe drinking water plays in protecting the public health, and with an understanding that financing, constructing and maintaining water systems that meet the requirements of the "Safe Drinking Water Act," 42 U.S.C. s.300f et seq. exceed the financial and technical capacity of the operators of some water systems, has established in the "Safe Drinking Water Act Amendments of 1996," P.L.104-182, a program to provide public water systems with financial assistance to meet national primary drinking water regulations or to otherwise further the health protection objectives of the federal law and that the State must, in order to make use of the federal funds, provide State funds for the program; and therefore, State funding for the program is necessary to meet this financial obligation .

d. The Legislature therefore determines that it is in the public interest to establish a State authority authorized to issue bonds, notes and other obligations and to establish any reserve funds necessary therefor, and to make loans to and guarantee debt incurred by local government units for environmental infrastructure projects.

4. Section 3 of P.L.1985, c.334 (C.58:11B-3) is amended to read as follows:

C.58:11B-3 Definitions.

3. As used in sections 1 through 27 of P.L.1985, c.334 (C.58:11B-1 through 58:11B-27) and sections 23 through 27 of P.L.1997, c.224 (C.58:11B-10.1 et al.):

"Bonds" means bonds issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

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

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

"Commissioner" means the Commissioner of the Department of Environmental Protection;

"Cost" means the cost of all labor, materials, machinery and equipment, lands, property, rights and easements, financing charges, interest on bonds, notes or other obligations, plans and specifications, surveys or estimates of costs and revenues, engineering and legal services, and all other expenses necessary or incident to all or part of an environmental infrastructure project;

"Department" means the Department of Environmental Protection;

"Local government unit" means (1) a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority, or any other political subdivision authorized to construct, operate and maintain wastewater treatment systems; or (2) a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption;

"Notes" means notes issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

"Project" or "environmental infrastructure project" means the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to any (1) wastewater treatment system project, including any stormwater management or combined sewer overflow abatement projects; or (2) water supply project, as authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

"Public water utility" means any investor-owned water company or small water company that is subject to the jurisdiction or rate regulation of the Board of Public Utilities as a public utility;

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections;

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

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

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

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

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

Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any amendatory or supplementary acts thereto;

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

"Water supply project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to water supply facilities that meets the requirements set forth in sections 24, 25 and 26 of P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1 and C.58:11B-22.1); or any work relating to the purposes set forth in section 4 of P.L.1981, c.261.

5. Section 4 of P.L.1985, c.334 (C.58:11B-4) is amended to read as follows:

C.58:11B-4 "New Jersey Environmental Infrastructure Trust."

4. a. There is 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 Environmental Infrastructure Trust." The trust is constituted as an instrumentality of the State exercising public and essential governmental functions, no part of whose revenues shall accrue to the benefit of any individual, and the exercise by the trust of the powers conferred by the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), shall be deemed and held to be an essential governmental function of the State.

b. The trust shall consist of a seven-member board of directors composed of the State Treasurer, the Commissioner of the Department of Community Affairs, and the Commissioner of the Department of Environmental Protection, who shall be members ex officio; one person appointed by the Governor upon the recommendation of the President of the Senate and one person appointed by the Governor upon the recommendation of the

Speaker of the General Assembly, who shall serve during the two-year legislative term in which they are appointed; and two residents of the State appointed by the Governor with the advice and consent of the Senate, who shall serve for terms of four years, except that the first two appointed shall serve terms of two and three years respectively. Each appointed director shall serve until his successor has been appointed and qualified. A director is eligible for reappointment. Any vacancy shall be filled in the same manner as the original appointment, but for the unexpired term only.

With respect to those public members first appointed by the Governor, the appointment of each of the two members upon the advice and consent of the Senate shall become effective 30 days after their nomination by the Governor if the Senate has not given advice and consent on those nominations within that time period; the President of the Senate and the Speaker of the General Assembly each shall recommend to the Governor a public member for appointment within 20 days following the effective date of this act, and a recommendation made in this manner shall become effective if the Governor makes the appointment in accordance with the recommendation, in writing, within 10 days of the Governor's receipt thereof. In each instance where the Governor fails to make the appointment, the President of the Senate and the Speaker of the General Assembly shall make new recommendations subject to appointment by the Governor as determined in this section.

c. Each appointed director may be removed from office by the Governor for cause, upon the Governor's consideration of the findings and recommendations of an administrative law judge after a public hearing before the judge, and may be suspended by the Governor pending the completion of the hearing. Each director, 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 oaths shall be filed in the office of the Secretary of State.

d. The Governor shall designate one of the appointed members to be the chairman and chief executive officer of the trust and the directors shall biannually elect a vice-chairman from among the appointed directors. The chairman shall serve as such for a term of two years and until a successor has been designated. A chairman shall be eligible to succeed himself for one additional two-year term. The directors shall elect a secretary and treasurer, who need not be directors, and the same person may be elected to serve as both secretary and treasurer.

The powers of the trust are vested in the directors in office from time to time and four directors shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the trust by the affirmative majority vote of those directors present, but in no event shall any action be taken or motions or resolutions adopted without the affirmative

vote of at least four members. No vacancy on the board of directors of the trust shall impair the right of a quorum of the directors to exercise the powers and perform the duties of the trust.

e. Each director and the treasurer of the trust shall execute a bond to be conditioned upon the faithful performance of the duties of the director or treasurer in a form and amount as may be prescribed by the State Treasurer. Bonds shall be filed in the office of the Secretary of State. At all times thereafter, the directors and treasurer shall maintain these bonds in full effect. All costs of the bonds shall be borne by the trust.

f. The directors of the trust shall serve without compensation, but the trust shall reimburse the directors for actual and necessary expenses incurred in the performance of their duties. Notwithstanding the provisions of any other law to the contrary, 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 director of the trust or his services thereon.

g. Each ex officio director may designate an officer of his department to represent him at meetings of the trust. Each designee may lawfully vote and otherwise act on behalf of the director for whom he constitutes the designee. The designation shall be delivered in writing to the trust and shall continue in effect until revoked or amended in writing and delivered to the trust.

h. The trust may be dissolved by law; provided the trust has no debts or obligations outstanding or that provision has been made for the payment or retirement of these debts or obligations. The trust shall continue in existence until dissolved by act of the Legislature. Upon any dissolution of the trust all property, funds and assets of the trust shall be vested in the State.

i. A true copy of the minutes of every meeting of the trust shall be forthwith delivered by and under the certification of the secretary thereof to the Governor and at the same time to the Senate and General Assembly. The time and act of this delivery shall be duly recorded on a delivery receipt. No action taken or motion or resolution adopted at a meeting by the trust shall have effect until 10 days, exclusive of Saturdays, Sundays and public holidays, after a copy of the minutes has been delivered to the Governor, unless during the 10-day period the Governor shall approve all or part of the actions taken or motions or resolutions adopted, in which case the action or motion or resolution shall become effective upon the approval.

If, in the 10-day period, the Governor returns the copy of the minutes with a veto of any action taken by the trust or any member thereof at that meeting, the action shall be of no effect. The Senate or General Assembly shall have the right to provide written comments concerning the minutes to

the Governor within the 10-day period, which comments shall be returned to the trust by the Governor with his approval or veto of the minutes.

The powers conferred in this subsection upon the Governor shall be exercised with due regard for the rights of the holders of bonds, notes and other obligations of the trust at any time outstanding, and nothing in, or done pursuant to, this subsection shall in any way limit, restrict or alter the obligation or powers of the trust or any representative or officer of the trust to carry out and perform each covenant, agreement or contract made or entered into by or on behalf of the trust with respect to its bonds, notes or other obligations or for the benefit, protection or security of the holders thereof.

j. No resolution or other action of the trust providing for the issuance of bonds, refunding bonds, notes or other obligations shall be adopted or otherwise made effective by the trust without the prior approval in writing of the Governor and the State Treasurer. The trust shall provide the Senate and General Assembly with written notice of any request for approval of the Governor and State Treasurer at the time the request is made, and shall also provide the Senate and General Assembly written notice of the response of the Governor and State Treasurer at the time that the response is received by the trust.

6. Section 5 of P.L.1985, c.334 (C.58:11B-5) is amended to read as follows:

C.58:11B-5 Powers of trust.

5. Except as otherwise limited by the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), the trust may:

a. Make and alter bylaws for its organization and internal management and, subject to agreements with holders of its bonds, notes or other obligations, make rules and regulations with respect to its operations, properties and facilities;

b. Adopt an official seal and alter it;

c. Sue and be sued;

d. Make and enter into all contracts, leases and agreements necessary or incidental to the performance of its duties and the exercise of its powers under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and subject to any agreement with the holders of the trust's bonds, notes or other obligations, consent to any modification, amendment or revision of any contract, lease or agreement to which the trust is a party;

e. Enter into agreements or other transactions with and accept, subject to the provisions of section 23 of P.L.1985, c.334 (C.58:11B-23), grants, appropriations and the cooperation of the State, or any State agency, in furtherance of the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or

P.L.1997, c.224 (C.58:11B-10.1 et al.), and do anything necessary in order to avail itself of that aid and cooperation;

f. Receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), subject to the conditions upon which that aid and those contributions may be made, including, but not limited to, gifts or grants from any department or agency of the State, or any State agency, for any purpose consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), subject to the provisions of section 23 of P.L.1985, c.334 (C.58:11B-23);

g. Acquire, own, hold, construct, improve, rehabilitate, renovate, operate, maintain, sell, assign, exchange, lease, mortgage or otherwise dispose of real and personal property, or any interest therein, in the exercise of its powers and the performance of its duties under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

h. Appoint and employ an executive director and any other officers or employees as it may require for the performance of its duties, without regard to the provisions of Title 11A of the New Jersey Statutes;

i. Borrow money and issue bonds, notes and other obligations, and secure the same, and provide for the rights of the holders thereof as provided in the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

j. Subject to any agreement with holders of its bonds, notes or other obligations, invest moneys of the trust not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, in any obligations, securities and other investments in accordance with the rules and regulations of the State Investment Council or as may otherwise be approved by the Director of the Division of Investment in the Department of the Treasury upon a finding that such investments are consistent with the corporate purposes of the trust;

k. Procure insurance to secure the payment of its bonds, notes or other obligations or the payment of any guarantees or loans made by it in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), or against any loss in connection with its property and other assets and operations, in any amounts and from any insurers as it deems desirable;

l. Engage the services of attorneys, accountants, engineers, and financial experts and any other advisors, consultants, experts and agents as may be necessary in its judgment and fix their compensation;

m. (1) Make and contract to make loans to local government units to finance the cost of wastewater treatment system projects or water supply projects and acquire and contract to acquire notes, bonds or other obligations issued or to be issued by local government units to evidence the loans, all in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

(2) Make and contract to make loans to public water utilities to finance the cost of water supply projects in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

n. Subject to any agreement with holders of its bonds, notes or other obligations, purchase bonds, notes and other obligations of the trust and hold the same for resale or provide for the cancellation thereof, all in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

o. (1) Charge to and collect from local government units or public water utilities any fees and charges in connection with the trust's loans, guarantees or other services, including, but not limited to, fees and charges sufficient to reimburse the trust for all reasonable costs necessarily incurred by it in connection with its financings and the establishment and maintenance of reserve or other funds, as the trust may determine to be reasonable. The fees and charges shall be in accordance with a uniform schedule published by the trust for the purpose of providing actual cost reimbursement for the services rendered;

(2) Any fees and charges collected by the trust pursuant to this subsection may be deposited and maintained in a fund separate from any other funds held by the trust pursuant to section 10 of P.L.1985, c.334 (C.58:11B-10) or section 23 of P.L.1997, c.224 (C.58:11B-10.1 et al.) and shall be available for any corporate purposes of the trust;

p. Subject to any agreement with holders of its bonds, notes or other obligations, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds, notes and other obligations of the trust or for the purchase upon tender or otherwise of the bonds, notes or other obligations, lines of credit, letters of credit and other security agreements or instruments in any amounts and upon any terms as the trust may determine, and pay any fees and expenses required in connection therewith;

q. Provide to local government units any financial and credit advice as these local government units may request;

r. Make payments to the State from any moneys of the trust available therefor as may be required pursuant to any agreement with the State or act appropriating moneys to the trust; and

s. Take any action necessary or convenient to the exercise of the foregoing powers or reasonably implied therefrom.

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

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

6. a. Except as may be otherwise expressly provided in the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), the trust may from time to time issue its bonds, notes or other obligations in any principal amounts as in the judgment of the trust shall be necessary to provide sufficient funds for any of its corporate purposes, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds, notes or other obligations issued by it, whether the bonds, notes or other obligations or the interest or redemption premiums thereon to be funded or refunded have or have not become due, the establishment or increase of reserves or other funds to secure or to pay the bonds, notes or other obligations or interest thereon and all other costs or expenses of the trust incident to and necessary to carry out its corporate purposes and powers.

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

c. Bonds, notes or other obligations of the trust shall be authorized by a resolution or resolutions of the trust and may be issued in one or more series and shall bear any date or dates, mature at any time or times, bear interest at any rate or rates of interest per annum, be in any denomination or denominations, be in any form, either coupon, registered or book entry, carry any conversion or registration privileges, have any rank or priority, be executed in any manner, be payable in any coin or currency of the United States which at the time of payment is legal tender for the payment of public and private debts, at any place or places within or without the State, and be subject to any terms of redemption by the trust or the holders thereof, with or without premium, as the resolution or resolutions may provide. A resolution of the trust authorizing the issuance of bonds, notes or other obligations may provide that the bonds, notes or other obligations be secured by a trust indenture between the trust and a trustee, vesting in the trustee any property, rights, powers and duties in trust consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) as the trust may determine.

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

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

e. Bonds, notes or other obligations of the trust may be issued under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) without obtaining the consent of any department, division, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things, other than those consents, proceedings, conditions or things which are specifically required by P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.).

f. Bonds, notes or other obligations of the trust issued under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) shall not be a debt or liability of the State or of any political subdivision thereof other than the trust and shall not create or constitute any indebtedness, liability or obligation of the State or any political subdivision, but all these bonds, notes and other obligations, unless funded or refunded by bonds, notes or other obligations, shall be payable solely from revenues or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.). Each bond, note and obligation shall contain on its face a statement to the effect that the trust is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and that neither the State, nor any political subdivision thereof, is obligated to pay the principal or interest and that

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

g. The aggregate principal amount of bonds, notes or other obligations, including subordinated indebtedness of the trust, shall not exceed $1,000,000,000.00. 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 agreements with any local government units, or a pledge or assignment of any notes, bonds or other obligations of any local government unit and the rights and interest of the trust therein;

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

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

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

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

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

j. (Deleted by amendment, P.L.1996, c.88).

8. Section 7 of P.L.1985, c.334 (C.58:11B-7) is amended to read as follows:

C.58:11B-7 Covenants by trust.

7. In any resolution of the trust authorizing or relating to the issuance of any of its bonds, notes or other obligations, the trust, in order to secure the payment of the bonds, notes or other obligations and in addition to its other powers, may by provisions therein which shall constitute covenants by the trust and contracts with the holders of the bonds, notes or other obligations:

a. Secure the bonds, notes or other obligations as provided in section 6 of P.L.1985, c.334 (C.58:11B-6);

b. Covenant against pledging all or part of its revenues or receipts;

c. Covenant with respect to limitations on any right to sell, mortgage, lease or otherwise dispose of any notes, bonds or other obligations of local government units, or any part thereof, or any property of any kind;

d. Covenant as to any bonds, notes or other obligations to be issued by the trust, and the limitations thereon, and the terms and conditions thereof, and as to the custody, application, investment and disposition of the proceeds thereof;

e. Covenant as to the issuance of additional bonds, notes or other obligations of the trust or as to limitations on the issuance of additional bonds, notes or other obligations and on the incurring of other debts by it;

f. Covenant as to the payment of the principal of or interest on bonds, notes or other obligations of the trust, as to the sources and methods of payment, as to the rank or priority of the bonds, notes or other obligations with respect to any lien or security or as to the acceleration of the maturity of the bonds, notes or other obligations;

g. Provide for the replacement of lost, stolen, destroyed or mutilated bonds, notes or other obligations of the trust;

h. Covenant against extending the time for the payment of bonds, notes or other obligations of the trust or interest thereon;

i. Covenant as to the redemption of bonds, notes and other obligations by the trust or the holders thereof and privileges of exchange thereof for other bonds, notes or other obligations of the trust;

j. Covenant to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of bonds, notes and other obligations of the trust, or reserves for other purposes and as to the use, investment, and disposition of moneys held in those funds, accounts or reserves;

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

l. Vest in a trustee or trustees within or without the State any property, rights, powers and duties in trust as the trust may determine, which may include any or all of the rights, powers and duties of any trustee appointed by the holders of any bonds, notes or other obligations of the trust pursuant to section 18 of P.L.1985, c.334 (C.58:11B-18), including rights with respect to the sale or other disposition of notes, bonds or other obligations of local government units pledged pursuant to a resolution or trust indenture for the benefit of the holders of bonds, notes or other obligations of the trust and the right by suit or action to foreclose any mortgage pledged pursuant to the resolution or trust indenture for the benefit of the holders of the bonds, notes or other obligations, and to limit or abrogate the right of the holders of any bonds, notes or other obligations of the trust to appoint a trustee

under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and to limit the rights, duties and powers of the trustee;

m. Pay the costs or expenses incident to the enforcement of the bonds, notes or other obligations of the trust or of the provisions of the resolution authorizing the issuance of those bonds, notes or other obligations or of any covenant or agreement of the trust with the holders of the bonds, notes or other obligations;

n. Limit the rights of the holders of any bonds, notes or other obligations of the trust to enforce any pledge or covenant securing the bonds, notes or other obligations; and

o. Make covenants other than or in addition to the covenants authorized by P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) of like or different character, and make covenants to do or refrain from doing any acts and things as may be necessary, or convenient and desirable, in order to better secure the bonds, notes or other obligations of the trust, or which, in the absolute discretion of the trust, would make the bonds, notes or other obligations more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.

9. Section 9 of P.L.1985, c.334 (C.58:11B-9) is amended to read as follows:

C.58:11B-9 Loans to local government units.

9. a. (1) The trust may make and contract to make loans to local government units in accordance with and subject to the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to finance the cost of any wastewater treatment system project or water supply project, which the local government unit may lawfully undertake or acquire and for which the local government unit is authorized by law to borrow money.

(2) The trust may make and contract to make loans to public water utilities in accordance with and subject to the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) to finance the cost of any water supply project, which the public water utility may lawfully undertake or acquire.

The loans may be made subject to those terms and conditions as the trust shall determine to be consistent with the purposes thereof. Each loan by the trust and the terms and conditions thereof shall be subject to approval by the State Treasurer, and the trust shall make available to the State Treasurer all information, statistical data and reports of independent consultants or experts as the State Treasurer shall deem necessary in order

to evaluate the loan. Each loan to a local government unit or public water utility shall be evidenced by notes, bonds or other obligations thereof issued to the trust. In the case of each local government unit, notes and bonds to be issued to the trust by the local government unit (1) shall be authorized and issued as provided by law for the issuance of notes and bonds by the local government unit, (2) shall be approved by the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs, and (3) notwithstanding the provisions of N.J.S.40A:2-27, N.J.S.40A:2-28 and N.J.S.40A:2-29 or any other provisions of law to the contrary, may be sold at private sale to the trust at any price, whether or not less than par value, and shall be subject to redemption prior to maturity at any times and at any prices as the trust and local government units may agree. Each loan to a local government unit or public water utility and the notes, bonds or other obligations thereby issued shall bear interest at a rate or rates per annum as the trust and the local government unit or public water utility, as the case may be, may agree.

b. The trust is authorized to guarantee or contract to guarantee the payment of all or any portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of any wastewater treatment system project or water supply project, which the local government unit may lawfully undertake or acquire and for which the local government unit is authorized by law to borrow money, and the guarantee shall constitute an obligation of the trust for the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.). Each guarantee by the trust and the terms and conditions thereof shall be subject to approval by the State Treasurer, and the trust shall make available to the State Treasurer all information, statistical data and reports of independent consultants or experts as the State Treasurer shall deem necessary in order to evaluate the guarantee.

c. The trust shall not make or contract to make any loans or guarantees to local government units or public water utilities, or otherwise incur any additional indebtedness, on or after November 5, 2005.

10. Section 10 of P.L.1985, c.334 (C.58:11B-10) is amended to read as follows:

C.58:11B-10 "Wastewater treatment system general loan fund."

10. The trust shall create and establish a special fund to be known as the "wastewater treatment system general loan fund."

Subject to the provisions of the legislation appropriating moneys to the trust, subject to any other provision of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) providing otherwise, and subject to agreements with the holders of bonds, notes and other obligations of the

trust, the trust shall deposit into the wastewater treatment system general loan fund all revenues and receipts of the trust, including moneys received by the trust as payment of the principal of and the interest or premium on loans made from moneys in any wastewater treatment system fund or account held by the trust under P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and the earnings on the moneys in any wastewater treatment system fund or account of the trust, and all grants, appropriations, other than those referred to in section 11 of P.L.1985, c.334 (C.58:11B-11), contributions, or other moneys from any source, available for the making of loans to local government units. The amounts in the wastewater treatment system general loan fund shall be available for application by the trust for loans to local government units for the cost of wastewater treatment system projects, and for other corporate purposes of the trust related to wastewater treatment systems, subject to agreements with the holders of bonds, notes or other obligations of the trust.

11. Section 13 of P.L.1985, c.334 (C.58:11B-13) is amended to read as follows:

C.58:11B-13 No personal liability.

13. Neither the directors of the trust nor any person executing bonds, notes or other obligations of the trust issued pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) shall be liable personally on the bonds, notes or other obligations by reason of the issuance thereof.

12. Section 14 of P.L.1985, c.334 (C.58:11B-14) is amended to read as follows:

C.58:11B-14 Pledge to bondholders.

14. The State does pledge to and covenant and agree with the holders of any bonds, notes or other obligations of the trust issued pursuant to authorization of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) that the State shall not limit or alter the rights or powers vested in the trust to perform and fulfill the terms of any agreement made with the holders of the bonds, notes or other obligations or to fix, establish, charge and collect any rents, fees, rates, payments or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the trust and to fulfill the terms of any agreement made with the holders of bonds, notes or other obligations, including the obligations to pay the principal of and interest and premium on those bonds, notes or other obligations, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf

of the holders, and shall not limit or alter the rights and powers of any local government unit to pay and perform its obligations owed to the trust in connection with loans received from the trust, until the bonds, notes and other obligations of the trust, together with interest thereon, are fully met and discharged or provided for.

13. Section 15 of P.L.1985, c.334 (C.58:11B-15) is amended to read as follows:

C.58:11B-15 Authorized investment.

15. The State and all public officers, governmental units and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds, notes or other obligations issued pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and those bonds, notes or other obligations shall be authorized security for any and all public deposits.

14. Section 17 of P.L.1985, c.334 (C.58:11B-17) is amended to read as follows:

C.58:11B-17 Tax exemption.

17. All property of the trust is declared to be public property devoted to an essential public and governmental function and purpose and the revenues, income and other moneys received or to be received by the trust shall be exempt from all taxes of the State or any political subdivision thereof. All bonds, notes and other obligations of the trust issued pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) are declared to be issued by a body corporate and politic of the State and for an essential public and governmental purpose and those bonds, notes and other obligations, and interest thereon and the income therefrom and from the sale, exchange or other transfer thereof shall at all times be exempt from taxation, except for transfer inheritance and estate taxes.

15. Section 18 of P.L.1985, c.334 (C.58:11B-18) is amended to read as follows:

C.58:11B-18 Default.

18. a. If the trust defaults in the payment of principal of, or interest on, any issue of its bonds, notes or other obligations after these are due, whether

at maturity or upon call for redemption, and the default continues for a period of 30 days or if the trust defaults in any agreement made with the holders of any issue of bonds, notes or other obligations, the holders of 25% in aggregate principal amount of the bonds, notes or other obligations of the issue then outstanding, by instrument or instruments filed in the office of the clerk of any county in which the trust operates and has an office and proved or acknowledged in the same manner as required for a deed to be recorded, may direct a trustee to represent the holders of the bonds, notes or other obligations of the issuers for the purposes herein provided.

b. Upon default, the trustee may, and upon written request of the holders of 25% in principal amount of the bonds, notes or other obligations of the trust of a particular issue then outstanding shall, in his or its own name:

(1) By suit, action or proceeding enforce all rights of the holders of bonds, notes or other obligations of the issue, to require the trust to carry out any other agreements with the holders of the bonds, notes or other obligations of the issue and to perform its duties under P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.);

(2) Bring suit upon the bonds, notes or other obligations of the issue;

(3) By action or suit, require the trust to account as if it were the trustee of an express trust for the holders of the bonds, notes or other obligations of the issue;

(4) By action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds, notes or other obligations of the issue;

(5) Sell or otherwise dispose of bonds and notes of local government units pledged pursuant to resolution or trust indenture for benefit of holders of bonds, notes, or other obligations of the issue on any terms as resolution or trust indenture may provide;

(6) By action or suit, foreclose any mortgage pledged pursuant to the resolution or trust indenture for the benefit of the holders of the bonds, notes or other obligations of the issue;

(7) Declare all bonds, notes or other obligations of the issue due and payable, and if all defaults are made good, then with the consent of the holders of 50% of the principal amount of the bonds, notes or other obligations of the issue then outstanding, to annul the declaration and its consequences.

c. The trustee shall, in addition to the foregoing, have those powers necessary or appropriate for the exercise of any function specifically set forth herein or incident to the general representation of holders of bonds, notes or other obligations of the trust in the enforcement and protection of their rights.

d. The Superior Court shall have jurisdiction over any suit, action or proceeding by the trustees on behalf of the holders of bonds, notes or other obligations of the trust. The venue of any suit, action or proceeding shall be in the county in which the principal office of the trust is located.

e. Before declaring the principal of bonds, notes or other obligations of the trust due and payable as a result of a trust default on any of its bonds, notes or other obligations, the trustee shall first give 30 days' notice in writing to the trust and to the Governor, State Treasurer, President of the Senate and Speaker of the General Assembly.

16. Section 19 of P.L.1985, c.334 (C.58:11B-19) is amended to read as follows:

C.58:11B-19 Application of trust funds.

19. Sums of money received pursuant to the authority of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), whether as proceeds from the sale of particular bonds, notes or other obligations of the trust or as particular revenues or receipts of the trust, are deemed to be trust funds, to be held and applied solely as provided in the resolution or trust indenture under which the bonds, notes or obligations are authorized or secured. Any officer with whom or any bank or trust company with which those sums of money are deposited as trustee thereof shall hold and apply the same for the purposes thereof, subject to any provision as the aforementioned acts and the resolution or trust indenture authorizing or securing the bonds, notes or other obligations of the trust may provide.

17. Section 20 of P.L.1985, c.334 (C.58:11B-20) is amended to read as follows:

C.58:11B-20 Project priority list.

20. a. The Commissioner of Environmental Protection shall for each fiscal year develop a priority system for wastewater treatment systems and shall establish the ranking criteria and funding policies for the projects therefor. The commissioner shall set forth a project priority list for funding by the trust for each fiscal year and shall include the aggregate amount of funds of the trust to be authorized for these purposes. The project priority list may include any stormwater management or combined sewer overflow abatement project identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of P.L.1989, c.181.

The project priority list, which shall include for each wastewater treatment system the date each project is scheduled to be certified as ready for funding, shall be in conformance with applicable provisions of the

"Federal Water Pollution Control Act Amendments of 1972," Pub.L. 92-500 (33 U.S.C. s.1251 et al.), and any amendatory or supplementary acts thereto, and State law. The project priority list shall include a description of each project and its purpose, impact, cost, and construction schedule, and an explanation of the manner in which priorities were established. The priority system and project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 15 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. On or before May 15 of each year, the trust shall submit the project priority list to be introduced in each House in the form of legislative appropriations bills, which shall be referred to the Senate Environment Committee and the General Assembly Agriculture and Waste Management Committee, or their successors, for their respective consideration.

b. The Senate Environment Committee and the General Assembly Agriculture and Waste Management Committee shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before July 1 of each year, the Legislature shall approve an appropriations act containing the project priority list, including any amendatory or supplementary provisions thereto, which act shall include the authorization of an aggregate amount of funds of the trust to be expended for loans and guarantees for the specific projects, including the individual amounts therefor, on the list.

c. The trust shall not expend any money for a loan or guarantee during a fiscal year for any wastewater treatment system project unless the expenditure is authorized pursuant to an appropriations act in accordance with the provisions of this section.

18. Section 21 of P.L.1985, c.334 (C.58:11B-21) is amended to read as follows:

C.58:11B-21 Financial plan.

21. On or before May 15 of each year, the trust shall submit to the Legislature a financial plan designed to implement the financing of the wastewater treatment system projects on the project priority list approved pursuant to section 20 of P.L.1985, c.334 (C.58:11B-20). The financial plan shall contain an enumeration of the bonds, notes or other obligations of the trust which the trust intends to issue, including the amounts thereof and the terms and conditions thereof, a list of loans to be made to local government units, including the terms and conditions thereof and the anticipated rate of interest per annum and repayment schedule therefor, and a list of loan

guarantees or contracts to guarantee the payment of all or a portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of a wastewater treatment system project, and the terms and conditions thereof. The financial plan shall also set forth a complete operating and financial statement covering its proposed operations during the forthcoming fiscal year, including amounts of income from all sources, and the uniform schedule of fees and charges established by the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5), and the amounts to be derived therefrom, and shall summarize the status of each wastewater treatment system project for which loans or guarantees have been made by the trust, and shall describe major impediments to the accomplishment of the planned wastewater treatment system projects.

19. Section 22 of P.L.1985, c.334 (C.58:11B-22) is amended to read as follows:

C.58:11B-22 Approval of financial plan by Legislature.

22. a. The trust shall submit the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21) to the President of the Senate and the Speaker of the General Assembly on a day when both houses are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively.

b. Unless the financial plan as described in the submission is approved by adoption of a concurrent resolution of both houses within the time period prescribed in this subsection, the financial plan shall be deemed disapproved and the trust shall not undertake any of the proposed activities contained therein. The President and the Speaker shall cause a concurrent resolution of approval of the trust's financial plan to be placed before the members of the respective houses for a recorded vote within the time period. The time period shall commence on the day of submission and expire on the forty-fifth day after submission or for a house not meeting on the forty-fifth day, on the next meeting day of that house.

20. Section 23 of P.L.1985, c.334 (C.58:11B-23) is amended to read as follows:

C.58:11B-23 Expenditure of funds.

23. a. No funds from State sources or State bond issues used to capitalize the trust shall be available for use by the trust unless appropriated by law to the trust.

b. No funds shall be expended by the trust for its annual operating expenses unless appropriated by law to the trust. Unless required to be

otherwise applied pursuant to law, funds generated by the operation of the trust, including, but not limited to: proceeds from the sale of the trust's bonds, notes or other obligations; revenues derived from investments by the trust; loan repayments from local government units; and fees and charges levied by the trust, may thereafter be applied in accordance with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) for any corporate purpose of the trust without appropriation; except that the funds shall only be used to make loans or guarantees approved by the Legislature in accordance with the provisions of sections 20, 21 and 22 of P.L.1985, c.334 (C.58:11B-20, 58:11B-21 and 58:11B-22), or sections 24, 25 and 26 of P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1 and C.58:11B-22.1).

c. The trust shall not apply for any federal funds, including funds which are authorized pursuant to the "Federal Water Pollution Control Act Amendments of 1972," Pub.L. 92-500 (33 U.S.C. s.1251 et al.), and any amendatory or supplementary acts thereto.

The trust, with the concurrence of the Commissioner of Environmental Protection, may receive, accept or utilize moneys received from local government units as repayments of principal and interest on loans made from the State Revolving Fund Accounts established pursuant to section 1 of P.L.1988, c.133.

21. Section 25 of P.L.1985, c.334 (C.58:11B-25) is amended to read as follows:

C.58:11B-25 Rules, regulations for loans, guarantees.

25. The trust shall establish the rules and regulations governing the making and use of loans or guarantees, including, but not limited to, procedures for the submission of loan guarantee requests, standards for the evaluation of requests, provisions implementing priority systems for projects, reporting requirements of the recipient of any loan or guarantee concerning the progress and the expenditure of funds, and limitations, restrictions or requirements concerning the use of loan funds as the trust shall prescribe; provided that the rules and regulations shall be in compliance with the terms and provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) relating to the making of or eligibility for loans or guarantees for environmental infrastructure projects generally or for any particular type or class of wastewater treatment system or water supply projects.

22. Section 27 of P.L.1985, c.334 (C.58:11B-27) is amended to read as follows:

C.58:11B-27 Rules, regulations, adoption procedure.

27. The trust shall adopt such rules and regulations as it deems necessary to effectuate the purposes of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), including those required pursuant to sections 25 and 26 of P.L.1985, c.334 (C.58:11B-25 and 58:11B-26), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.58:11B-10.1 "Water supply facilities general loan fund."

23. The trust shall create and establish a special fund to be known as the "water supply facilities general loan fund."

Subject to the provisions of the legislation appropriating moneys to the trust, subject to any other provision of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.) providing otherwise, and subject to agreements with the holders of bonds, notes and other obligations of the trust, the trust shall deposit into the water supply facilities general loan fund all revenues and receipts of the trust, including moneys received by the trust as payment of the principal of and the interest or premium on loans made from moneys in any fund or account held by the trust under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et al.), and the earnings on the moneys in any fund or account of the trust, and all grants, appropriations, other than those referred to in section 11 of P.L.1985, c.334 (C.58:11B-11), contributions, or other moneys from any source, available for the making of loans to local government units or public water utilities for water supply projects. The amounts in the water supply facilities general loan fund shall be available for application by the trust for loans to local government units or public water utilities for the cost of water supply projects, and for other corporate purposes of the trust, subject to agreements with the holders of bonds, notes or other obligations of the trust.

C.58:11B-20.1 Priority system for water supply projects; policies.

24. a. The Commissioner of Environmental Protection shall for each fiscal year develop a priority system for water supply projects and shall establish the ranking criteria and funding policies therefor. The commissioner shall set forth a project priority list for funding by the trust for each fiscal year and shall include the aggregate amount of funds of the trust to be authorized for these purposes. The commissioner may include a water supply project on the project priority list if it meets the eligibility requirements for funding pursuant to the federal "Safe Drinking Water Act Amendments of 1996," Pub.L.104-182. The project priority list shall include a description of each project and an explanation of the manner in which priorities were established. The priority system and project priority

list for the ensuing fiscal year shall be submitted to the Legislature on or before January 15 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively. On or before May 15 of each year, the trust shall submit the project priority list to be introduced in each House in the form of legislative appropriations bills, which shall be referred to the Senate Natural Resources and Economic Development Committee and the General Assembly Agriculture and Waste Management Committee, or their successors, for their respective consideration.

b. The Senate Natural Resources and Economic Development Committee and the General Assembly Agriculture and Waste Management Committee shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before July 1 of each year, the Legislature shall approve an appropriations act containing the project priority list, including any amendatory or supplementary provisions thereto, which act shall include the authorization of an aggregate amount of funds of the trust to be expended for loans and guarantees for the specific water supply projects, including the individual amounts therefor, on the list.

c. The trust shall not expend any money for a loan or guarantee during a fiscal year for any water supply project unless the expenditure is authorized pursuant to an appropriations act in accordance with the provisions of this section.

C.58:11B-21.1 Submission of financial plan to Legislature.

25. On or before May 15 of each year, the trust shall submit to the Legislature a financial plan designed to implement the financing of the water supply projects on the project priority list approved pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1). The financial plan shall contain an enumeration of the bonds, notes or other obligations of the trust which the trust intends to issue, including the amounts thereof and the terms and conditions thereof, a list of loans to be made to local government units or public water utilities, including the terms and conditions thereof and the anticipated rate of interest per annum and repayment schedule therefor, and a list of loan guarantees or contracts to guarantee the payment of all or a portion of the principal and interest on bonds, notes or other obligations issued by a local government unit to finance the cost of a water supply project, and the terms and conditions thereof.

The financial plan shall also set forth a complete operating and financial statement covering its proposed operations during the forthcoming fiscal year,

including amounts of income from all sources, and the uniform schedule of fees and charges established by the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5), and the amounts to be derived therefrom, and shall summarize the status of each water supply project for which loans or guarantees have been made by the trust, and shall describe major impediments to the accomplishment of the planned water supply projects.

C.58:11B-22.1 Submission of financial plan, details; approval.

26. a. The trust shall submit the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1) to the President of the Senate and the Speaker of the General Assembly on a day when both houses are meeting. The President and the Speaker shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively.

b. Unless the financial plan as described in the submission is approved by adoption of a concurrent resolution of both houses within the time period prescribed in this subsection, the financial plan shall be deemed disapproved and the trust shall not undertake any of the proposed activities contained therein. The President and the Speaker shall cause a concurrent resolution of approval of the trust's financial plan to be placed before the members of the respective houses for a recorded vote within the time period. The time period shall commence on the day of submission and expire on the forty-fifth day after submission or for a house not meeting on the forty-fifth day, on the next meeting day of that house.

C.58:11B-22.2 Submission of consolidated financial plan.

27. As an alternative to the individual annual submissions required by the provisions of sections 21 and 22 of P.L.1985, c.334 (C.58:11B-21 and 58:11B-22) and sections 25 and 26 of P.L.1997, c.224 (C.58:11B-21.1 and C.58:11B-22.1), the trust may develop and submit to the Legislature a consolidated financial plan designed to implement the financing of the wastewater treatment system projects on the project priority list approved pursuant to section 20 of P.L.1985, c.334 (C.58:11B-20) and the water supply projects on the project priority list approved pursuant to section 24 of P.L.1997, c.224 (C.58:11B-20.1).

28. This act shall take effect immediately.

Approved August 20, 1997.

CHAPTER 225

AN ACT amending the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989" to authorize the Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust to use bond moneys therefrom to make grants, loan guarantees, or low or zero interest loans to local government units for financing the construction of stormwater management and combined sewer overflow abatement projects; providing for the submission of this amendatory act to the people at a general election, and making an appropriation.

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

1. Section 3 of P.L.1989, c.181 is amended to read as follows:

3. As used in this act:

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

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

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

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

"Commissioner" means the Commissioner of Environmental Protection;

"Construction" means, in addition to the usual meaning thereof, acts of construction, reconstruction, improvement, rehabilitation, relocation, demolition, renewal, repair, replacement, extension, improvement, and betterment;

"Cost" means the expenses incurred in connection with: the acquisition by purchase, lease, or otherwise, and the construction of a project authorized by this act; the acquisition by purchase, lease, or otherwise, and the development of any real or personal property for use in connection with a project authorized by this act, including any rights or interests therein; the execution of any agreements and franchises deemed by the department to be necessary or useful and convenient in connection with any project authorized by this act; the procurement of engineering, inspection, planning, legal, financial, or other professional services, including the services of a

bond registrar or an authenticating agent; the issuance of bonds, or any interest or discount thereon; the administrative, organizational, operating, or other expenses incident to the financing, completing, and placing into service of any project authorized by this act; the establishment of a reserve fund or funds for working capital, operating, maintenance, or replacement expenses and for the payment or security of principal or interest on bonds, as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine; and reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by this act, or of any moneys which may have been expended therefrom for, or in connection with, any project authorized by this act;

"Department" means the Department of Environmental Protection;

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

"Local government unit" means a county, municipality, municipal or county sewerage authority or utilities authority, municipal sewerage district, joint meeting or any other political subdivision of the State authorized pursuant to law to construct, operate or maintain a stormwater management system or a combined sewer system;

"Project" means any work relating to any of the stormwater management or combined sewer overflow abatement projects identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of P.L.1989, c.181;

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

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.);

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, or any combination thereof, or other liquid residue

discharged or collected into a sewer system or stormwater management system, or any combination thereof; and

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

2. Section 5 of P.L.1989, c.181 is amended to read as follows:

5. a. Bonds of the State of New Jersey are authorized to be issued in the aggregate principal amount of $50,000,000 for the purposes of providing grants or loans to local government units for the costs of stormwater management and combined sewer overflow abatement projects, all as identified pursuant to the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of this act.

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

(1) Not less than $45,000,000 is allocated to the department for the purposes of providing grants or low or zero interest loans to local government units for the costs of stormwater management and combined sewer overflow abatement projects, all as designated and authorized pursuant to section 28 of P.L.1989, c.181; and

(2) No more than $5,000,000 is allocated for payment to, and use by, the trust in establishing reserves and providing loan guarantees in accordance with paragraph (2) of subsection a. of section 15 of P.L.1989, c.181.

If the "New Jersey Environmental Infrastructure Trust Act," P.L.1997, c.224 (C.58:11B-10.1 et al.) has not been enacted into law by the date of the approval of this act by the voters, the bonds allocated pursuant to paragraph (2) of this subsection shall be allocated with the bonds allocated pursuant to paragraph (1) of this subsection, and subsection b. of section 14 of P.L.1989, c.181 and paragraph (2) of subsection a. of section 15 of P.L.1989, c.181 shall be inoperative.

3. Section 10 of P.L.1989, c.181 is amended to read as follows:

10. a. The bonds shall recite that they are issued for the purposes set forth in section 5 of P.L.1989, c.181, that they are issued pursuant to this act, that this act was submitted to the people of the State at the general election held in the month of November, 1989, and that this act was approved by a majority of the legally qualified voters of the State voting thereon at the election. The bonds shall also recite, if issued after the effective date of P.L.1997, c.225, that the amendments to P.L.1989, c.181 were submitted to the people of the State at the general election held in the month of November, 1997, and were approved by a majority of the legally qualified voters of the State voting thereon. These recitals shall be conclusive evidence of the authority of the State to issue the bonds and their validity. Any bonds containing the recitals shall, in any suit, action or proceeding involving their validity, be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed and delivered in conformity herewith and with all other provisions of laws applicable hereto, and shall be incontestable for any cause.

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

4. Section 14 of P.L.1989, c.181 is amended to read as follows:

14. a. The proceeds from the sale of the bonds allocated pursuant to paragraph (1) of subsection b. of section 5 of P.L.1989, c.181 shall be paid to the State Treasurer for deposit in a separate nonlapsing revolving fund, which shall be known as the "Stormwater Management and Combined Sewer Overflow Abatement Fund," for use by the department as hereinafter provided.

b. The proceeds from the sale of bonds allocated pursuant to paragraph (2) of subsection b. of section 5 of P.L.1989, c.181 shall be paid to the State Treasurer for deposit in a separate nonlapsing revolving fund, which shall be known as the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund," for use by the trust as hereinafter provided.

5. Section 15 of P.L.1989, c.181 is amended to read as follows:

15. a. (1) The moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" are specifically dedicated and shall be applied to the financing of the costs of stormwater management and combined sewer overflow abatement projects, as set forth in section 5 of P.L.1989, c.181, and designated and authorized pursuant to section 28 of

P.L.1989, c.181. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided, notwithstanding that the Legislature shall not have then adopted an act making a specific appropriation of any of the moneys. Any act appropriating moneys from the "Stormwater Management and Combined Sewer Overflow Abatement Fund" shall identify the project to be funded by the moneys.

Payments of principal and interest on loans made from the "Stormwater Management and Combined Sewer Overflow Abatement Fund" shall be returned to that fund for use for any authorized purpose to which moneys in the fund may be used pursuant to P.L.1989, c.181. Moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" may be made available to the trust, with the concurrence of the department, for temporary use by the trust for any of the purposes set forth in paragraph (2) of this subsection, under terms and conditions established therefor by the commissioner and the trust and approved by the State Treasurer.

The trust shall repay to the "Stormwater Management and Combined Sewer Overflow Abatement Fund" any sums made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(2) The moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" are specifically dedicated and allocated to, and shall be applied to the cost of, the establishment by the trust of reserve and loan guarantee accounts within that fund. The reserve account is to be used to secure debt issued by the trust pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.); and the guarantee account is to be used by the trust to secure debt issued by a local government unit. The trust shall not directly or indirectly use any moneys paid to it pursuant to this paragraph for the purpose of issuing a loan guarantee in connection with the financing of a stormwater management or combined sewer overflow abatement project, unless the project, and the amount and the terms or conditions of the loan guarantee, shall have been approved by the Legislature. Moneys in the reserve and loan guarantee accounts may be made available to the department, with the concurrence of the trust, for temporary use by the department in implementing the provisions of P.L.1989, c.181, under terms and conditions established therefor by the commissioner and the trust and approved by the State Treasurer. The department shall repay to the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" any sums made available for temporary use. Repayment shall be in accordance with the terms and conditions approved therefor.

(3) Moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" may be transferred to the trust for use as set forth in paragraph (2) of this subsection.

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

c. Pending their application to the purposes provided in this act, the moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law, and moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" may be invested and reinvested by the trust as are other trust funds in the custody of the trust.

Net earnings received from the investment or deposit of moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" shall be paid to that fund, and net earnings received from the investment or deposit of moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" shall be paid to that fund for use by the trust to cover administrative expenses incurred in administering that fund. Any moneys not required for administrative expenses shall be used for any other authorized purpose to which moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" may be used.

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

6. Section 28 of P.L.1989, c.181 is amended to read as follows:

28. The commissioner shall, on or before January 15 of each year, develop and submit to the Legislature a priority system for stormwater management system and combined sewer overflow abatement projects and shall establish the ranking criteria and funding policies for the projects therefor. The commissioner shall set forth a stormwater management system

and combined sewer overflow abatement project priority list for funding for each fiscal year and shall include the aggregate amount of funds to be authorized for these purposes. No moneys shall be expended for grants or loans in a fiscal year for any stormwater management system or combined sewer overflow abatement project unless the expenditure is authorized pursuant to an appropriations act. As part of the annual submission required by this subsection, the department and the trust shall each provide a financial accounting of all project expenditures made in the preceding year, and of all administrative expenses incurred by the trust from interest earnings from the "Stormwater Management and Combined Sewer Overflow Abatement Trust Fund" in connection therewith.

7. Section 29 of P.L.1989, c.181 is amended to read as follows:

29. Not less than 30 days prior to entering into any contract, lease, obligation, or agreement to effectuate the purposes of this act, the commissioner or the trust shall report to and consult with the Joint Budget Oversight Committee, or its successor.

8. Section 30 of P.L.1989, c.181 is amended to read as follows:

30. a. All appropriations from the "Stormwater Management and Combined Sewer Overflow Abatement Fund" shall be by specific allocation for each project, and any transfer of any funds so appropriated shall require the approval of the Joint Budget Oversight Committee or its successor.

b. Notwithstanding any other provision of P.L.1989, c.181, as amended, the department is authorized to use moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Fund" for direct program administrative costs incurred in implementing the provisions of P.L.1989, c.181, as amended, subject to the annual appropriation thereof by the Legislature. In no event may the Legislature appropriate to the Department of Environmental Protection or to any other State department or entity from the "Stormwater Management and Combined Sewer Overflow Abatement Fund," either directly or indirectly, any moneys for indirect program costs or fringe benefit costs. The total sum of all appropriations to the Department of Environmental Protection and to any other State department or entity from the "Stormwater Management and Combined Sewer Overflow Abatement Fund" for direct program administrative costs may not exceed in any fiscal year the total sum of all appropriations that were made to the Department of Environmental Protection from the proceeds of bonds, interest, and loan repayments pursuant to P.L.1989, c.181, for direct program administrative costs, pursuant to P.L.1996, c.42, plus an annual increase of not more than three percent. In

calculating the total sum of all appropriations made to the Department of Environmental Protection for direct program administrative costs pursuant to P.L.1996, c.42, the Legislature may not include any appropriations made for indirect program administrative costs and fringe benefit costs. The provisions of this subsection shall not affect the ability of the Trust to use moneys for its administrative expenses as specifically provided in P.L.1989, c.181, as amended.

9. For the purpose of complying with the provisions of the State Constitution, this act shall be submitted to the people at the general election to be held in the month of November, 1997. To inform the people of the contents of this act, it shall be the duty of the Secretary of State, after this section takes effect, and at least 60 days prior to the election, to cause this act to be published at least once in one or more newspapers of each county, if any newspapers are published therein, and to notify the clerk of each county of this State of the passage of this act; and the clerks respectively, in accordance with the instructions of the Secretary of State, shall have printed on each of the ballots the following:

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

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

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

	YES	AMENDMENT TO THE STORMWATER MANAGEMENT AND COMBINED SEWER OVERFLOW ABATEMENT BOND ACT OF 1989 Shall the amendments to the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," which authorize the Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust to use such bonds to make grants or low or zero interest loans to local governments for financing the cost of stormwater management and combined sewer overflow abatement projects, which limit the State's ability to use bond moneys to cover administrative costs incurred therewith, which authorize the Trust to use interest earnings on bond moneys to cover administrative costs incurred therewith, and which authorize the Trust to establish reserve and guarantee accounts in conjunction therewith, be approved?

	No.	INTERPRETIVE STATEMENT If approved, bond moneys in the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," could be used by the Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust to make grants or low or zero interest loans to local governments. The grants or loans are to be used to finance the costs of projects to manage stormwater and to abate overflows of combined wastewater and stormwater sewers in order to stop or decrease pollutants from going into the State's waters. The voters approved the original bond act in 1989. These changes would permit the Department and the Trust to administer a combined loan and loan guarantee program for stormwater management and combined sewer overflow abatement projects. The bill provides that the State would be limited in using bond moneys for administrative expenses, that the Trust would be permitted to cover its administrative costs out of interest earned on bond moneys, and that the Trust would be permitted to establish reserve and guarantee accounts for loan moneys. Approval of these revisions to the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989" would not involve any new State bonded indebtedness.

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

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

10. There is appropriated, from the General Fund, the sum of $5,000 to the Department of State for expenses in connection with the publication of the notice required pursuant to section 9 of P.L.1997, c.225.

11. Sections 9 and 10 of this act shall take effect immediately, and the remainder of the act shall take effect as and when provided in section 9 of this act.

Approved August 20, 1997.

CHAPTER 226

AN ACT providing for the collection of certain tax refunds and rebates to pay delinquent assessments and restitution intended for victims of crimes, amending P.L.1981, c.239.

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

1. 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, to the Victims of Crime Compensation Board for the portion of an assessment ordered pursuant to N.J.S.2C:43-3.1 for deposit in the Victims of Crime Compensation Board Account or restitution ordered to be paid to the board pursuant to N.J.S.2C:44-2 for deposit in the Victims of Crime Compensation Board Account, 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. s.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.

2. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 227

AN ACT concerning compensation for persons mistakenly imprisoned and supplementing Title 52 of the Revised Statutes.

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

C.52:4C-1 Findings, declarations relative to persons mistakenly imprisoned.

1. The Legislature finds and declares that innocent persons who have been convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The Legislature intends by enactment of the provisions of this act that those innocent persons who can demonstrate by clear and convincing evidence that they were mistakenly convicted and imprisoned be able to recover damages against the State.

In light of the substantial burden of proof that must be carried by such persons, it is the intent of the Legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, may, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

C.52:4C-2 Suit for damages.

2. Notwithstanding the provisions of any other law, any person convicted and subsequently imprisoned for one or more crimes which he did not commit may, under the conditions hereinafter provided, bring a suit for damages in Superior Court against the Department of the Treasury.

C.52:4C-3 Evidence claimant must establish.

3. The person (hereinafter titled, "the claimant") shall establish the following by clear and convincing evidence:

a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and

b. He did not commit the crime for which he was convicted; and

c. He did not by his own conduct cause or bring about his conviction.

C.52:4C-4 Time to bring suit.

4. The suit, accompanied by a statement of the facts concerning the claim for damages, verified in the manner provided for the verification of complaints in civil actions, shall be brought by the claimant within a period of two years after his release from imprisonment, or after the grant of a pardon to him; provided, however, that any eligible claimant released or pardoned during the five-year period prior to May 2, 1996 shall have two years from the effective date of this act to file a suit.

C.52:4C-5 Damages, attorney fees.

5. a. Damages awarded under this act shall not exceed twice the amount of the claimant's income in the year prior to his incarceration or $20,000.00 for each year of incarceration, whichever is greater.

b. In addition to the damages awarded pursuant to subsection a., the claimant shall be entitled to receive reasonable attorney fees.

C.52:4C-6 Noneligibility.

6. a. A person serving a term of imprisonment for a crime other than a crime of which the person was mistakenly convicted shall not be eligible to file a claim for damages pursuant to the provisions of this act.

b. A person shall not be eligible to file a claim for damages pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.

7. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 228

AN ACT concerning procedures for eviction from certain rental premises 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. (1) 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.

(2) In public housing under the control of a public housing authority or redevelopment agency, the person has substantially violated or breached any of the covenants or agreements contained in the lease for the premises pertaining to illegal uses of controlled dangerous substances, or other illegal activities, whether or not 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 conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term.

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall

notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1 et seq.) have been complied with.

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-61.2), or has a protected tenancy status pursuant to section 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.

k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226

(C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this 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:20-1 et al. involving theft of property located on the leased premises from the landlord, the leased premises or other tenants residing in the leased premises, or 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."

q. 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:20-1 et al. involving theft of property from the landlord, the leased premises or other tenants residing in the same building or complex; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently.

For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate family" means a person's spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

2. Section 3 of P.L.1974, c.49 (C.2A:18-61.2) is amended to read as follows:

C.2A:18-61.2 Removal of residential tenants; required notice; contents; service.

3. No judgment of possession shall be entered for any premises covered by section 2 of this act, except in the nonpayment of rent under subsection a. or f. of section 2, unless the landlord has made written demand and given written notice for delivery of possession of the premises. The following notice shall be required:

a. For an action alleging disorderly conduct under subsection b. of section 2, or injury to the premises under subsection c. of section 2, or any grounds under subsection m., n., o. or p. of section 2, three days' notice prior to the institution of the action for possession;

b. For an action alleging continued violation of rules and regulations under subsection d. of section 2, or substantial breach of covenant under subsection e. of section 2, or habitual failure to pay rent, one month's notice prior to the institution of the action for possession;

c. For an action alleging any grounds under subsection g. of section 2, three months' notice prior to the institution of the action;

d. For an action alleging permanent retirement under subsection h. of section 2, 18 months' notice prior to the institution of the action and,

provided that, where there is a lease in effect, no action may be instituted until the lease expires;

e. For an action alleging refusal of acceptance of reasonable lease changes under subsection i. of section 2, one month's notice prior to institution of action;

f. For an action alleging any grounds under subsection l. of section 2, two months' notice prior to the institution of the action and, provided that where there is a written lease in effect no action shall be instituted until the lease expires;

g. For an action alleging any grounds under subsection k. of section 2, three years' notice prior to the institution of action, and provided that where there is a written lease in effect, no action shall be instituted until the lease expires;

h. In public housing under the control of a public housing authority or redevelopment agency, for an action alleging substantial breach of contract under paragraph (2) of subsection e. of section 2, the period of notice required prior to the institution of an action for possession shall be in accordance with federal regulations pertaining to public housing leases.

The notice in each of the foregoing instances shall specify in detail the cause of the termination of the tenancy and shall be served either personally upon the tenant or lessee or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years, or by certified mail; if the certified letter is not claimed, notice shall be sent by regular mail.

3. This act shall take effect on the first day of the fourth month next following enactment.

Approved August 25, 1997.

CHAPTER 229

AN ACT establishing an Advisory Council on Adolescent Pregnancy, supplementing Title 26 of the Revised Statutes and making an appropriation.

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

C.26:2-170 Findings, declarations relative to out-of-wedlock adolescent births.

1. The Legislature finds and declares that:

a. Out-of-wedlock adolescent births are a serious problem facing the State of New Jersey and the nation;

b. A large number of adolescents ages 10-19 are having children with approximately one million adolescents in the United States becoming pregnant each year;

c. Adolescent pregnancy has serious medical consequences, including the following: adolescents are less likely than older mothers to obtain prenatal care as only half of the pregnant adolescents in New Jersey receive early prenatal care; pregnant teenagers are at excess risk for anemia, cervical trauma, premature delivery, prolonged or abrupt labor and maternal mortality; and children of adolescent mothers are more likely to have low birth weight, require further hospitalization and die in infancy;

d. Out-of-wedlock adolescent pregnancy has serious social consequences, including the following: adolescent mothers are more likely to live in poverty, receive public assistance, be a high school dropout and be unemployed as nearly 75% of all single mothers under age 25 live in poverty, approximately half of all women receiving AFDC from 1976-1992 were or had been teenage mothers, only slightly more than half of adolescents who become mothers finish high school and children of adolescent mothers experience excess rates of dropping out of school, incarceration, depression, premature sexual activity and out-of-wedlock births. As of 1992, 84% of all births to mothers under the age of 20 in New Jersey were out-of-wedlock, the sixth highest rate in the country;

e. Out-of-wedlock adolescent pregnancy imposes large economic costs to federal, state and local governments;

f. There is a need for a permanent body to confront the issue of out-of-wedlock adolescent pregnancy and to review policy proposals, such as the findings and recommendations presented in the 1988 report of the New Jersey Task Force on Adolescent Pregnancy; and

g. It is therefore necessary to establish an advisory council to determine the best methods of coordination and improvement of the services of State and local governmental, private and voluntary agencies, community organizations, and schools which seek to serve adolescents at high risk of pregnancy, pregnant adolescents, adolescent parents, and their families.

C.26:2-171 Advisory Council on Adolescent Pregnancy established.

2. a. There is established in the Executive Branch of the State Government an Advisory Council on Adolescent Pregnancy. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the advisory council is allocated within the Department of Health and Senior Services, but

notwithstanding that allocation, the advisory council shall be independent of any supervision or control by the department or by any board or officer thereof.

b. The advisory council shall consist of 23 members as follows: the Commissioners of the Departments of Health and Senior Services, Human Services, Education, Community Affairs, and Labor, who shall serve as ex officio members, and 18 public members, four of whom shall be teenagers, including two teenage parents and two teenagers who are not parents, and fourteen of whom shall be representatives of community based religious, health and social service organizations which serve adolescents and health professionals and educators with recognized expertise in the field of adolescent pregnancy. Of the public members, three shall be appointed by the President of the Senate, no more than two of whom shall be of the same political party; three shall be appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party; and 12 shall be appointed by the Governor with the advice and consent of the Senate, no more than six of whom shall be of the same political party. The advisory council shall organize within 30 days after the appointment of its members. The members shall select one person from among them to serve as the chairperson and the members shall select a secretary, who need not be a member of the advisory council.

c. Each ex officio member may designate an employee of the member's department to represent the member at hearings of the advisory council. All designees may lawfully vote and otherwise act on behalf of the member for whom they constitute the designee.

d. Each public member shall be appointed for a term of three years, but of the members first appointed, six shall serve for a term of one year, six for a term of two years and six for a term of three years. Members shall serve until their successors are appointed and qualified. Vacancies shall be filled in the same manner as the original appointments were made.

e. Members of the advisory council shall serve without compensation but, within the limits of funds appropriated or otherwise made available to it, shall be eligible for reimbursement of necessary expenses incurred in the performance of their duties.

f. The Department of Health and Senior Services shall provide such staff as the advisory council requests to carry out the purposes of this act.

C.26:2-172 Advisory council duties.

3. It shall be the duty of the advisory council to:

a. Review past policy proposals, including those contained in the 1988 report of the New Jersey Task Force on Adolescent Pregnancy;

b. Develop policy proposals for the State to prevent adolescent pregnancy, reduce out-of-wedlock births among adolescents and improve services to at-risk, pregnant, and parenting adolescents;

c. Assist with and promote a coordinated and comprehensive approach to the social, economic, and health problems of adolescent pregnancy and parenthood among public and private groups;

d. Collect information on ongoing and new efforts aimed at preventing adolescent pregnancy and improving services to at-risk, pregnant, and parenting adolescents;

e. Promote and encourage broad community input, communication and education regarding adolescent pregnancy;

f. Provide advice to local public and private agencies and schools seeking to mobilize local efforts designed to prevent adolescent pregnancies and assist adolescent parents; and

g. Coordinate activities generated by the National Campaign to Prevent Teen Pregnancy and the Family Planning Program in the State Department of Health and Senior Services.

C.26:2-173 Assistance, services available.

4. The advisory council may call to its assistance and avail itself of the services of the Legislature and officials and employees of any State, county or municipal department, board, bureau, commission, task force, or agency as may be required and made available for its purposes. It may also, within the limits of funds appropriated or otherwise made available to it, incur travel and miscellaneous expenses necessary for the performance of its duties.

C.26:2-174 Report to Governor, Legislature.

5. The advisory council shall report to the Governor and the Legislature biannually, or more frequently if deemed appropriate, on its activities, findings and recommendations for legislation, administrative action or other methods for preventing adolescent pregnancy, reducing out-of-wedlock births among adolescents and improving services related to adolescent pregnancy.

6. There is appropriated $95,000 from the General Fund to the Advisory Council on Adolescent Pregnancy to effectuate the purposes of this act.

7. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 230

AN ACT concerning testing for syphilis, amending P.L.1938, c.41 and repealing P.L.1938, c.126.

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

1. Section 1 of P.L.1938, c.41 (C.26:4-49.1) is amended to read as follows:

C.26:4-49.1 Blood sample, syphilis testing for pregnant women.

1. Every physician attending pregnant women in the State for conditions relating to their pregnancy during the period of gestation and/or at delivery shall, in the case of every woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination and take or cause to be taken a sample of blood of the woman or from the umbilical cord of the infant at the time of delivery of a live infant, and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the State, but not permitted by law to take blood samples, shall cause a sample of blood of such pregnant women or postpartum woman or infant, as the case may be, to be taken by a physician duly licensed to practice medicine and surgery and have such sample submitted to an approved laboratory for a standard serological test for syphilis.

2. Section 3 of P.L.1938, c.41 (C.26:4-49.3) is amended to read as follows:

C.26:4-49.3 Statement of blood test in birth or stillbirth report.

3. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the certificate whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child or from the umbilical cord of the infant for which a birth or stillbirth certificate is filed and the date when the specimen was taken.

Repealer.

3. The following is repealed:
P.L.1938, c.126 (C.37:1-20 to C.37:1-26).

4. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 231

AN ACT concerning expenditures from the Airport Safety Fund, amending P.L.1983, c.264 and P.L.1995, c.108.

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

1. Section 2 of P.L.1983, c.264 (C.6:1-90) is amended to read as follows:

C.6:1-90 Findings, declarations.

2. a. The Legislature finds and declares that:

(1) New Jersey's public use, general aviation airports are an integral part of the State's transportation network and promote mobility and economic activities of common public benefit. These public use, general aviation transportation facilities are deteriorating and must be improved as to safety and their economic vitality in order to realize their full public benefit.

(2) There is a growing need to upgrade the safety of general aviation airports, which require such improvements and equipment as radar, instrument landing aids and weather-reporting equipment to enable them to safely handle modern general aviation aircraft.

(3) Many publicly owned, general aviation airports are unable to obtain all of the federal funds available to them for airport development because they are unable to raise money for their local matching requirements.

(4) Many privately owned, public use, general aviation airports which are essential to the State's economic development are in danger of conversion to nonaviation uses, and it is in the public interest to provide State assistance to county and municipal efforts to preserve these airports, through acquisition or other means.

(5) Users of general aviation airports have contributed substantial amounts to the State treasury through fees and fuel taxes, and this money should henceforth be used to establish an airport assistance program.

(6) The long term stability and viability of unrestricted public use airports are greatly dependent upon the economic stability and vitality of the aviation enterprises which are located within them.

(7) It is in the public interest for the Department of Transportation to undertake activities which promote aviation safety, promote aviation education, and provide for the promotion of aeronautics.

b. The Legislature therefore finds and declares that it is in the public interest to establish an Airport Safety Fund, impose a two cent per gallon tax on fuel distributed to general aviation airports, and authorize the Commis-

sioner of Transportation to establish assistance programs to improve the safety and economic vitality of general aviation airports, to promote aviation safety and education, and to provide for the promotion of aeronautics.

c. The Legislature also declares that, inasmuch as federal authorities already register aircraft, it is deemed appropriate to cease the State registration of New Jersey based aircraft, which is currently administered at a net loss.

2. Section 3 of P.L.1983, c.264 (C.6:1-91) is amended to read as follows:

C.6:1-91 Definitions.

3. As used in this act:

a. "Commissioner" means the Commissioner of Transportation.

b. "Department" means the Department of Transportation.

c. "Fund" means the Airport Safety Fund, as established in section 4 of this act.

d. "Treasurer" means the State Treasurer.

e. "Unrestricted public use airport" means any facility for the take-off and landing of aircraft, either publicly or privately owned, that does not have restrictive covenants on operational use by the general public for reasons other than safety.

f. "General aviation airport" means any area of land or water, or both, used or made available for the landing and take-off of civil aircraft, and which has further been determined by the Commissioner of Transportation not to be an international airport either by classification or service characteristics.

g. "Turbine fuel" means any liquid or gaseous substance used by jet and turbo-shaft aircraft for the propulsion of aircraft through the air, as determined by the Commissioner of Transportation.

h. "Director" means the Director of the Division of Taxation.

i. "Aviation enterprise" means any business or enterprise which is principally located within a New Jersey unrestricted public use airport where the commissioner has determined such business or enterprise has a direct economic or operational benefit to the airport.

3. Section 4 of P.L.1983, c.264 (C.6:1-92) is amended to read as follows:

C.6:1-92 "Airport Safety Fund."

4. a. There is established in the general fund a separate special account to be known as the "Airport Safety Fund." Notwithstanding any provisions of law to the contrary and except as otherwise provided in this act, revenues

from the taxes imposed on the sale of fuel used in aircraft, pursuant to chapter 39 of Title 54 of the Revised Statutes, revenues from the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this act, and fees imposed under Title 6 of the Revised Statutes shall be credited to the fund.

b. Moneys shall be appropriated from the fund, notwithstanding the provisions of P.L.1976, c.67 (C.52:9H-5 et seq.).

c. Moneys in the fund shall be appropriated to the department only for those aviation purposes which the department is empowered to undertake pursuant to this act or under Title 6 and Title 27.

d. All revenues generated by the taxes imposed on the sale of aircraft fuels, pursuant to chapter 39 of Title 54 of the Revised Statutes; the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this act, and fees imposed under the provisions of Title 6 of the Revised Statutes shall be collected and invested by the Treasurer pursuant to law. Earnings received from the investment or deposit of revenues in the fund shall be paid into and become part of the fund.

e. Any revenues credited to the fund but not appropriated to the department shall remain in the fund exclusively for the purposes set forth in this act.

f. The Director of the Division of Budget and Accounting is empowered to transfer funds from the fund as may be necessary in order to compensate the Division of Taxation for the cost incurred in administering the tax provisions in this act.

g. Moneys paid back to the State pursuant to loans made from the fund shall be paid back into and become part of the fund.

4. Section 9 of P.L.1983, c.264 (C.6:1-93) is amended to read as follows:

C.6:1-93 Permitted uses of "Airport Safety Fund."

9. The commissioner is hereby authorized to expend moneys from the Airport Safety Fund established by section 4 of the "New Jersey Airport Safety Act of 1983," P.L.1983, c.264 (C.6:1-92), for the following purposes:

a. To provide grants to publicly and privately owned, unrestricted, public use airports to obtain federal funds for airport assistance. The commissioner is authorized to provide up to 50% of the required local match; except that the commissioner is authorized to provide up to 100% of the required local match, when he deems that an emergency situation exists.

b. To provide grants or loans, or both, to publicly owned and private, unrestricted, public use airports for safety projects, including but not limited

to engineering, planning, construction and rehabilitation of lighting, runways, aprons, airport approach aids and obstruction removals.

c. To provide grants or loans, or both, to publicly owned airports or counties or municipalities to acquire airports or lands, rights in land and easements, including aviation easements necessary for clear zones or clear areas, which are owned, controlled or operated, or to be owned, controlled or operated by municipalities, counties or other political subdivisions of this State.

d. To acquire lands or rights in lands adjacent to privately owned, public use airports, which are found necessary for airport or air safety purposes, and while retaining title to that land or rights in land, the commissioner may lease those lands or rights to airports or airport authorities for use in the furtherance of airport, air safety, or air transportation purposes. The commissioner shall establish terms in any such lease so as to protect the State's interest in the promotion of aviation and the State's investment in lands and property.

e. To provide loans to unrestricted public use airports and New Jersey based aviation enterprises, in amounts not to exceed $200,000 per loan, for such specific purposes and on such terms and conditions as may be determined by the commissioner pursuant to this subsection. Loans pursuant to this subsection may be provided for revenue or nonrevenue generating capital construction, capital development, or equipment acquisition purposes. In providing such loans, the commissioner shall establish loan security terms so as to protect the State's interests. Loans shall not be provided pursuant to this subsection to airports or enterprises for the purpose of expanding, preparing for an expansion or completing an expansion of the physical capabilities of the airport, including but not limited to expansion of the runways, to support a greater number of flights or larger aircraft than that which the airport is able to handle within the safety parameters applicable to that airport at the time of the loan application, except that a loan may be provided to restore the physical capabilities of an airport, which capabilities have been reduced as a result of insufficient maintenance and repair, to the capabilities that existed when the airport was in a state of full repair and fully maintained.

f. To establish, operate, or provide any program or activity which promotes aviation safety, promotes aviation education, or provides for the promotion of aeronautics. In no fiscal year shall the amount of moneys expended pursuant to this subsection exceed 10 percent of the total amount of moneys appropriated in that fiscal year to the Airport Safety Fund, established in the General Fund pursuant to section 4 of P.L.1983, c.264 (C.6:1-92).

5. Section 15 of P.L.1995, c.108 (C.27:1B-21.8) is amended to read as follows:

C.27:1B-21.8 Credits to Airport Safety Fund.

15. Each year a nonlapsing sum of money shall be appropriated from funds held in the Special Transportation Fund, established pursuant to section 21 of P.L.1984, c.73 (C.27:1B-21), and credited to the Airport Safety Fund, established in the General Fund pursuant to section 4 of P.L.1983, c.264 (C.6:1-92), for use for any purpose pursuant to the "New Jersey Airport Safety Act of 1983," P.L.1983, c.264 (C.6:1-89 et al.) and that sum shall be included in the annual report of projects prepared pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22). Funds so appropriated shall no longer be subject to the provisions and limitations of chapter 1B of Title 27 of the Revised Statutes, but instead shall be subject to the provisions and limitations of P.L.1983, c.264 (C.6:1-89 et al.).

6. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 232

AN ACT concerning State aid for public school districts, amending and supplementing P.L.1996, c.138 and making an appropriation.

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

C.18A:7F-5.1 Additional State aid to school districts.

1. Notwithstanding any provision of P.L.1996, c.138 (C:18A:7F-1 et al.) or any rule or regulation promulgated pursuant thereto to the contrary, for the 1997-98 school year a school district, county vocational school district, or county special services school district shall receive additional State aid equal to the amount by which the district's State aid was reduced in the 1996-97 school year pursuant to the provisions of P.L.1995, c.236 (C.18A:7E-6 et seq.). The additional aid received by a district shall be an adjustment to the district's spending growth limitation for the 1997-98 school year. For the 1998-99 school year and thereafter, this additional amount shall be included in the school district's or county vocational school district's prebudget year net budget and prebudget year net T&E budget.

2. Section 10 of P.L.1996, c.138 (C.18A:7F-10) is amended to read as follows:

C.18A:7F-10 Stabilization aid per district; calculation.

10. a. Notwithstanding any other provision of this act to the contrary, the total stabilized aid for each district shall not be increased by more than the district's stabilization aid growth limit. In the event that total stabilized aid exceeds the prebudget year total by a rate greater than the stabilization aid growth limit, the commissioner shall adjust the components of total stabilized aid so that they total exactly the prebudget year total increased by the stabilization aid growth limit. For the 1997-98 school year, the prebudget year total shall include foundation aid, transition aid, categorical aids for special education, bilingual education and county vocational education, and transportation aid paid for the 1996-97 school year. For the 1998-99 school year and thereafter, the prebudget year total shall be the total for the same aid categories as included in total stabilized aid plus any stabilization aid the district has received pursuant to subsection b. of this section, as paid in the prebudget years. For the 1997-98 and 1998-99 school years, total stabilized aid shall include core curriculum standards aid, categorical aids for special education programs, bilingual education programs, and county vocational programs, transportation aid, and aid for adult and postsecondary programs calculated pursuant to sections 15, 19, 20, 21, 25, and 28 of this act. For the 1999-2000 school year and thereafter, total stabilized aid shall include core curriculum standards aid, supplemental core curriculum standards aid, distance learning network aid, categorical aids for special education programs, bilingual education programs, county vocational programs, early childhood program aid, demonstrably effective program aid, instructional supplement aid, transportation aid, aid for adult and postsecondary programs, and academic achievement rewards calculated pursuant to sections 15 through 22, 25, 28 and 29 of this act.

Notwithstanding any provision of this section to the contrary, the commissioner shall ensure that for any district with a stabilization reduction in 1997-98 that by the 1999-2000 school year and thereafter, the total stabilized aid for each school district reflects the actual pupil counts of the district.

b. Notwithstanding any other provision of this act to the contrary, the total of a district's stabilization aid, core curriculum standards aid, supplemental core curriculum standards aid, distance learning network aid, categorical aids for special education programs, bilingual education programs, county vocational programs, early childhood program aid, demonstrably effective program aid, transportation aid, aid for adult and postsecondary programs, and academic achievement rewards calculated

pursuant to subsection a. of this section and sections 15 through 17, subsection a. of section 18, 19 through 22, 25, 28 and 29 of this act, shall not be decreased by more than 10% below the amounts paid for these categories in the prebudget year. In the event that the sum of the formula entitlements calculated pursuant to those sections is less than 90% of the prebudget total, stabilization aid shall be paid in the amount of the difference between 90% of the prebudget year total and the sum of those entitlements. For the 1997-98 school year, the prebudget year total shall include foundation aid, transition aid, aid for at-risk pupils, technology aid and categorical aids for special education, bilingual education and county vocational education, and transportation aid.

c. For the 1997-98 school year, supplemental stabilization aid shall be paid to any district in which:

(1) the total aid payable for the categories listed in subsection b. of this section is less than the prebudget year total for the same aids; and

(2) resident enrollment projected for October 1997 exceeds 99 percent of the resident enrollment for October 1991 or resident enrollment projected for October 1997 is less than resident enrollment for October 1991 by 35 or fewer pupils or the prebudget year equalized tax rate exceeded the Statewide average equalized school tax rate by 10% or more.

An eligible district shall be aided in the amount of its total aid decline, after offset by any stabilization aid provided pursuant to subsection b. of this section, or $4,000,000, whichever is less. The commissioner, in consultation with the Commissioner of the Department of Community Affairs and the Director of the Division of Local Government Services in the Department of Community Affairs, shall examine the fiscal ability of districts eligible for supplemental stabilization aid to absorb aid losses and shall make recommendations to the Legislature and the Governor regarding the continuation of supplemental stabilization aid. The commissioner shall not implement any of those recommendations until the recommendations are enacted into law.

d. Additional supplemental stabilization aid of $500,000 per district shall be disbursed to any district which meets all of the following criteria:

(1) the district's projected resident enrollment for the 1997-98 school year exceeds 10,000 pupils;

(2) the district's 1996-97 net budget is less than the sum of its maximum T&E budget calculated pursuant to section 13 of this act and early childhood program aid, demonstrably effective program aid, instructional supplement aid, transportation aid, and categorical program aid received pursuant to sections 19 through 22, 28, and 29 of this act;

(3) the district's total aid payable for the categories listed in subsection b. of this section exceeds the prebudget year total for the same aids by no more than 10%;

(4) the district's original State aid notice for 1996-97 was not reduced pursuant to P.L.1995, c.236 (C.18A:7E-6 et seq.);

(5) the district's core curriculum standards aid as a percentage of its T&E budget is less than 50%; and

(6) the district was certified as of November 30, 1996.

e. For the 1997-98 school year, each district which had pupils placed in a county special services school district on October 15, 1995 shall receive additional supplemental stabilization aid as follows:

(1) when the sum of the district's total aid payable for the categories listed in subsection b. of this section, aid payable pursuant to subsections c. and d. of this section, and aid payable pursuant to subsection c. of section 18 of this act exceeds the prebudget year total for the same aids pursuant to subsection b. of this section, the district shall receive an amount equal to the excess of the State aid generated by such placements in the county special services school district in 1996-97 over the excess calculated pursuant to this paragraph; or

(2) when the district's prebudget year aid pursuant to subsection b. of this section equals or exceeds the sum of the total aid payable for the categories listed in subsection b. of this section, aid payable pursuant to subsections c. and d. of this section, and aid payable pursuant to subsection c. of section 18 of this act, the district shall receive an amount equal to the State aid generated by such placements in the county special services school district in 1996-97.

f. Supplemental school tax reduction aid shall be paid to any district which meets the following criteria:

(1) the district's 1996-97 net budget per pupil is less than 115% of the State average net budget per pupil;

(2) the district's 1996-97 equalized tax rate of the general fund is greater than 130% of the Statewide average equalized school tax rate;

(3) the district does not receive any supplemental core curriculum standards aid; and

(4) the district is not included within the Department of Education's district factor groups I or J based on the 1990 federal census data.

Each district which is determined to be eligible to receive aid pursuant to this subsection shall receive aid according to the following formula:

.75 X (ESTR - 1.30 X STESTR) X EVAL

where

ESTR is the district's equalized tax rate of the general fund for the 1996-97 school year;

STESTR is the Statewide average equalized school tax rate for the 1996-97 school year; and

EVAL is the district October 1995 equalized valuation.

No district shall receive more than $300,000 pursuant to this subsection.

g. Additional supplemental stabilization aid shall be paid to any district which is located in a municipality which has a population composed of more than 45% senior citizens age 65 or older according to the most recent federal decennial census. The aid shall equal $200 multiplied by the district's resident enrollment projected for October 1997.

h. For the 1997-98 school year, any county vocational school district which is not eligible for supplemental stabilization aid pursuant to subsection c. of this section but which meets the requirements of paragraph (1) of that subsection and in which the secondary resident enrollment for October 1996 exceeds the resident enrollment projected for October 1997 shall be entitled to supplemental stabilization aid after offset by any aid received by the district pursuant to subsections b., d., e., f., and g. of this section and subsection c. of section 18 of P.L.1996, c.138 (C.18A:7F-18), or $500,000, whichever is less. A recommendation concerning the continuation of aid awarded pursuant to this subsection shall be made by the commissioner pursuant to the provisions of subsection c. of this section.

i. Any stabilization aid, supplemental stabilization aid, and supplemental school tax reduction aid paid pursuant to this section shall be applied toward the required local share of the school district or county vocational school district which receives the aid; except that for the 1997-98 school year, any aid received by a district pursuant to subsection h. of this section shall be an adjustment to the district's spending growth limitation.

3. There is appropriated from the General Fund to the Department of Education $8,127,271 to effectuate the purposes of this act.

4. This act shall take effect immediately.

Approved August 25, 1997.

CHAPTER 233

AN ACT concerning economic development in the Pinelands, supplementing P.L.1979, c.111 (C.13:18A-1 et seq.), and making an appropriation.

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

C.13:18A-56 Findings, declarations relative to economic development in the Pinelands.

1. The Legislature finds and declares that the Pinelands comprehensive management plan and its accompanying land use regulations place a number of restrictions on opportunities for economic development in portions of the region in which growth is restricted and which are largely devoted to conservation and agriculture; that within these areas, there is potential for limited development that may be undertaken in a manner that does not detract from ecological protection goals; and that certain types of economic development can be identified that are compatible with the environmentally sensitive and rural character of the region.

The Legislature further finds and declares that small villages exist in non-growth portions of the region that include areas zoned for commercial and other uses but are isolated in the rural municipalities and lack the staff and resources for planning and economic development; that economic development of a certain type, such as ecotourism, retail sales and services, recreation, and light manufacturing, may be viable alternatives for these areas; and that in order to promote opportunities for these areas, it is necessary to create a program to research and test viable economic development opportunities and to design implementation strategies to bring development to these areas compatible with the ecologically sensitive nature of the region.

C.13:18A-57 Pilot program developed by Pinelands Commission.

2. a. The Pinelands Commission shall develop a pilot program to assist rural Pinelands municipalities in non-growth regions in the Pinelands area in identifying economic development opportunities that complement regional requirements for resource protection and in attracting such development to the area. The pilot program shall be developed by the Pinelands Commission, together with several rural municipalities within non-growth areas in the Pinelands area chosen by the commission, to enable similarly situated municipalities to match local conditions with compatible economic development opportunities. The commission shall choose municipalities to participate in the program based on the extent to which: the entire municipality or large portions thereof are located in an environmentally sensitive area; limited sites are available for development; sewer service is unavailable in most of the municipality; large portions of the municipality are owned by the State; and no local resources are available for economic development planning.

b. The Pinelands Commission shall establish a partnership with each municipality participating in the program. The municipality shall be given

technical and other assistance in developing a local economic development entity. Each local economic development entity shall, together with the commission, perform a community assessment to determine community interests and opportunities for development, and to identify sites for development that are compatible with resource protection and that take into account constraints on the scale of allowable development. The commission, together with the local economic development entities shall develop strategies for attracting development and shall develop promotional materials for that purpose, and shall develop links with county and regional economic development entities. The commission shall develop strategies for the expedited review of development applications and permits for such projects.

C.13:18A-58 Report by Pinelands Commission to Governor, Legislature.

3. Not later than two years after the effective date of this act, the Pinelands Commission shall prepare and submit a report to the Governor and the Legislature describing the pilot program developed pursuant to this act, evaluating its effectiveness, detailing the expenditure of the funds appropriated pursuant to section 4 of P.L.1997, c.233 and discussing its applicability to other regions of the State. The commission shall also make the report available, upon request, to any municipality in the State.

4. There is appropriated from the General Fund, the sum of $250,000 to the Pinelands Commission in order to implement the provisions of this act.

5. This act shall take effect immediately.

Approved August 30, 1997.

CHAPTER 234

AN ACT concerning the remediation of contaminated sites, reappropriating moneys from the "Hazardous Discharge Fund of 1986" that were appropriated pursuant to P.L.1993, c.348, and making an appropriation.

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

1. a. There is appropriated from the special account in the General Fund created pursuant to Article VIII, Section II, paragraph 6 of the New Jersey Constitution, to the Department of Environmental Protection, the

sum of $14,800,000. This money shall be used by the department only for paying or financing the costs incurred by the State for the remediation of discharges of hazardous substances, including the cost of performing necessary operation and maintenance activities relating to remedial actions, and the cost of providing alternative sources of public or private water supplies when a water supply has been, or is suspected of being, contaminated by a discharge of a hazardous substance.

b. Of the moneys appropriated pursuant to subsection a. of this section, not more than $2,700,000 may be expended by the Department of Environmental Protection for the direct program administrative costs relating to the purposes for which the money may be expended pursuant to subsection a. of this section. No moneys appropriated pursuant to subsection a. of this section may be expended for any indirect administrative costs of the department. The expenditure of moneys appropriated pursuant to this section is limited by the provisions of Article VIII, Section II, paragraph 6 of the New Jersey Constitution.

c. At the end of each fiscal year the State Treasurer shall submit a certification to the Legislature stating the revenues collected pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), for the previous fiscal year and the amount of money that has been credited in the previous fiscal year to the special account as required pursuant to Article VIII, Section II, paragraph 6 of the New Jersey Constitution. The State Treasurer shall also certify the current balance of that special account.

2. a. The Department of Environmental Protection shall for each fiscal year develop a financial plan for the department's site remediation program. The financial plan shall be submitted to the Legislature on or before January 15 of 1998 and each year thereafter on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively, and shall cause copies of the financial plan to be submitted to the relevant legislative committees for their consideration and review.

b. The financial plan shall contain a list of site remediation projects for which public funds are anticipated to be authorized and expended in the next fiscal year, including sites for which the State will provide the State match share for money provided by the federal government. The list shall include a site description of each project and its purpose, a summary of prior remedial activities performed on the site, the active phase of the project for which funding will be authorized, a summary of the funds, by funding

source, that have been authorized to date for each project, and a total of funds, by source, for each project.

c. The financial plan shall also contain a summary of the revenue sources for the site remediation program within the Department of Environmental Protection and the proposed expenditure and allocation of funds from each of the revenue sources, including the amount from each revenue source to be used for the publicly funded program, the responsible party program, direct administrative costs, indirect administrative costs, fringe benefit costs, project expenditures, operation and maintenance, federal matches, and other costs incurred by the site remediation program.

3. a. Of the moneys from the "Hazardous Discharge Fund of 1986," created pursuant to the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, as amended by P.L.1989, c.182, and appropriated to the Department of Environmental Protection pursuant to section 1 of P.L.1993, c.348, the sum of $20,000,000 is reappropriated to the New Jersey Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) for the purposes of that fund.

b. The expenditure of the sum reappropriated by this section is subject to the provisions and conditions of P.L.1986, c.113 and P.L.1989, c.182.

4. Notwithstanding any other law to the contrary, as of the effective date of this section, moneys appropriated from the "Hazardous Discharge Bond Act," P.L.1981, c.275, and the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, that were previously appropriated or that may be reappropriated may not be used to pay the indirect administrative or fringe benefit costs incurred by the State of New Jersey.

5. This act shall take effect immediately.

Approved August 30, 1997.

CHAPTER 235

AN ACT concerning the upgrade, remediation, and closure of certain underground storage tanks, supplementing Title 58 of the Revised Statutes, repealing sections 17 and 18 of P.L.1986, c.102, and making an appropriation.

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

C.58:10A-37.1 Short title.

1. This act shall be known and may be cited as the "Underground Storage Tank Finance Act."

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

2. As used in this act:

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

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

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

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

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

"Eligible owner or operator" means (1) any owner or operator other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than $2,000,000 and who demonstrates to the satisfaction of the authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs, (2) the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, or (3) a public entity who owns or operates a petroleum underground storage tank in New Jersey;

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade, or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of federal and State law. The limitation of eligible project costs to the minimal effective system shall

not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of P.L.1997, c.235. Eligible project costs shall not include the costs of any remediation performed at a site where the petroleum underground storage tank was removed prior to December 1, 1996;

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

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

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

"Owner" means any person who owns a facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention therefor, or any

other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and 42 U.S.C. s.6991 et seq.

C.58:10A-37.3 Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, establishment.

3. a. The Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund is established in the authority as a special, revolving fund. The fund shall be administered by the authority and shall be credited with:

(1) such monies as are appropriated by the Legislature;

(2) sums received as repayment of principal and interest on outstanding loans made from the State Underground Storage Tank Improvement Fund established pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.);

(3) such monies as are appropriated pursuant to section 21 of P.L.1997, c.235 (C.58:10A-37.21);

(4) all non-refundable application fees collected pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6);

(5) sums received as repayment of principal and interest on outstanding loans made from the fund;

(6) any monies recovered by the authority pursuant to sections 14 and 15 of P.L.1997, c.235 (C.58:10A-37.14 and C.58:10A-37.15);

(7) any return on investment of monies deposited in the fund;

(8) any monies recovered through liens pursuant to section 10 or 16 of P.L.1997, c.235 (C.58:10A-37.10 or C.58:10A-37.16); and

(9) payments of the annual surcharge imposed pursuant to section 18 of P.L.1997, c.235 (C.58:10A-37.18).

b. Monies in the fund shall be used by the authority solely for providing financial assistance pursuant to section 4 of P.L.1997, c.235 (C.58:10A-37.4) except that the authority may use any return on investment of monies deposited in the fund, application fees collected pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6), monies recovered by the authority pursuant to sections 14 and 15 of P.L.1997, c.235 (C.58:10A-37.14 and C.58:10A-37.15), and payments of the annual surcharge imposed pursuant to section 18 of P.L.1997, c.235 (C.58:10A-37.18) for actual costs incurred in administering the fund, and for costs of any action to recover monies owing to the fund.

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

4. a. Monies in the fund shall be allocated and used to provide financial assistance only to (1) eligible owners or operators of regulated tanks in this State in order to finance the eligible project costs of the upgrade or closure of those regulated tanks as may be required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.); and (2) eligible owners and

operators of petroleum underground storage tanks in this State in order to finance the eligible project costs of remediations that are necessary due to the discharge of petroleum from one or more of those petroleum underground storage tanks. Priority for the issuance of financial assistance from the fund, and the terms and conditions of that financial assistance, shall be based upon the criteria set forth in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. a. The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship

grant as provided in this section. An award of financial assistance, either as a loan or a grant, or a combination of both, may, upon application therefor, be for 100% of the eligible project costs. However, a loan that any applicant may receive from the fund for an upgrade, remediation, or closure, or any combination thereof, for any one facility, may not exceed $1,000,000 and a grant that any applicant may receive from the fund for any one facility, may not exceed $250,000. The total amount of financial assistance awarded as grants in any one year may not exceed 10% of the total amount of financial assistance awarded in that year.

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

c. An applicant, other than a public entity, may apply for and receive a conditional hardship grant as provided in paragraph (1) of this subsection, or a loan for an upgrade, closure, or remediation as provided in paragraph (2) of this subsection. Financial assistance awarded an applicant pursuant to this subsection may consist entirely of a conditional hardship grant, a loan for an upgrade, or loan for a closure, or a loan for a remediation, or any combination thereof, except that the total amount of the award of financial assistance shall be subject to the per facility dollar limitation enumerated in subsection a. of this section. Notwithstanding any other provision of this subsection to the contrary, no tax exempt, nonprofit organization, corporation, or association shall be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection.

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

In order to be eligible for a conditional hardship grant, the applicant shall have owned or operated the subject petroleum underground storage tank as of December 1, 1996 and continually thereafter or shall have inherited the property from a person who owned the petroleum underground storage tank as of that date. No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than $100,000 or a net worth, exclusive of the applicant's primary residence, of over $100,000.

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

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

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

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

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

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

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

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

f. An eligible owner or operator may only be awarded that amount of financial assistance issued as a loan for which the applicant demonstrates he could not qualify for and obtain as a commercial loan. The provisions of this subsection shall not apply to an owner or operator or petroleum underground storage tank used to store heating oil for onsite consumption in a residential building.

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

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

The authority shall adopt rules and regulations listing the filing requirements for a complete application for financial assistance. If a financial assistance application is determined to be incomplete by the authority, an applicant shall have 30 days from the date of receipt of written notification of incompleteness to file such additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within the 30 days, the filing date for that application shall be the date that such additional information is received by the authority. If the additional information is filed within the 30 days and is satisfactory to the authority, the filing date for that application shall be the initial date of application with the authority. Notwithstanding the above, if a completed application has been submitted and the applicant fails to submit the filing fee, then the filing date for the application shall not be established until the date on which the authority receives the application fee.

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

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

7. a. The authority shall award financial assistance to an owner or operator of a facility only if the facility is properly registered with the department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23), where applicable, and if all fees or penalties due and payable on the facility to the department pursuant to P.L.1986, c.102 have either been paid or the nature or the amount of the fee or penalty is being contested in accordance with law.

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

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

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

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

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

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

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Once financial assistance for an upgrade, closure or a remediation is awarded for a facility, no additional award of financial assistance may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of this act. An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank

and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. No financial assistance shall be awarded for any regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by March 1, 1999.

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

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

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

C.58:10A-37.8 Rules, regulations relative to application procedure.

8. a. The authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations to:

(1) require an applicant:

(a) to submit documentation or other information on the nature and scope of the work to be performed, cost estimates thereon, and, as available, proofs of the actual costs of all work performed;

(b) to demonstrate, where applicable, an ability to repay the amount of any loan and to provide adequate collateral to secure the amount of a loan;

(c) to submit a certification that the applicant has not engaged in any of the conduct described in subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7);

(d) to submit a certification that any upgrade, closure, and remediation being undertaken will be or was completed or was in conformance with rules and regulations of the department;

(e) require the loan or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the loan or grant; and

(f) to submit documentation and a certification, as applicable, that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs;

(2) require any financial assistance awarded to be used only for the purposes for which the award is made and that the applicant is adhering to all of the terms and conditions of the loan agreement; and

(3) adopt such other requirements as may be deemed necessary to carry out its responsibilities pursuant to this act.

b. Information submitted as part of an application that results in the award of a grant from the fund shall be a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). Information submitted as part of an application that results solely in the award of a loan from the fund shall not be a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

c. The authority may file a lien on real property owned by the applicant in addition to the property at which the subject facility is located to secure a loan, except that such a filing shall be subject to the restrictions on the use of the applicant's primary residence as collateral, as provided in section 5 of P.L.1997, c.235 (C.58:10A-37.5) and paragraph (3) of subsection d. of this section. Liens filed pursuant to this subsection shall not affect any valid lien, right or interest in the real property filed in accordance with established procedure prior to the filing of this notice of lien.

d. In establishing requirements for applications for financial assistance, the authority:

(1) may not impose conditions that interfere with the everyday normal operations of a financial assistance recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the loan and to preserve the value of any loan collateral;

(2) shall strive to minimize the complexity and costs to applicants or recipients of compliance with such requirements;

(3) may not require as collateral for any loan, except with the applicant's consent, the primary residence of the applicant, except that this paragraph shall not apply to a loan issued from the fund for the eligible project costs for a petroleum underground storage tank at the site of the primary residence; and

(4) shall expeditiously process all applications in accordance with a schedule established by the authority for the review thereof and the taking of final action, which schedule shall reflect the complexity of an application.

C.58:10A-37.9 Enforcement action prohibited; exceptions.

9. a. The department and the Office of the Attorney General may not take any enforcement action pursuant to section 12 of P.L.1986, c.102 (C.58:10A-32) against the owner or operator of a regulated tank for failure to upgrade or close a regulated tank or for failure to maintain evidence of financial responsibility pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25), if the owner or operator, (1) has submitted an application for financial assistance from the fund prior to the date upon which the upgrade or closure is required by law to be completed, (2) the authority has not yet acted on the application as of that date, (3) the owner or operator agrees to enter into a consent agreement or a memorandum of agreement with the department to comply with the upgrade, closure, remediation, and financial responsibility requirements, (4) the owner or operator complies with the provisions of the consent agreement or the memorandum of agreement, and (5) the owner or operator maintains an acceptable method of release detection for the regulated tanks that are the subject of the application for financial assistance as required pursuant to section 5 of P.L.1986, c.102 (C.58:10-25).

b. The provisions of subsection a. of this section shall not apply upon the denial of an application for financial assistance or in the case of a knowing discharge that may result in a serious threat to the public health or the environment. The department shall make an annual report to the Senate Environment Committee and the Assembly Agriculture and Waste Management Committee or their successors listing any enforcement actions taken against an owner or operator of a regulated tank who meets the requirements of subsection a. of this section. The report shall list the name of the violator, the specific statute or regulation alleged to have been violated, the status of the case at the time of the report, and the penalty imposed.

C.58:10A-37.10 Term of loans.

10. a. All loans awarded from the fund shall be for a term not to exceed ten years. Except as provided in subsection b. of section 5 of P.L.1997,

c.235 (C.58:10A-37.5), all loans shall be at a rate between two percent and the prime rate at the time of approval, or at the time of loan closing if the prime rate is lower at that time. The authority shall determine the interest rate to be imposed based on the applicant's ability to repay the loan.

b. Upon the sale of the facility for which the loan was made, the unpaid balance of the loan shall become immediately payable in full. Upon the sale of a facility for which a conditional hardship grant was made pursuant to section 5 of P.L.1997, c.235 (C.58:10A-37.5), that amount of the conditional hardship grant that must be repaid, as calculated pursuant to section 16 of P.L.1997, c.235 (C.58:10A-37.16), shall become immediately payable in full.

C.58:10A-37.11 Insurance coverage for costs of remediation.

11. Notwithstanding any other provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.), if an owner or operator maintains environmental liability or other insurance coverage for the remediation of a discharge, the insurance coverage shall be the primary coverage for the costs of a remediation. Eligible owners and operators may apply for financial assistance from the fund for any excess thereof, including any deductible, up to the per facility monetary limits set forth in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An eligible owner or operator shall file a notice of a claim with its insurance carrier prior to filing an application for financial assistance from the fund. The notice of claim shall list the fund as a beneficiary of the claim to the extent of an award of financial assistance is made from the fund. As a condition of receiving an award of financial assistance from the fund, the eligible owner or operator shall agree to diligently pursue the claim against its insurance carrier.

C.58:10A-37.12 Memorandum of agreement relative to powers, responsibilities.

12. The authority and the department may enter into a memorandum of agreement whereby any of the powers or responsibilities that the authority may exercise pursuant to P.L.1997, c.235 (C.58:10A-37.1 et seq.), may be exercised by the department. The authority may require an applicant for financial assistance to enter into an agreement with the department prior to an application being deemed complete, which agreement shall provide that any upgrade, closure, or remediation will be performed pursuant to rules and regulations of the department. Any agreement, review of documents, or other powers to be exercised by the department pursuant to this section must be completed by the department within 45 days of the application being submitted to the department. Pursuant to the memorandum of agreement, the authority and the department may provide that any of the monies in the fund that may be used for administrative expenses by the

authority pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3), may be used by the department in carrying out its responsibilities under this section.

C.58:10A-37.13 Joint application filing, review and approval procedure.

13. The authority shall establish a joint application filing, review and approval procedure whereby a person who is eligible for financial assistance from the fund, created pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3) and who is eligible for financial assistance from the Hazardous Discharge Site Remediation Fund, created pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4), may file one application for financial assistance from both funds and receive a joint response from the authority that approves or disapproves the application in whole or in part.

C.58:10A-37.14 Authority's right of subrogation, recovery.

14. a. Payment of any grant from the fund, or of a loan from the fund where the loan is in default and is uncollectible, for any costs relating to a remediation, shall be conditioned upon the authority being subrogated to all of the rights of an owner or operator against any insurance carrier, against any previous owner or operator of the facility where the previous owner or operator engaged in any conduct identified in paragraph (1) or (2) of subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7), and against any other person liable for the discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the costs of the remediation necessitated by the discharge. In an action by the authority to enforce a right of subrogation, the authority shall be entitled to invoke all the rights and defenses available to the grant or loan recipient if the action had been brought by the grant or loan recipient against such other person. Nothing in this subsection shall be construed to affect or limit any right that an owner or operator of a petroleum underground storage tank may have under statutory or common law against any other person concerning a discharge of petroleum from that tank.

b. The authority may seek to recover any financial assistance or that part of an award of financial assistance that exceeds the eligible project costs or that was obtained as a result of conduct described in paragraph (4) of subsection b. of section 7 of P.L.1997, c.235 (C.58:10A-37.7). If the authority is the prevailing party in an action to recover financial assistance payments made from the fund, the authority shall be entitled to all investigative and legal costs incurred by the authority in bringing and prosecuting the action, as well as interest charges which shall accrue as of the date such payments were made from the fund, unless the court makes a finding of a lack of intent to defraud the fund. The rate of interest shall be the interest rate for judgments established pursuant to the Rules Governing the Courts of the State of New Jersey.

C.58:10A-37.15 Violations, penalties.

15. a. A person who purposely, knowingly, recklessly, or negligently provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, shall be subject to a civil penalty not to exceed $50,000. Any penalty incurred under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

b. (1) The authority may commence a civil action in Superior Court to recover any financial assistance awarded to an applicant from the fund if financial assistance was obtained, in whole or in part, as the result of providing false documents or false information to the authority or to the department or by withholding documents or information from the authority or the department. The action to recover money awarded by the authority may be combined with any action to impose penalties provided for in subsection a. of this section.

(2) The authority may commence a civil action in Superior Court to recover any financial assistance awarded as a loan where the recipient of the loan has not made loan repayments in accordance with the loan agreement, where any condition or provision of the loan agreement has been violated by the loan recipient, or to enforce any lien filed pursuant to the issuance of financial assistance.

c. (1) A person who purposely or knowingly provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, with the intent to alter the applicant's eligibility for financial assistance from the fund, alter the priority of the applicant's application to receive financial assistance from the fund, cause the applicant to receive a larger grant award than the applicant would otherwise be eligible for, or obtain financial assistance from the fund in excess of the eligible project costs, shall be guilty of a crime of the third degree.

(2) A person who recklessly provides false documents or false information to the authority or to the department, or withholds documents or information, in relation to an application for financial assistance from the fund or in relation to documents or information that may be required as a condition of receiving an award of financial assistance from the fund, which results in the alteration of the applicant's eligibility for financial assistance

from the fund, the alteration of the priority of the applicant's application to receive financial assistance from the fund, which causes the applicant to receive a larger grant award than the applicant would otherwise be eligible for, or obtain financial assistance from the fund in excess of the eligible project costs, shall be guilty of a crime of the fourth degree.

C.58:10A-37.16 Liens for financial assistance.

16. a. In addition to any other financial assistance requirements imposed by the authority pursuant to P.L.1997, c.235 (C.58:10A-37.1 et seq.), any award of financial assistance from the fund shall constitute, in each instance, a debt of the applicant to the fund. The debt shall constitute a lien on the real property at which the subject facility is located. The lien shall be in the amount of the financial assistance awarded the applicant. The lien shall attach when a notice of lien, incorporating the name of the property owner, a description of the real property on which the subject facility is located and an identification of the amount of the financial assurance awarded, is duly filed with the county recording officer in the county in which the property is located.

Where financial assistance from the fund is awarded as a combination of a loan and a grant, separate liens for the loan and the grant shall be filed. No lien shall be placed on any real property of an applicant based on a conditional hardship grant awarded pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), for a remediation necessitated by a discharge from a petroleum underground storage tank used to store heating oil at the applicant's primary residence.

b. A lien that is filed on real property pursuant to a loan shall be removed upon repayment of the loan.

c. The lien that is filed on real property pursuant to a conditional hardship grant shall be removed upon repayment of the amount of the grant that is unsatisfied or upon the end of a 15-year period in which the site for which the financial assistance was awarded continued to be operated in substantially the same manner as it was operated at the time of the award of financial assistance. The period of operation need not run consecutively. Beginning with the 11th year of operating in substantially the same manner, 20% of the conditional hardship grant shall be deemed satisfied with an additional 20% to be satisfied each year until the entire amount of the conditional hardship grant is satisfied at the end of the 15-year period. The owner or operator of the facility claiming to have satisfied a conditional hardship grant due to the 15-year period of operation, shall submit a certification of this fact to the authority. Upon repayment of the unsatisfied grant award or upon submittal of this certification, unless the authority has

made a finding that the certification is not correct, the authority shall remove the lien from the property.

Where real property for which a conditional hardship grant was awarded is not being operated in substantially the same manner, the 15-year period to satisfy the lien shall be tolled. If at any time prior to the satisfaction of the lien the property is developed or operated for a purpose that is not substantially the same as its operation at the time of the award of the conditional hardship grant, the grant recipient shall so certify to the authority upon the change in operation. Upon receipt of this certification, the authority shall determine, based upon the new operation of the property if the financial assistance shall continue as a conditional hardship grant or if it shall be converted into a loan. In making this determination, the authority shall base its decision on the financial hardship factors used in determining the original eligibility for the conditional hardship grant.

The authority may take whatever enforcement actions it deems necessary to verify the operation of any property for which a conditional hardship grant was made. The terms and conditions of any loan converted from a grant pursuant to this subsection shall be the same as those authorized pursuant to this act.

d. The provisions of this section do not apply to any real property of an applicant who is a public entity.

C.58:10A-37.17 Rules, regulations.

17. a. Within 180 days of the effective date of this act, the New Jersey Economic Development Authority shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations for the administration of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and the issuance of financial assistance therefrom as necessary to implement this act.

b. Within 180 days of the effective date of this act, the Department of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations for the administration of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and the issuance of financial assistance therefrom as necessary to implement this act.

c. Prior to the adoption of rules and regulations pursuant to this section, the authority and the department may, notwithstanding the provisions of the "Administrative Procedure Act," adopt procedures for the acceptance and review of financial assistance applications from the fund. No financial assistance may be awarded however, until the rules and regulations are adopted pursuant to this section.

C.58:10A-37.18 Imposition of annual surcharge.

18. There is imposed upon the owner or operator of a facility who is required to maintain evidence of financial responsibility pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et seq., and any regulations adopted pursuant thereto, and who does not maintain that evidence of financial responsibility, an annual surcharge. The annual surcharge shall be $1,500 for facilities with one or two petroleum underground storage tanks, $3,500 for facilities with three to six petroleum underground storage tanks, and $6,000 for facilities with seven or more petroleum underground storage tanks. The owner or operator shall pay this surcharge to the authority for deposit into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. The New Jersey Spill Compensation Fund shall not be considered as evidence of financial responsibility for the purposes of this section.

Nothing in this section shall be construed to negate the requirement of an owner or operator of a facility to maintain evidence of financial responsibility as may be required pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et seq.

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

C.58:10A-37.19 Joint annual report.

19. a. The New Jersey Economic Development Authority and the Department of Environmental Protection shall present a joint annual report to the presiding officers of the two houses of the Legislature and to the chairmen and members of the Assembly Agriculture and Waste Management Committee and the Senate Environment Committee, or their successors, on the status of the financial assistance program, which shall include: a statement on receipts and expenditures for the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund; the number of applications for financial assistance received and the actions taken on the applications; the amount of financial assistance awarded as loans or as grants for both public entities and other applicants; the identity and location of the facilities receiving the financial assistance; an assessment of the adequacy of current funding levels in meeting the statutory objectives of the fund; an accounting of expenses incurred by the authority in administering the fund; and such other information, including any legislative or administrative recommendations for program changes, as the authority and the department may deem appropriate or useful. The annual reports shall be made not later than March 31 of each year beginning one year following the effective date of this act.

The first report shall also contain a needs survey, which shall estimate the scope and projected costs of all potentially eligible remediation applications for financial assistance from the fund.

C.58:10A-37.20 Construction of act.

20. Nothing in P.L.1997, c.235 (C.58:10A-37.1 et seq.) shall be construed to:

(1) impose any liability on the State or the authority for any claims made to, or approved from, the Petroleum Underground Storage Tank Remediation, and Closure Upgrade Fund, and the extent of the State's or authority's responsibility for the payment or reimbursement of an approved application shall be limited to the amount of otherwise unobligated monies available in the fund;

(2) impose any liability on the State or the authority for the quality of any work performed pursuant to a remediation, closure or an upgrade for which financial assistance is made; or

(3) alter any obligation of an owner or operator of a facility, who is eligible for financial assistance from the fund, to comply in a timely manner with all lawful requirements relating to the facility.

C.58:10A-37.21 Appropriation for Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

21. There is appropriated from the special account in the General Fund created pursuant to Article VIII, Section II, paragraph 6 of the New Jersey Constitution $9,900,000 to the New Jersey Economic Development Authority which shall be deposited into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, established pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3), for use for any of the purposes for which that fund has been established. Expenditures of monies in the fund shall be subject to the conditions set forth in Article VIII, Section II, paragraph 6 of the New Jersey Constitution and the provisions in P.L.1997, c.235 (C.58:10A-37.1 et seq.).

C.58:10A-37.22 Penalty for failure to register underground storage tank; exceptions.

22. Any person who has owned or operated an underground storage tank as defined pursuant to section 2 of P.L.1986, c.102 (C.58:10A-22) who has not registered that tank pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall not be subject to a civil penalty for the failure to register that underground storage tank if the person, within one year of the effective date of this act, registers the tank pursuant to P.L.1986, c.102. The department may require that person to pay any registration fees that would have been paid had the underground storage tank been registered in accordance with law.

Repealer.

23. Sections 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and C.58:10A-37) are repealed, except that in order to assure the uninterrupted funding of loans for regulated tank upgrades pending the adoption of rules and regulations pursuant to section 17 of P.L.1997, c.235 (C.58:10A-37.17), rules and regulations adopted pursuant to section 17 of P.L.1986, c.102 (C.58:10A-37) that are in effect on the effective date of P.L.1997, c.235 (C.58:10A-37.1 et seq.), shall continue in force until the adoption of rules and regulations by the authority pursuant to section 17 of P.L.1997, c.235 (C.58:10A-37.17). The repayment of any outstanding loans made from the State Underground Storage Tank Improvement Fund shall be made to the New Jersey Economic Development Authority for deposit into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. Any monies in the State Underground Storage Tank Improvement Fund are transferred to the New Jersey Economic Development Authority for deposit into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund.

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

24. Prior to July 1, 1997, or within six months of an underground storage tank being upgraded and the site remediated as required pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), whichever is later, the owner or operator of that underground storage tank shall submit to the department evidence of financial responsibility for taking corrective action and compensating third parties as is required pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et seq. After a regulated tank is upgraded, the New Jersey Spill Compensation Fund, created pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of financial responsibility for the regulated tank.

25. There is appropriated from the General Fund to the New Jersey Economic Development Authority the sum of $50,000 for the adoption of rules and regulations for administering the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund, established pursuant to section 3 of P.L.1997, c.235 (C.58:10A-37.3). The authority shall transfer such sums from this appropriation to the Department of Environmental Protection as the authority and the department deem necessary to allow the department to adopt rules and regulations as necessary pursuant to this act. Upon sufficient monies being deposited into the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund that may be used

for these purposes, the authority shall reimburse the General Fund the amount of this appropriation.

26. This act shall take effect immediately.

Approved August 30, 1997.

CHAPTER 236

AN ACT concerning aquaculture, and amending and supplementing parts of the statutory law.

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

C.4:27-1 Short title.

1. Sections 1 through 24 of this act shall be known, and may be cited, as the "New Jersey Aquaculture Development Act."

C.4:27-2 Findings, declarations relative to aquaculture.

2. The Legislature finds and declares that aquaculture is the fastest growing segment of agriculture in the nation; and that the development of an economically viable aquaculture industry in New Jersey has the potential to augment existing fisheries, and to produce a significant number of jobs and revenue in a new economic activity.

The Legislature further finds and declares that the Aquaculture Development Task Force, established by Executive Order No. 104 (1993), was directed to prepare an aquaculture development plan; that the "Aquaculture Development Plan" asserts that legislative and regulatory obstacles are major impediments to aquaculture growth and development in New Jersey, and that the lack of specific legislation defining and permitting various aquaculture activities has greatly hindered aquaculture development in New Jersey; and that the plan also presents a compelling case for State investment in aquaculture, discusses specific suggestions to remove barriers impeding the development of the industry and methods for achieving the interdepartmental cooperation necessary to developing aquaculture.

The Legislature therefore determines that in order to foster development of an aquaculture industry in New Jersey it is in the best interest of the citizens of this State that the recommendations contained in the "Aquaculture Development Plan" be adopted by the Legislature.

C.4:27-3 Definitions relative to aquaculture.

3. As used in sections 1 through 24 of this act:

"Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation.

"Aquaculture Development Plan" means the plan prepared by the Aquaculture Development Task Force, established pursuant to Executive Order No. 104 (1993).

"Aquaculturist" means a person engaging in aquaculture.

"Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

"Council" means the Aquaculture Advisory Council established pursuant to section 5 of this act.

"Office" means the Office of Aquaculture Coordination established pursuant to section 4 of this act.

"Secretary" means the Secretary of Agriculture.

C.4:27-4 Office of Aquaculture Coordination.

4. There is established in the Department of Agriculture the Office of Aquaculture Coordination. The office shall, in consultation with the Department of Environmental Protection, prepare a guidebook explaining the permit process for receiving all necessary permits or other approvals or exemptions to engage in an aquaculture project in the State. The guidebook shall include a list that identifies the permits or other approvals that may be necessary for an aquaculture project. The list shall identify the application form or forms required for an application to be deemed complete, any documents or other written submissions required to be filed with the application, and any filing, notice, hearing or other requirement that is a precondition for review of an application. The guidebook shall also describe management practices for aquaculture. The guidebook shall be updated as often as necessary. The office shall serve as a resource for applicants and prospective applicants for aquaculture projects.

The office shall establish, in cooperation with other permitting agencies, a permit coordination system whose purpose is to assist the applicant in the completion of the application and to assist in processing the application. The goal of the system shall be the processing of applications within 90 days of their completion, and at a reasonable application cost consistent with the goals and objectives of this act.

The office shall develop a protocol for authorizing an individual to engage in an aquaculture demonstration project.

C.4:27-5 Aquaculture Advisory Council.

5. a. There is established in the Department of Agriculture an Aquaculture Advisory Council which shall consist of 13 voting and two non-voting members. The voting members shall include the Secretary of Agriculture, who shall serve as chairman, the Commissioner of Environmental Protection, the Commissioner of Commerce and Economic Development, the Commissioner of Health and Senior Services, the director of the Aquaculture Technology Transfer Center, the director of the Aquaculture Training and Information Center, the executive director of the New Jersey Agricultural Experiment Station, or their designees, who shall serve ex officio, and six citizens of the State, to be appointed as follows: two by the President of the Senate, one of whom shall be a representative from recognized aquaculture organizations or an operator of an aquaculture farm and one of whom shall be a representative of the seafood industry; two by the Speaker of the General Assembly, one of whom shall be a representative of recognized aquaculture organizations or an operator of an aquaculture farm and one of whom shall be a representative of farmers; and two by the Governor from the public at large. The chairman of the Marine Fisheries Council and the chairman of the Fish and Game Council shall serve ex officio and as non-voting members.

b. The term of office of each public member shall be three years; except that of the first members to be 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 two years, and the remaining two 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. A majority of the membership of the advisory council shall constitute a quorum for the transaction of advisory council business.

d. Members of the advisory council shall serve without compensation, but shall be entitled to reimbursement for expenses incurred in attendance at meetings to the extent funds are available therefor.

e. The advisory council shall act in an advisory capacity to the department and other State agencies on aquaculture matters. The advisory council shall assist the various departments in the evaluation of proposed and existing rules and regulations and the development of policies mandated by provisions of this act. The advisory council shall seek to ensure that

aquaculture market development activities and policies reflect the changing needs and characteristics of the aquaculture industry. The advisory council shall review the Aquaculture Development Plan and update the plan as appropriate, but no less frequently than every five years.

C.4:27-6 Aquaculture considered component of agriculture.

6. a. Notwithstanding any law, rule, or regulation to the contrary, aquaculture shall be considered a component of agriculture in the State, and aquacultured plants and animals shall be considered to be agriculture crops and animals.

b. Notwithstanding any law, rule, or regulation to the contrary, a person engaged in aquaculture shall have exclusive ownership of the aquatic organisms being aquacultured by that person.

c. The Department of Agriculture shall be the lead State agency for the development, marketing, promotion, and advocacy of aquaculture in the State.

d. The Department of Environmental Protection shall be the lead State agency with respect to regulation of aquaculture activities in the waters of the State.

e. The Aquaculture Technology Transfer Center, composed of the Multispecies Aquaculture Demonstration Facility at Rutgers, The State University, the Aquaculture Training and Information Center at Cumberland County College, and the Rutgers Cooperative Extension, shall be the primary State facility for aquaculture education, extension, demonstration, and industry development and commercialization in the State.

C.4:27-7 Interagency memoranda of agreement concerning implementation of Aquaculture Development Plan.

7. Within one year of the effective date of this act, the Department of Agriculture, the Department of Environmental Protection, the Department of Commerce and Economic Development, and the Department of Health and Senior Services shall, after consultation with the Aquaculture Advisory Council, enter into interagency memoranda of agreement concerning the implementation of the Aquaculture Development Plan, and delineating the financial and regulatory responsibility based upon the provisions of this act and any other applicable laws. In developing the interagency memoranda of agreement, the departments shall seek to develop provisions that foster the development of aquaculture in the State.

C.4:27-8 Policies for use of aquaculture leases.

8. Within 180 days of the effective date of this act, the Department of Environmental Protection and the Department of Agriculture, in consultation with the Aquaculture Advisory Council, the Shell Fisheries Council

and the Pinelands Commission as it affects the pinelands area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11), jointly shall establish, according to rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), appropriate policies for the use of aquaculture leases in waters of the State and for lands underneath waters of the State, including but not limited to lease specifications, fees, royalty payments, and assignability and termination of lease agreements. The policies shall provide for an expeditious procedure for finalizing lease agreements. Lease agreements shall convey a necessary degree of exclusivity to minimize the risks to the aquaculturists caused by pollution, vandalism, theft, and other forms of encroachment, while protecting common use rights of the public, and assuring the integrity and protection of the natural wild stocks and their habitat.

C.4:27-9 Interagency memorandum of agreement to expand current leasing programs.

9. The Department of Environmental Protection and the Department of Agriculture, after consultation with the Aquaculture Advisory Council, shall establish an interagency memorandum of agreement to expand current leasing programs for waters of the State and lands underneath waters of the State to include a Statewide aquaculture leasing system. The memorandum of agreement shall determine which additional waters, lands, and aquatic organisms are appropriate for aquaculture development. The Department of Environmental Protection and the Department of Agriculture shall jointly adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such additions within one year of the date of enactment of this act.

C.4:27-10 Review of laws, rules, regulations pertinent to aquaculture.

10. a. The Department of Environmental Protection, in consultation with the Department of Agriculture, the Fish and Game Council, the Marine Fisheries Council and the Aquaculture Advisory Council, shall review the laws, rules, and regulations pertaining to the taking, harvesting, possession, and use of fish, wildlife, shellfish, and plants with regard to the effect of those laws, rules, and regulations on the taking, harvesting, possession, use, importation, containment, transport, and marketing of aquaculture products from public waters of the State. The review shall include, but need not be limited to, such factors as gear, season, area, size limits, and all rules and regulations adopted by the Department of Environmental Protection, the Fish and Game Council, or the Marine Fisheries Council that may impede the potential use of any species in aquaculture.

b. Based upon the review performed pursuant to subsection a. of this section the Department of Environmental Protection or the Fish and Game Council, as appropriate, shall adopt, pursuant to the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and within one year of the effective date of this act, modifications that would not cause significant harm to wild stocks, natural habitat, or the environment, so as to either exempt specific types of aquacultural practices from those rules and regulations or reduce any negative impact upon those practices to the maximum extent practicable and feasible. To the extent that modifications in the law are required to accomplish the purposes of this section, the Department of Environmental Protection and the various other entities conducting the review shall make recommendations accordingly to the Governor and the Legislature.

c. The Department of Environmental Protection or the Fish and Game Council, as appropriate, in consultation with the Department of Agriculture and the Aquaculture Advisory Council, shall establish a program within one year of the effective date of this act and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulating the importation and transport of species used in aquaculture.

C.4:27-11 Review of laws, rules, regulations pertinent to predation problems at aquaculture facilities or sites.

11. The Department of Environmental Protection, in consultation with the Department of Agriculture, the Pinelands Commission as it affects the pinelands area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11), and the Aquaculture Advisory Council, shall review the laws, rules, and regulations pertaining to endangered and nongame species, migratory birds, and fish and game species with regard to the application and effectiveness of those laws, rules, and regulations in the prevention of predation at aquaculture facilities or sites. Based upon that review, the Department of Environmental Protection in conjunction with the various other entities conducting the review, after allowing for a period of public review and comment and within one year of the effective date of this act, shall make recommendations to all appropriate governmental entities concerning implementation, to the extent permitted by law and as soon as may be practical and feasible, of procedures and mechanisms for the timely and cost effective resolution of specific predation problems occurring at aquaculture facilities or sites.

C.4:27-12 Aquaculture sites not designated freshwater wetland, conditions.

12. a. Notwithstanding any law, rule, or regulation to the contrary, an aquaculture site, for which all appropriate permits required by law have been obtained, that was not originally a freshwater wetland as defined pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.) or any other law, or any rule or regulation adopted pursuant thereto, prior to being utilized for aquaculture shall not be

designated a freshwater wetland because of the subsequent growth of aquatic organisms at the aquaculture site.

b. Within 180 days of the effective date of this act, the Department of Environmental Protection, in consultation with the Department of Agriculture and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall develop appropriate methods and procedures to implement this section.

C.4:27-13 Aquaculture sites not designated coastal wetland, conditions.

13. a. Notwithstanding any law, rule, or regulation to the contrary, an aquaculture site, for which all appropriate permits required by law have been obtained, that was not originally a coastal wetland as defined pursuant to "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.) or any other law, or any rule or regulation adopted pursuant thereto, prior to being utilized for aquaculture shall not be designated a coastal wetland because of the subsequent growth of aquatic organisms at the aquaculture site.

b. Within 180 days of the effective date of this act, the Department of Environmental Protection, in consultation with the Department of Agriculture and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall develop appropriate methods and procedures to implement this section.

C.4:27-14 Agriculture programs applicable to aquaculture.

14. Notwithstanding any law, or regulations to the contrary, all State grant and loan, financial, and insurance programs that apply to agriculture as of the effective date of this act shall apply also to aquaculture.

C.4:27-15 Aquaculture statistics reporting, assistance programs.

15. The Department of Agriculture:

a. in consultation with the Aquaculture Technology Transfer Center, the Rutgers Cooperative Extension and the Department of Environmental Protection, shall implement an aquaculture statistics reporting program which may include the collection of information on the numbers of jobs being created in aquaculture, the amount, value and type of product being produced, and the overall economic activity in the aquaculture industry;

b. in consultation with the Aquaculture Technology Transfer Center, and the Rutgers Cooperative Extension, shall assist aquaculturists in obtaining coverage from federal crop insurance programs;

c. in consultation with the Aquaculture Technology Transfer Center and the Rutgers Cooperative Extension, shall assist aquaculturists in completing the proper paperwork and other information necessary to develop eligibility for economic emergency loans for disaster relief through the Farmers Services Agency and other programs;

d. in consultation with the United States Department of Agriculture and the National Association of State Aquaculture Coordinators, shall develop a monthly wholesale market report for aquaculture products;

e. in conjunction with the Aquaculture Technology Transfer Center and the Department of Health and Senior Services, shall assist the aquaculture industry in the development of necessary quality control guidelines and specifications for production, processing, and marketing of aquaculture products;

f. in conjunction with the Aquaculture Technology Transfer Center, shall assist (1) the aquaculture industry in promoting its products through techniques that may include the establishment and use of a trademark and other specialized marketing efforts; and (2) aquaculturists interested in developing coordinated efforts or arrangements, including producer cooperatives, joint ventures, market orders, and other forms of association; and

g. in conjunction with the Department of Health and Senior Services, the Department of Commerce and Economic Development, the Department of Environmental Protection shall explore the possibilities of establishing private sector joint processing facilities to accommodate agriculture, seafood, and aquaculture products.

C.4:27-16 Management practices for control of soil erosion, sedimentation.

16. The State Soil Conservation Committee in consultation with the Department of Environmental Protection and the Aquaculture Advisory Council, shall develop, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), management practices for control of soil erosion and sedimentation for aquacultural systems.

C.4:27-17 Licensure of possession, ownership of aquacultured organisms.

17. The Department of Agriculture, in consultation with the Department of Environmental Protection and the Aquaculture Advisory Council, shall establish, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a program for the licensure of the possession and ownership of aquacultured organisms.

C.4:27-18 Aquatic health management plan.

18. The Department of Agriculture, in consultation with the Department of Environmental Protection and the Aquaculture Advisory Council, shall develop and adopt, within one year of the effective date of this act and in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing an aquatic health management plan designed to protect public and private aquaculturists and wild aquatic populations from the importation of non-endemic disease

causing organisms, and to assist in facilitating the exportation and importation of aquatic species into and out of the State.

C.4:27-19 Comprehensive animal waste management program.

19. The Department of Agriculture, in consultation with the Department of Environmental Protection, shall adopt, within one year of the effective date of this act and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a comprehensive animal waste management program that shall provide for the proper disposal of animal wastes, including wastes generated from aquaculture. The animal waste management program shall include, but need not be limited to, criteria and standards for the composting, handling, storage, processing, utilization and disposal of animal wastes, the establishment of program compliance provisions including appropriate penalties for program noncompliance and violations, and may include provisions for the assessment of fees to cover reasonable administrative costs.

C.4:27-20 Aquaculture component for model planning and zoning ordinances.

20. The Office of State Planning established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), in consultation with the Pinelands Commission as it affects the pinelands area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11), shall develop, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an aquaculture component for model planning and zoning ordinances.

C.4:27-21 Review of worker's compensation package coverages.

21. The Department of Labor, in conjunction with the Department of Agriculture and the aquaculture industry, shall review worker's compensation package coverages to assess their general applicability to aquaculture industry needs, and make recommendations accordingly to all appropriate entities with respect to any needed modifications.

C.4:27-22 Development, implementation of information campaign.

22. The Department of Commerce and Economic Development, in conjunction with the Department of Agriculture, the Department of Environmental Protection, the Aquaculture Technology Transfer Center, and the aquaculture industry, shall, to the extent feasible, develop and implement an information campaign to promote in-State and outside investments in aquaculture operations located or based in New Jersey within one year of the appointment of the Aquaculture Advisory Council pursuant to section 5 of this act.

C.4:27-23 Development of mechanisms for providing tax credits, reduced loan payments.

23. The Department of Commerce and Economic Development and the Aquaculture Advisory Council, in consultation with the Department of Agriculture, shall develop mechanisms for providing tax credits or reduced loan payments to a new aquaculture enterprise, and make recommendations accordingly to the Governor and the Legislature for any legislative action that may be necessary to implement those mechanisms.

C.4:27-24 Review of product liability insurance.

24. The Department of Banking and Insurance, in consultation with the Aquaculture Advisory Council, shall review product liability insurance within the State and determine how the coverage might be extended to various segments of the aquaculture industry, and make recommendations accordingly to all appropriate entities regarding any modifications that should be made to existing insurance coverage plans.

25. R.S.4:1-6 is amended to read as follows:

Agricultural convention delegates.

4:1-6. Each county board of agriculture shall be entitled to be represented in the annual convention by two delegates.

Each of the following organizations shall be entitled to be represented in the annual convention by one delegate: American Cranberry Growers' Association, Board of Managers of the New Jersey Agricultural Experiment Station, Cook College of Rutgers, The State University, The Cooperative Marketing Associations in New Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden State Dairy Goat Association, Inc., Garden State Milk Council, Garden State Service Cooperative Association, Inc., Horse Park of New Jersey at Store Tavern Inc., Morgan Horse Association of New Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural Society, Inc., New Jersey Apple Institute, Inc., New Jersey Aquaculture Association, New Jersey Association of Agricultural Fairs, New Jersey Beekeepers' Association, Inc., New Jersey Christmas Tree Growers' Association, New Jersey Commercial Fisherman's Association, New Jersey Farmers Direct Marketing Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA Alumni Association, Grain and Forage Producers' Association of New Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New Jersey Hereford Association, New Jersey Holstein-Friesian Association, Inc., New Jersey Horse Council, New Jersey Livestock Cooperative Association, Inc., New Jersey Nursery and Landscape Association, New Jersey Nursery and Landscape Association -- Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach Promotion Council, Inc., New Jersey Plant and Flower Growers Association, Inc., New

Jersey Pony Breeders and Owners, Inc., New Jersey Quarter Horse Association, New Jersey Sheep and Wool Cooperative Association, Inc., New Jersey State Florists' Association, Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New Jersey State Horticultural Society, Inc., New Jersey State Potato Association, Inc., New Jersey State Poultry Association, Inc., New Jersey State Sweet Potato Industry Association, Inc., New Jersey Turkey Association, New Jersey Veterinary Medical Association, New Jersey Vocational Agriculture Teachers Association, each Pomona Grange, Patrons of Husbandry, Standardbred Breeders and Owners Association of New Jersey, Inc., Thoroughbred Breeders' Association of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey Flower Growers Association, Inc., and the Vegetable Growers Association of New Jersey, Inc.

Prior to the time fixed for the holding of the annual convention each of the organizations named in this section shall choose from its members the authorized number of delegates and certify to the convention their qualifications as such. The credentials shall be filed with the proper convention officer or committee, and upon the acceptance thereof by the convention such persons shall have all the rights and powers of delegates.

26. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read as follows:

C.58:10A-3 Definitions.

3. As used in this act, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

a. "Administrator" means the Administrator of the United States Environmental Protection Agency or his authorized representative;

b. "Areawide plan" means any plan prepared pursuant to section 208 of the Federal Act;

c. "Commissioner" means the Commissioner of Environmental Protection or his authorized representative;

d. "Department" means the Department of Environmental Protection;

e. "Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes the release of any pollutant into a municipal treatment works;

f. "Effluent limitation" means any restriction on quantities, quality, rates and concentration of chemical, physical, thermal, biological, and other

constituents of pollutants established by permit, or imposed as an interim enforcement limit pursuant to an administrative order, including an administrative consent order;

g. "Federal Act" means the "Federal Water Pollution Control Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. s.1251 et seq.);

h. "Municipal treatment works" means the treatment works of any municipal, county, or State agency or any agency or subdivision created by one or more municipal, county or State governments and the treatment works of any public utility as defined in R.S.48:2-13;

i. "National Pollutant Discharge Elimination System" or "NPDES" means the national system for the issuance of permits under the Federal Act;

j. "New Jersey Pollutant Discharge Elimination System" or "NJPDES" means the New Jersey system for the issuance of permits under this act;

k. "Permit" means a NJPDES permit issued pursuant to section 6 of this act. "Permit" includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works;

l. "Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state or interstate agency. "Person" shall also mean any responsible corporate official for the purpose of enforcement action under section 10 of this act;

m. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;

n. "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State. "Pollutant" includes both hazardous and nonhazardous pollutants;

o. "Pretreatment standards" means any restriction on quantities, quality, rates, or concentrations of pollutants discharged into municipal or privately owned treatment works adopted pursuant to P.L.1972, c.42 (C.58:11-49 et seq.);

p. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to

compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard;

q. "Substantial modification of a permit" means any significant change in any effluent limitation, schedule of compliance, compliance monitoring requirement, or any other provision in any permit which permits, allows, or requires more or less stringent or more or less timely compliance by the permittee;

r. "Toxic pollutant" means any pollutant identified pursuant to the Federal Act, or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring;

s. "Treatment works" means any device or systems, whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. "Treatment works" includes any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems;

t. "Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction;

u. "Hazardous pollutant" means:

(1) Any toxic pollutant;

(2) Any substance regulated as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C. s.136 et seq.);

(3) Any substance the use or manufacture of which is prohibited under the federal Toxic Substances Control Act, Pub.L.94-469 (15 U.S.C. s.2601 et seq.);

(4) Any substance identified as a known carcinogen by the International Agency for Research on Cancer;

(5) Any hazardous waste as designated pursuant to section 3 of P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. s.6901 et seq.); or

(6) Any hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b);

v. "Serious violation" means an exceedance of an effluent limitation for a discharge point source set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, by 20 percent or more for a hazardous pollutant, or by 40 percent or more for a nonhazardous pollutant, calculated on the basis of the monthly average for a pollutant for which the effluent limitation is expressed as a monthly average, or, in the case of an effluent limitation expressed as a daily maximum and without a monthly average, on the basis of the monthly average of all maximum daily test results for that pollutant in any month; in the case of an effluent limitation for a pollutant that is not measured by mass or concentration, the department shall prescribe an equivalent exceedance factor therefor. The department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. "Serious violation" shall not include a violation of a permit limitation for color;

w. "Significant noncomplier" means any person who commits a serious violation for the same hazardous pollutant or the same nonhazardous pollutant, at the same discharge point source, in any two months of any six-month period, or who exceeds the monthly average or, in a case of a pollutant for which no monthly average has been established, the monthly average of the daily maximums for an effluent limitation for the same pollutant at the same discharge point source by any amount in any four months of any six-month period, or who fails to submit a completed discharge monitoring report in any two months of any six-month period. The department may utilize, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier, if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. A local agency shall not be deemed a "significant noncomplier" due to an exceedance of an effluent limitation established in a permit for flow;

x. "Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works;

y. "Delegated local agency" means a local agency with an industrial pretreatment program approved by the department;

z. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the department or a delegated local agency;

aa. "Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works;

bb. "Major facility" means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his representative, in conjunction with the department, and includes industrial facilities and municipal treatment works;

cc. "Significant indirect user" means a discharger of industrial or other pollutants into a municipal treatment works, as defined by the department, including, but not limited to, industrial dischargers, but excluding the collection system of a municipal treatment works;

dd. "Violation of this act" means a violation of any provisions of this act, and shall include a violation of any rule or regulation, water quality standard, effluent limitation or other condition of a permit, or order adopted, issued, or entered into pursuant to this act;

ee. "Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. "Aquaculture"shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

ff. "Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

27. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read as follows:

C.58:10A-6 Permits; issuance; exemptions; prohibitions; requirements.

6. a. It shall be unlawful for any person to discharge any pollutant, except as provided pursuant to subsections d. and p. of this section, or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner

pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with P.L.1977, c.74, and with regulations to be adopted by him. The commissioner may reissue, with or without modifications, an NPDES permit duly issued by the federal government as the NJPDES permit required by P.L.1977, c.74.

d. The commissioner may, by regulation, exempt the following categories of discharge, in whole or in part, from the requirement of obtaining a permit under P.L.1977, c.74; provided, however, that an exemption afforded under this section shall not limit the civil or criminal liability of any discharger nor exempt any discharger from approval or permit requirements under any other provision of State or federal law:

(1) Additions of sewage, industrial wastes or other materials into a publicly owned sewage treatment works which is regulated by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste disposal systems, sanitary landfills, and other means of land disposal of wastes;

(4) Discharges of dredged or fill materials into waters for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. s.1344) and implementing regulations;

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the department as a significant contributor of pollution;

(7) Discharges conforming to a national contingency plan for removal of oil and hazardous substances, published pursuant to section 311(c)(2) of the Federal Act;

(8) Discharges resulting from agriculture, including aquaculture, activities.

e. The commissioner shall not issue any permit for:

(1) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into the waters of this State;

(2) Any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

(3) Any discharge to which the administrator has objected in writing pursuant to the Federal Act;

(4) Any discharge which conflicts with an areawide plan adopted pursuant to law.

f. A permit issued by the department or a delegated local agency pursuant to P.L.1977, c.74 shall require the permittee:

(1) To achieve effluent limitations based upon guidelines or standards established pursuant to the Federal Act or to P.L.1977, c.74, together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To insure that all discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges or, if these would not violate effluent limitations or other restrictions specified in the permit, to notify the commissioner, or delegated local agency, of such new or increased discharges;

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only storm-water or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest ranking official having

day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and hire personnel, a person having that responsibility, or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for purposes of subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

(6) At all times, to maintain in good working order and operate as effectively as possible, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit;

(7) To limit concentrations of heavy metal, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established

pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any regulations adopted pursuant thereto;

(8) To report to the department or delegated local agency, as appropriate, any exceedance of an effluent limitation that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, within two hours of its occurrence, or of the permittee becoming aware of the occurrence. Within 24 hours thereof, or of an exceedance, or of becoming aware of an exceedance, of an effluent limitation for a toxic pollutant, a permittee shall provide the department or delegated local agency with such additional information on the discharge as may be required by the department or delegated local agency, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken, or being taken, to remediate the problem and any damage to the environment, and to avoid a repetition of the problem;

(9) Notwithstanding the reporting requirements stipulated in a permit for discharges to surface waters, a permittee shall be required to file monthly reports with the commissioner or delegated local agency if the permittee:

(a) in any month commits a serious violation or fails to submit a completed discharge monitoring report and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefor; or

(b) exceeds an effluent limitation for the same pollutant at the same discharge point source by any amount for four out of six consecutive months.

The commissioner or delegated local agency may restore the reporting requirements stipulated in the permit if the permittee has not committed any of the violations identified in this paragraph for six consecutive months;

(10) To report to the department or delegated local agency, as appropriate, any serious violation within 30 days of the violation, together with a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

g. The commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

h. In addition, any permit issued for a discharge from a municipal treatment works shall require the permittee:

(1) To notify the commissioner or local agency in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an

existing user of the facility, except for such introductions of nonindustrial pollutants as the commissioner or local agency may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State law and toxicity standards adopted pursuant to P.L.1977, c.74 and pretreatment standards.

(3) As actual flows to the facility approach design flow or design loading limits, to submit to the commissioner or local agency for approval, a program which the permittee and the persons responsible for building and maintaining the contributory collection system shall pursue in order to prevent overload of the facilities.

i. (1) All local agencies shall prescribe terms and conditions, consistent with applicable State and federal law, or requirements adopted pursuant thereto by the department, upon which pollutants may be introduced into treatment works, and shall have the authority to exercise the same right of entry, inspection, sampling, and copying, and to impose the same remedies, fines and penalties, and to recover costs and compensatory damages as authorized pursuant to subsection a. of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such works, as are vested in the commissioner by P.L.1977, c.74, or by any other provision of State law, except that a local agency, except as provided in P.L.1991, c.8 (C.58:10A-10.4 et seq.), may not impose civil administrative penalties, and shall petition the county prosecutor or the Attorney General for a criminal prosecution under that section. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any regulations adopted pursuant thereto.

(2) Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L.1990, c.28 (C.58:10A-14.5), and used to

finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works.

j. In reviewing permits submitted in compliance with P.L.1977, c.74 and in determining conditions under which such permits may be approved, the commissioner shall encourage the development of comprehensive regional sewerage planning or facilities, which serve the needs of the regional community, conform to the adopted area-wide water quality management plan for that region, and protect the needs of the regional community for water quality, aquifer storage, aquifer recharge, and dry weather based stream flows.

k. No permit may be issued, renewed, or modified by the department or a delegated local agency so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L.1977, c.74, or has entered into an agreement with the department establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permit holder shall satisfy the provisions of this section by posting financial security as required pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10). The provisions of this subsection with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. Except as hereinafter provided, an inspection required under this subsection shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal, or, in the case of a new facility or municipal treatment works, issuance of a permit therefor, except that if for any reason, a scheduled inspection cannot be made the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility or municipal treatment works discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the federal National Priorities List adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C. s.9601 et seq.),

or any other hazardous discharge site included by the department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16). Inspections shall include:

(1) A representative sampling of the effluent for each permitted facility or municipal treatment works, except that in the case of facilities or works that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

(2) An analysis of all collected samples by a State owned and operated laboratory, or a certified laboratory other than one that has been or is being used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

(3) An evaluation of the maintenance record of the permittee's treatment equipment;

(4) An evaluation of the permittee's sampling techniques;

(5) A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

(6) An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

The department may inspect a facility required to be inspected by a delegated local agency pursuant to this subsection. Nothing in this subsection shall require the department to conduct more than one inspection per year.

m. The facility or municipal treatment works of a permittee identified as a significant noncomplier shall be subject to an inspection by the department, or the delegated local agency, as the case may be, which inspection shall be in addition to the requirements of subsection l. of this section. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance. The department or delegated local agency is required to conduct only one inspection per year pursuant to this subsection, and is not required to make an inspection hereunder if an inspection has been made pursuant to subsection l. of this section within six months of the period within which an inspection is required to be conducted under this subsection.

n. To assist the commissioner in assessing a municipal treatment works' NJPDES permit in accordance with paragraph (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local agency shall perform a complete analysis that includes a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency as often as the priority pollutant scan is required under the permit, but not less than once a year, and shall be based upon data acquired in the priority pollutant scan and from applicable sludge quality analysis reports. The results of the analysis shall be included in a report to be attached to the annual report required to be submitted to the commissioner by the delegated local agency.

o. Except as otherwise provided in section 3 of P.L.1963, c.73 (C.47:1A-3), any records, reports or other information obtained by the commissioner or a local agency pursuant to this section or section 5 of P.L.1972, c.42 (C.58:11-53), including any correspondence relating thereto, shall be available to the public; however, upon a showing satisfactory to the commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commissioner or local agency shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the department, the local agency, and the federal government.

p. The provisions of this section shall not apply to a discharge of petroleum to the surface waters of the State that occurs as a result of the process of recovering, containing, cleaning up or removing a discharge of petroleum in the surface waters of the State and that is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner or the commissioner's designee.

q. The commissioner shall, in consultation with the Department of Agriculture and the Aquaculture Advisory Council, provide for the issuance of general permits for the discharge of pollutants from concentrated aquatic animal production facilities and aquacultural projects. In establishing general permits the commissioner shall take into consideration the source and receiving water quality and the type of aquaculture activity being conducted. The general permits issued pursuant to this subsection shall give priority to meeting best management practices rather than attaining numeric pollutant discharge parameter levels. If the commissioner determines that a permittee cannot perform the best management practices in order to obtain a general permit or that the performance of best management practices will not be protective of water quality as required by P.L.1977, c.74, the

commissioner may require the permittee to obtain an individual permit which may contain numeric pollutant parameter discharge limits.

28. Section 2 of P.L.1989, c.119 (C.58:10A-7.1) is amended to read as follows:

C.58:10A-7.1 Discharging waste in ocean waters prohibited after Dec. 31, 1991; "aquaculture" defined.

2. After December 31, 1991, the department may not issue a permit to any private, commercial, or industrial applicant for the discharge of any solid, semi-solid, or liquid wastes into the ocean waters of the State, the provisions of any other law, or rule or regulation to the contrary notwithstanding. Any permit issued by the department for the discharge of any such waste prior to January 1, 1992 shall expire on January 1, 1992, the provisions of any such permit to the contrary notwithstanding. The provisions of P.L.1989, c.119 shall not apply to permits applied for, or issued to, municipal treatment works, seafood processing facilities, public water supply desalinization plants, or aquaculture activities. As used in this act, "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

As used in this section, "aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities such as stocking, intervention in the rearing process to increase production, feeding, transplanting, and providing for protection from predators and shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation, and "aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

29. Section 3 of P.L.1981, c.262 (C.58:1A-3) is amended to read as follows:

C.58:1A-3 Definitions.

3. As used in the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) and P.L.1993, c.202 (C.58:1A-7.3 et al.):

a. "Commissioner" means the Commissioner of the Department of Environmental Protection or his designated representative;

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b. "Consumptive use" means any use of water diverted from surface or ground waters other than a nonconsumptive use as defined in this act;

c. "Department" means the Department of Environmental Protection;

d. "Diversion" means the taking or impoundment of water from a river, stream, lake, pond, aquifer, well, other underground source, or other water body, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere;

e. "Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality;

f. "Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a water supply facility, political subdivision of the State and any state, or interstate agency or Federal agency;

g. "Waters" or "waters of the State" means all surface waters and ground waters in the State;

h. "Safe or dependable yield" or "safe yield" means that maintainable yield of water from a surface or ground water source or sources which is available continuously during projected future conditions, including a repetition of the most severe drought of record, without creating undesirable effects, as determined by the department;

i. "Aquaculture" means the propagation, rearing and subsequent harvesting of aquatic species in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

j. "Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

30. Section 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read as follows:

C.58:1A-6 Permit system; development of guidelines.

6. a. The department in developing the permit system established by P.L.1981, c.262 (C.58:1A-1 et al.) shall:

(1) Permit privileges previously allowed pursuant to lawful legislative or administrative action, except that the department may, after notice and

public hearing, limit the exercise of these privileges to the extent currently exercised, subject to contract, or reasonably required for a demonstrated future need. All diversion permits issued by the Water Policy and Supply Council prior to August 13, 1981 shall remain in effect until modified by the department pursuant to P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right to divert more than 100,000 gallons of water per day pursuant to prior legislative or administrative action, including persons previously exempted from the requirement to obtain a permit, shall renew that right by applying for a diversion permit, or water usage certification, as the case may be, no later than February 9, 1982. Thereafter, the conditions of the new diversion permit or water usage certification shall be deemed conclusive evidence of such previously allowed privileges.

(2) Require any person diverting 100,000 or more gallons of water per day for agricultural or horticultural purposes to obtain approval of the appropriate county agricultural agent of a five-year water usage certification program. This approval shall be based on standards and procedures established by the department. This program shall include the right to construct, repair or reconstruct dams or other structures, the right to divert water for irrigation, frost protection, harvesting and other agriculturally-related purposes, including aquaculture, and the right to measure the amount of water diverted by means of a log or other appropriate record, and shall be obtained in lieu of any permit which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et al.).

(3) Require any person diverting more than 100,000 gallons per day of any waters of the State or proposing to construct any building or structure which may require a diversion of water to obtain a diversion permit. Prior to issuing a diversion permit, the department shall afford the general public with reasonable notice of a permit application, and with the opportunity to be heard thereon at a public hearing held by the department.

b. In exercising the water supply management and planning functions authorized by P.L.1981, c.262 (C.58:1A-1 et al.), particularly in a region of the State where excessive water usage or diversion present undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water supply due to excess groundwater diversion, the commissioner shall, after notice and public hearing as provided by and required pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), designate that region as an area of critical water supply concern.

In designating an area of critical water supply concern, the department shall be required to demonstrate that the specific area is stressed to a degree which jeopardizes the integrity and viability of the water supply source or poses a threat to the public health, safety, or welfare. This designation shall

conform to and satisfy the criteria of an area of critical water supply concern as defined in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

Those specific areas previously designated by the department as water supply critical and margin areas, considered as Depleted or Threatened Zones, respectively, prior to the effective date of P.L.1993, c.202 shall be considered to be areas of critical water supply concern for the purposes of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

c. In designated areas of critical water supply concern, the department, in consultation with affected permittees and local governing bodies and after notice and public hearing, shall:

(1) study water supply availability;

(2) estimate future water supply needs;

(3) identify appropriate and reasonable alternative water supply management strategies;

(4) select and adopt appropriate water supply alternatives; and

(5) require affected permittees to prepare water supply plans consistent with the adopted water supply management alternatives.

d. Following implementation of the adopted water supply management alternatives, the department shall monitor water levels and water quality within the designated area of critical water supply concern to determine the effectiveness of the alternative water supply management strategies selected. If the department determines that the alternatives selected are not effective in protecting the water supply source of concern, the department may revise the designation and impose further restrictions in accordance with the procedures set forth in this section. The results of all monitoring conducted pursuant to this section shall be reported to all affected permittees on an annual basis.

e. Nothing in P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall prevent the department from including, or require the department to include, the presently non-utilized existing privileges in any new, modified or future diversion permit issued to the present holder of these privileges, except as otherwise expressly provided in subsection b. of section 7 of P.L.1981, c.262 (C.58:1A-7).

31. Section 2 of P.L.1981, c.277 (C.58:1A-7.2) is amended to read as follows:

C.58:1A-7.2 No tax, fee imposed on diversion of water; exceptions; "aquaculture" defined.

2. The provisions of any law, rule or regulation to the contrary notwithstanding, no tax, fee or other charge shall be imposed on the diversion, for agricultural or horticultural purposes, including aquaculture,

of any ground or surface water of this State; provided, however, that nothing in this section shall prohibit the imposition of a fee, pursuant to law, for the cost of processing, monitoring and administering a water usage certification program for persons who divert any ground or surface water for agricultural and horticultural purposes, or other agriculturally-related purposes, including aquaculture.

As used in this section, "aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities such as stocking, intervention in the rearing process to increase production, feeding, transplanting, and providing for protection from predators and shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation, and "aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

32. Section 13 of P.L.1981, c.262 (C.58:1A-13) is amended to read as follows:

C.58:1A-13 New Jersey Statewide Water Supply Plan.

13. a. The department shall prepare and adopt the New Jersey Statewide Water Supply Plan, which plan shall be revised and updated at least once every five years.

b. The plan shall include, but need not be limited to, the following:

(1) An identification of existing Statewide and regional ground and surface water supply sources, both interstate and intrastate, and the current usage thereof;

(2) Projections of Statewide and regional water supply demands for the duration of the plan;

(3) Recommendations for improvements to existing State water supply facilities, the construction of additional State water supply facilities, and for the interconnection or consolidation of existing water supply systems;

(4) Recommendations for the diversion or use of fresh surface or ground waters and saline surface or ground water for aquaculture purposes; and

(5) Recommendations for legislative and administrative actions to provide for the maintenance and protection of watershed areas.

c. Prior to adopting the plan, the department shall:

(1) Prepare and make available to all interested persons a proposed plan;

(2) Conduct public meetings in the several geographic areas of the State on the proposed plan; and

(3) Consider the comments made at these meetings, make any revisions to the proposed plan as it deems necessary, and adopt the plan.

33. Section 12 of P.L.1989, c.151 (C.4:9-38) is amended to read as follows:

C.4:9-38 Composting, handling, etc. of animal wastes.

12. The Department of Agriculture shall, by rule or regulation and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establish criteria and standards for the composting, handling, storage, processing, utilization and disposal of animal wastes as provided in section 19 of P.L.1997, c.236 (C.4:27-19).

34. Section 13 of P.L.1989, c.151 (C.13:1E-99.21f) is amended to read as follows:

C.13:1E-99.21f Rules, regulations.

13. The Department of Environmental Protection shall, pursuant to the "Administrative Procedure Act," adopt rules and regulations necessary to implement sections 5 through 11 of P.L.1989, c.151 (C.13:1E-99.21a through C.13:1E-99.21e and C.4:24-22.1).

35. Section 3 of P.L.1979, c.111 (C.13:18A-3) is amended to read as follows:

C.13:18A-3 Definitions.

3. As used in this act:

a. "Agricultural or horticultural purposes" or "agricultural or horticultural use" means any production of plants or animals useful to man, including but not limited to: forages or 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, and including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; aquatic organisms as part of aquaculture; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or any land devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agency of the Federal Government;

b. "Application for development" means the application form and all accompanying documents required by municipal ordinance for approval of

a subdivision plat, site plan, planned development, conditional use, zoning variance or other permit as provided in the "Municipal Land Use Law," P.L.1975, c. 291 (C. 40:55D-1 et seq.), for any use, development or construction other than the improvement, expansion or reconstruction of any single-family dwelling unit or appurtenance thereto, or the improvement, expansion, construction or reconstruction of any structure used exclusively for agricultural or horticultural purposes;

c. "Commission" means the Pinelands Commission created by section 4 of this act;

d. "Comprehensive management plan" means the plan prepared and adopted by the commission pursuant to section 7 of this act;

e. "Council" means the Pinelands Municipal Council created by section 6.1 of this act;

f. "Federal Act" means section 502 of the "National Parks and Recreation Act of 1978" (Pub.L. 95-625);

g. "Major development" means any division or subdivision of land into five or more parcels; any construction or expansion of any housing development of five or more dwelling units; any construction or expansion of any commercial or industrial use or structure on a site of more than three acres; or any grading, clearing or disturbance of any area in excess of 5,000 square feet for other than agricultural or horticultural purposes;

h. "Pinelands area" means that area so designated by subsection a. of section 10 of this act;

i. "Pinelands National Reserve" means the approximately 1,000,000 acre area so designated by the Federal Act and generally depicted on the map entitled "Pinelands National Reserve Boundary Map" numbered NPS/80,011A and dated September, 1978;

j. "Preservation area" means that portion of the pinelands area so designated by subsection b. of section 10 of this act;

k. "Protection area" means that portion of the pinelands area not included within the preservation area;

l. "Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing and shall include but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any other State or federal law or regulation;

m. "Aquatic organism " means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

C.4:27-25 Construction of act.

36. Except as provided in section 3 of P.L.1979, c.111 (C.13:18A-3) as amended by section 35 of P.L.1997, c.236, nothing in this act shall be construed to modify the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L. 95-625).

37. This act shall take effect immediately.

Approved August 31, 1997.

CHAPTER 237

AN ACT establishing a college savings program and supplementing Titles 18A and 54A of the New Jersey Statutes.

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

C.18A:72-43 Short title.

1. Sections 1 through 12 of this act establish a college savings plan and shall be known and may be cited as the "New Jersey Better Educational Savings Trust (NJBEST) Act."

C.18A:72-44 Findings, declarations relative to college savings program.

2. The Legislature finds and declares that:

a. This State is committed to making world-class education accessible and affordable for all New Jersey students;

b. When families save for college education, they are making an important investment in the future for themselves and the young people of this State;

c. Incentives are needed to encourage families to save for college education;

d. The "Small Business Job Protection Act of 1996," Pub.L.104-188, amended the federal Internal Revenue Code to provide for favorable tax treatment for qualified college savings programs and participants in the programs; and

e. In addition to favorable federal tax treatment for a college savings program and its participants, it is desirable to provide favorable State tax treatment, as a special incentive for student beneficiaries to attend college in this State.

C.18A:72-45 Definitions relative to college savings program.

3. As used in this act:

"Account" means an individual trust account or savings account established in accordance with this act;

"Authority" means the New Jersey Higher Education Assistance Authority;

"Contributor" means the person or organization contributing to and maintaining an account and having the right to withdraw funds from the account before the account is disbursed to or for the benefit of the designated beneficiary;

"Designated beneficiary" means: a. the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account; b. the replacement beneficiary if the change in designated beneficiary would not result in a distribution that is included in federal gross income under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and c. in the case of an interest in the program purchased by a state or local government or an organization described in paragraph (3) of subsection (c) of section 501 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.501 and exempt from taxation under subsection (a) of section 501 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.501, as a part of a scholarship program operated by the government or organization, the individual receiving the interest as a scholarship;

"Higher education institution" means an eligible educational institution as defined in or for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education institution shall include a proprietary institution if expenses for tuition at the institution would be considered qualified higher education expenses under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, but only for degree granting programs licensed or approved by the Commission on Higher Education or for other proprietary institutions as determined by the authority;

"Investment Manager" means the Division of Investment in the Department of the Treasury or the private entities authorized to do business in this State that may be designated by the authority to invest the funds of the trust pursuant to the terms of this act;

"Member of the family" means a member of the family as defined in or for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;

"Nonqualified withdrawal" means a withdrawal from an account other than: a. a qualified withdrawal; b. a withdrawal made as the result of the

death or disability of the designated beneficiary of an account; c. a withdrawal made on account of a scholarship (or allowance or payment described in subparagraph (B) or (C) of paragraph (1) of subsection (d) of section 135 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.135) received by the designated beneficiary, but only to the extent of the amount of that scholarship, allowance or payment; d. a rollover or change in designated beneficiary which would not result in a distribution includible in federal gross income under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal if the failure of the program to impose a more than de minimis penalty on the withdrawal would cause the program not to be a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529;

"Program" means the "New Jersey Better Educational Savings Trust (NJBEST) Program" established pursuant to this act;

"Qualified higher education expenses" means expenses described in paragraph (3) of subsection (e) of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529 incurred in connection with the enrollment of a designated beneficiary at a higher education institution;

"Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account; but a withdrawal shall not be considered a qualified withdrawal if the failure of the program to impose a more than de minimis penalty on the withdrawal would cause the program not to qualify as a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, U.S.C.s.529;

"Trust" means the "New Jersey Better Educational Savings Trust" established pursuant to section 4 of this act.

C.18A:72-46 New Jersey Better Educational Savings (NJBEST) Trust.

4. There is created within the New Jersey Higher Education Assistance Authority the New Jersey Better Educational Savings (NJBEST) Trust. The trust shall provide a mechanism through which the authority, as trustee, holds accounts established and maintained pursuant to the provisions of this act to finance the cost of qualified higher education expenses.

C.18A:72-47 Administration of NJBEST Program.

5. The Office of Student Assistance shall administer the NJBEST Program established in the authority. The authority shall have the power to:

a. serve as trustee of the trust;

b. 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;

c. prescribe and provide appropriate forms for participation in the program;

d. select an investment manager and any other contractors needed to manage and market the program;

e. monitor the investment manager and any other contractors by audits and other reports;

f. collect reasonable administrative fees in connection with any contract or transaction relating to the program;

g. impose penalties for nonqualified withdrawals;

h. take all actions required so that the program is treated as a qualified State tuition program under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529; and

i. perform any other acts which may be deemed necessary or appropriate to carry out the objects and purposes of this act.

C.18A:72-48 Immunity.

6. Neither the members of the authority, nor any officer or employee of the authority shall be liable personally for the debts, liabilities or obligations of the program established pursuant to this act.

C.18A:72-49 Selection of investment manager.

7. a. The authority shall select an investment manager or managers to invest the funds of the trust or the funds in accounts. In making this selection, any investment manager shall be subject to the "prudent person" standard of care applicable to the Division of Investment in the Department of the Treasury pursuant to subsection b. of section 11 of P.L.1950, c.270 (C.52:18A-89), and the authority shall consider the impact of fees and costs imposed by the manager or managers on yield to contributors.

b. The authority may select more than one investment manager and investment instrument for the program if it is in the best interest of contributors and will not interfere with the administration of the program.

c. The authority may provide a contributor with a choice of investment managers or investment instruments or both for the program if both of the following conditions exist:

(1) the federal Internal Revenue Service has provided guidance that providing a contributor with a choice of investment managers or instruments under a State tuition program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.529; and

(2) the authority concludes that a choice of investment managers or of investment instruments is in the best interest of contributors and will not interfere with the administration of the program.

d. If the authority terminates the designation of an investment manager to hold accounts, and accounts must be moved from that investment manager to another investment manager, the authority shall select the investment manager and type of investment instrument to which the balance of the account is moved, unless the federal Internal Revenue Service provides guidance that allowing the contributor to select among several investment managers or investment instruments that have been selected by the authority would not cause a program to cease to be a qualified State tuition program for the purposes of section 529 of the federal Internal Revenue Code, 26 U.S.C. s.529.

C.18A:72-50 Operation of program.

8. a. The program shall be operated as a trust through the use of accounts for designated beneficiaries. An account may be opened by any person who desires to save to pay the qualified higher education expenses of an individual by satisfying each of the following requirements:

(1) completing an application in the form prescribed by the authority;

(2) paying the one-time application fee established by the authority;

(3) making the minimum contribution required by the authority for opening an account;

(4) designating the account or accounts to be opened; and

(5) in the case of an account to which subsection a. of section 11 of this act would apply, demonstrating to the satisfaction of the authority that either the contributor, if an individual, or the designated beneficiary is a New Jersey resident. The requirement of New Jersey residency for either the contributor or the designated beneficiary would not apply to an account to which subsection b. of section 11 of this act would apply unless otherwise determined by the authority.

b. Except as provided under section 9 of this act, only the contributor may make contributions to an account after the account is opened.

c. Contributions to accounts shall be made only in cash, as defined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

d. Contributors may withdraw all or part of the balance from an account on sixty days' notice or a shorter period, as may be authorized by the authority pursuant to regulations.

e. A contributor may change the designated beneficiary of an account or rollover all or a portion of an account to another account if the change or rollover would not result in a distribution includible in gross income under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, in accordance with procedures established by the authority.

f. In the case of any nonqualified withdrawal, a penalty at a level established by the authority and sufficient to be considered a more than de minimis penalty for purposes of section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, shall be withheld and paid to the authority for use in operating and marketing the program. The authority may elect not to impose a penalty if that section ceases to include a provision requiring more than de minimis penalties for a program to qualify as a qualified State tuition program.

g. If a contributor makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection f. of this section or the amount withheld is less than the amount required to be withheld under that subsection, the contributor shall pay the unpaid portion of the penalty to the authority at the same time that the contributor files a State income tax return for the taxable year of the withdrawal, or if the contributor does not file a return, the unpaid portion of the penalty shall be paid on or before the due date for the filing of that income tax return.

h. Each account shall be maintained separately from each other account under the program.

i. Separate records and accounting shall be maintained for each account for each designated beneficiary.

j. A contributor to or designated beneficiary of any account shall not direct the investment of any contributions to an account or the earnings from the account, except as permitted under section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

k. A contributor or a designated beneficiary shall not use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

l. The maximum contribution for any designated beneficiary shall be determined by the authority pursuant to regulations, in accordance with section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529.

m. Statements, reports on distributions and information returns relating to accounts shall be prepared, distributed, and filed to the extent required by section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529, or regulations issued thereunder.

n. The authority may charge, impose and collect reasonable administrative fees and service charges in connection with any agreement, contract or transaction relating to the program. These fees and charges may be imposed directly on contributors or may be taken as a percentage of the investment earnings on accounts.

C.18A:72-51 Provision of funds, conditions.

9. a. An amount of no less than $500 shall be provided by the State for the qualified higher education expenses of a designated beneficiary at the time of a qualified withdrawal provided that:

(1) the contributor demonstrates, to the satisfaction of the authority, that the contributor participated in the program for at least four years by making a qualifying minimum initial deposit or qualifying minimum annual contributions, or both, as shall be determined by the authority, for a designated beneficiary;

(2) the designated beneficiary demonstrates, to the satisfaction of the authority, attendance or enrollment in a higher education institution in this State, at the time of initial attendance or enrollment in the higher education institution; and

(3) either the contributor, if an individual, or the designated beneficiary demonstrates, to the satisfaction of the authority, that the contributor or designated beneficiary is a New Jersey resident.

b. The amount provided under subsection a. of this section shall meet the requirements of a qualified scholarship within the meaning of section 117 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.117, for a designated beneficiary satisfying the requirements of subsection a. of this section.

c. A designated beneficiary shall not receive more than one State scholarship provided pursuant to subsection a. of this section.

C.18A:72-52 Determination of dollar amount of account.

10. Annually, the authority shall determine a dollar amount of an account, which shall not be less than $25,000, which shall not be considered in evaluating the financial needs of a student enrolled in an institution of higher education located in the State of New Jersey, or be deemed a financial resource or a form of financial aid or assistance to a student, for purposes of determining the eligibility of a student for any scholarship, grant, or monetary assistance awarded by the State; nor shall the amount of any account as determined by the authority provided for a designated beneficiary under this act reduce the amount of any scholarship grant or monetary assistance which the student is entitled to be awarded by the State.

C.18A:72-53 Assurance of availability of principal.

11. a. If the investment manager is the Division of Investment in the Department of the Treasury, in order to assure the availability of principal of any amount contributed under this act, there shall be paid to the authority for deposit in the trust, at the time of distribution, subject to appropriation, such sum, if any, as shall be certified by the chairman of the authority as

necessary to provide that amount at the time of distribution. The chairman shall make and deliver to the Governor, or his designee, the certificate stating the sums, if any, required to make available in the trust the amount aforesaid, and the sums so certified shall be appropriated and paid to the authority during the then current State fiscal year.

b. If the investment manager is a private entity, the investment of the principal and interest of any amount contributed under this act shall be backed by the full faith and credit of the United States or be fully insured by the Federal Deposit Insurance Corporation or other similar insurer backed by the full faith and credit of the United States. No account balance shall exceed the maximum amount of insurance provided by the insurer. No investment is permitted in derivatives of eligible securities, and any investment must be designed to balance prospective payments according to the guidelines established.

C.18A:72-54 Construction of act.

12. a. Nothing in this act shall be construed to:

(1) guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution after admission;

(2) establish State residency for a person merely because the person is a designated beneficiary; or

(3) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

b. Nothing in this act establishes any obligation of this State or any agency or instrumentality of this State to guarantee for the benefit of any contributor or designated beneficiary any of the following:

(1) the rate of interest or other return on any account; or

(2) the payment of interest or other return on any account.

c. Nothing in this act establishes any obligation or liability of this State or any agency or instrumentality of this State with respect to any federal or State tax liability of any contributor or designated beneficiary in this program.

d. Under regulations promulgated by the authority, every contract and application that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this State nor is the investment return guaranteed by this State.

C.54A:6-25 NJBEST distributions excluded from gross income.

13. a. Gross income shall not include the earnings on or distribution from an individual trust account or savings account established pursuant to

the "New Jersey Better Educational Savings Trust Program" established pursuant to P.L.1997, c.237 (C.18A:72-43 et seq.).

b. "Distribution" means a withdrawal which pays the designated beneficiary's qualified higher education expenses described in section 529 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.529 or which represents contributions net of earnings thereon.

14. If the Congress of the United States enacts legislation that exempts educational savings accounts from federal income taxation, sections 9 and 10 of this act shall apply with respect to such educational savings accounts as if they were accounts established under this act and the beneficiaries of the accounts were designated beneficiaries subject to the approval of the New Jersey Higher Education Assistance Authority.

15. This act shall take effect immediately.

Approved September 2, 1997.

CHAPTER 238

AN ACT creating the Higher Education Technology Infrastructure Fund and supplementing chapter 72A of Title 18A of the New Jersey Statutes.

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

C.18A:72A-59 Short title.

1. This act shall be known and may be cited as the "Higher Education Technology Infrastructure Fund Act."

C.18A:72A-60 Findings, declarations relative to higher education technology infrastructure.

2. The Legislature finds and declares that:

a. New Jersey's public and independent colleges and universities contribute substantially to the local, State, and national economies by developing the workforce, advancing knowledge through research and scholarship, and serving as a repository for information.

b. An integrated technology infrastructure is increasingly critical to teaching, research, workforce training, and the effectiveness and efficiency of New Jersey's higher education system.

c. Up-to-date telecommunications and information technology, including connectivity within and among institutions and with libraries and elementary and secondary schools, will enable students and faculty to access

information and educational opportunities efficiently and effectively and will increase opportunities for institutions to collaborate and share resources.

d. Consortial arrangements and distance learning offer significant potential to reduce costs and increase access, but these new modes of delivery cannot succeed without a technology infrastructure which insures compatibility and connectivity.

e. Colleges and universities must address substantial, yet varying, technological needs in order to participate fully in a comprehensive, current telecommunications network. To strengthen New Jersey's competitiveness and enhance the State's higher education system in a global and highly technological economy, it is essential to establish a dedicated source of funding to support investment by New Jersey's public and independent higher education institutions in technology infrastructure.

C.18A:72A-61 "Higher Education Technology Infrastructure Fund."

3. There is created within the New Jersey Educational Facilities Authority, established pursuant to N.J.S.18A:72A-1 et seq., the "Higher Education Technology Infrastructure Fund," hereinafter referred to as the "technology fund." The technology fund shall be maintained as a separate account and administered by the authority to carry out the provisions of this act. The technology fund shall consist of:

a. moneys received from the issuance of bonds or notes pursuant to section 7 of P.L.1997, c.238 (C.18A:72A-65);

b. all moneys appropriated by the State for the purposes of the fund; and

c. all interest and investment earnings received on moneys in the technology fund.

C.18A:72A-62 Use of technology fund.

4. The technology fund shall be used to develop technology infrastructure within and among New Jersey's institutions of higher education in order to provide access effectively and efficiently to information, educational opportunities, and workforce training. Funds may also be used to enhance the connectivity of higher education institutions to libraries and elementary and secondary schools.

As used in this act, "technology infrastructure" means video, voice, and data telecommunications equipment and linkages, including transport services and network interconnections.

C.18A:72A-63 Grant conditions, allocations.

5. The use of a grant from the technology fund shall require a matching amount from an institution equal to the amount of the grant provided. The initial grants from the technology fund shall be allocated as follows:

a. a minimum of $12,600,000 for the acquisition of higher education technology infrastructure at the State colleges;

b. a minimum of $7,722,000 for the acquisition of higher education technology infrastructure at Rutgers, The State University;

c. a minimum of $4,306,500 for the acquisition of higher education technology infrastructure at the University of Medicine and Dentistry of New Jersey;

d. a minimum of $2,821,500 for the acquisition of higher education technology infrastructure at the New Jersey Institute of Technology;

e. a minimum of $12,600,000 for the acquisition of higher education technology infrastructure at the county colleges;

f. a minimum of $4,950,000 for the acquisition of higher education technology infrastructure at private institutions of higher education;

g. a maximum of $5,000,000 for interconnectivity among the higher education institutions. Expenditures shall be based on an inter-institutional needs assessment. If, as a result of the needs assessment, less than $5,000,000 is expended from the funds allocated in this subsection, the remaining funds shall be allocated among the institutions designated in subsections a. through f. of this section based on the percentage of the total funds allocated in each of the subsections a. through f.; and

h. a minimum of $5,000,000 for non-matching public library grants or for Statewide library technology initiatives through the New Jersey State Library.

The Commission on Higher Education may reallocate any balance in the amount authorized in subsections a. through g. of this section, which has not been approved by the commission for a grant within 18 months of the effective date of P.L.1997, c.238 (C.18A:72A-59 et seq.).

The commission shall determine the allocation of moneys deposited into the technology fund resulting from the issuance by the authority of new bonds because of the retirement of bonds previously issued by the authority.

Acquisition of technology infrastructure funded by grants from the technology fund shall follow the principles of affirmative action and equal opportunity employment. In furtherance of these principles, the commission shall continue its policy of encouraging institutions to solicit bids from, and award contracts to, minority and women-owned businesses.

C.18A:72A-64 Application for grant, conditions.

6. a. The governing board of a public or private institution of higher education may determine, by resolution, to apply for a grant from the technology fund. Upon adoption of the resolution, the board shall file an application with the Commission on Higher Education, which application shall include a complete description of the technology infrastructure to be

acquired and an identification of the sources of revenue to be used for the required institutional match.

b. The commission shall review the application and, by resolution, approve or disapprove the grant. For each grant which is approved, the commission shall establish the amount and shall forward a copy of the resolution along with the amount of the grant to the authority.

c. Each grant awarded under this act shall be contingent upon the recipient governing board entering into a contract or contracts for the acquisition of technology infrastructure within one year of the date on which the funds of the grant are made available to the institution.

C.18A:72A-65 Issuance of bonds, notes.

7. a. The authority shall from time to time issue bonds or notes in an amount sufficient to finance the grants provided under this act and to finance the administrative costs associated with the approval process and the issuance of the bonds and notes for the purchase of higher education technology infrastructure for public and private institutions of higher education, provided that the total outstanding principal amount of the bonds and notes shall not exceed $55,000,000 and the term of any bond issued shall not exceed 15 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds or notes which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriation, shall pay the amount necessary to pay the principal and interest on bonds and notes of the authority issued pursuant to this section.

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

political subdivision thereof is pledged to the payment of the principal of, redemption premium, if any, or the interest on the bonds.

c. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to P.L.1997, c.238 (C.18A:72A-59 et seq.) that the State shall not limit or alter the rights or powers hereby vested in the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes, or to fix, establish, charge and collect such rents, fees, rates, payments, or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and to fulfill the terms of any agreement made with the holders of the bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders, until the bonds and notes, together with interest thereon, are fully met and discharged or provided for.

C.18A:72A-66 Agreements between authority and institutions of higher education.

8. The authority may enter into an agreement with a public or private institution of higher education to finance the acquisition of higher education technology infrastructure by the institution. In entering into an agreement with a public or private institution of higher education, the authority shall include in the agreement such provisions as may be necessary to ensure that the institution shall provide a matching amount at least equal to the amount of the grant provided.

C.18A:72A-67 Approval for entry into agreements.

9. The authority shall not enter into an agreement with an institution of higher education unless the Commission on Higher Education has adopted a resolution which approves the acquisition of the higher education technology infrastructure by the institution.

C.18A:72A-68 Financing of matching amounts.

10. a. To finance the matching amounts for institutions of higher education which have received grants from the technology fund, the authority may from time to time issue bonds or notes in an amount sufficient to finance the purchase of higher education technology infrastructure pursuant to agreements with public and private institutions of higher education and to finance the administrative costs associated with the issuance of bonds or notes. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1997, c.238 (C.18A:72A-59 et seq.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq. The bonds or notes issued pursuant to this section shall be repaid by the institutions of higher

education from any available funds, except grant funds provided to the institution of higher education pursuant to this act.

b. The authority shall require that if an institution of higher education fails or is unable to pay to the authority in full, when due, any obligation of the institution to the authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution and paid to the authority. As used in this subsection, "obligation of the institution" means any amount payable by the institution for technology infrastructure pursuant to an agreement with the authority.

c. The amount retained by the State Treasurer shall be deducted from the corresponding appropriation or apportionment of State aid payable to the institution of higher education and shall not obligate the State to make, nor entitle the institution to receive, any additional appropriation or apportionment.

C.18A:72A-69 Criteria for approval, specific information in grant application.

11. In order to ensure the most effective utilization of the moneys in the technology fund and to guide governing boards which elect to apply for a grant, the Commission on Higher Education shall establish criteria for approval and shall specify the information to be included in a grant application.

C.18A:72A-70 Rules, regulations.

12. The Commission on Higher Education, in consultation with the New Jersey Educational Facilities Authority, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations necessary to carry out the provisions of this act.

C.18A:72A-71 Report to Governor, Legislature.

13. The Commission on Higher Education shall annually submit a report to the Governor and the Legislature on the higher education technology infrastructure purchases at public and private institutions of higher education, which have been approved by the commission and financed by the New Jersey Educational Facilities Authority pursuant to this act.

14. This act shall take effect immediately.

Approved September 3, 1997.

CHAPTER 239

AN ACT concerning the conveyance of riparian lands, supplementing chapter 3 of Title 12 of the Revised Statutes, and amending P.L.1948, c.448.

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

C.12:3-12.1 Findings, declarations relative to conveyance of riparian lands.

1. The Legislature finds and declares that the Tidelands Resource Council is the public body responsible for the stewardship of the State's riparian lands; that it is the responsibility of the council to determine whether applications for the lease, license, or grant of riparian lands are in the public interest; that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a future use for such lands; that the council must obtain the fair market value for the lease, license or grant of riparian lands in accordance with court decisions and legal opinions of the Attorney General; and that the substantive policies adopted by the council and information about the roles of the council and the tidelands management program within the Department of Environmental Protection in requiring, reviewing, and processing applications for the lease, license, and grant of riparian lands should be made readily available to the general public and should be provided to those who apply for permission to use riparian lands.

C.12:3-12.2 Development of "Guide to the Tidelands."

2. The Tidelands Resource Council shall develop an informational guide entitled "Guide to the Tidelands," which shall be written in clear and plain language such that a person possessing a high school degree or its equivalent can understand any information provided in the guide. The council shall provide a copy of the guide to any person expressing an interest in applying for a lease, license or grant of any riparian land and to any other person who requests a copy of the guide. The guide shall contain the following information:

a. A brief history of the designation of riparian lands in New Jersey as property of the State to be held in the public trust;

b. The purpose of the Tidelands Resource Council and the tidelands management program within the Department of Environmental Protection, emphasizing the status of mapped riparian lands as property of the State under the stewardship of the Tidelands Resource Council;

c. A complete listing and explanation of application fees adopted by the council pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

d. An explanation of the process involved in submitting an application to the council, and an explanation of the method by which the council establishes the fair market value of riparian lands, and the consequent price of a lease, license, or grant of such lands;

e. An explanation of the process by which an applicant for a lease, license, or grant of riparian lands may appeal to the council for a reduction in the price of such lease, license, or grant as established by the council; and

f. Any information not specified in subsections a. through e. of this section that the council determines will help applicants obtain a clear understanding of the council's role as steward of State-owned riparian lands.

C.12:3-12.3 Rules, regulations setting forth fees; minimum term of conveyance.

3. The Tidelands Resource Council shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations setting forth all fees imposed by the council, but shall not be required to publish as a rule or regulation any formula or method used to determine the fair market value of a lease, license or grant. All leases and licenses shall be conveyed for a minimum of seven years.

4. Section 10 of P.L.1948, c.448 (C.13:1B-10) is amended to read as follows:

C.13:1B-10 Tidelands Resource Council.

10. There shall be within the Department of Environmental Protection a Tidelands Resource Council, which shall consist of 12 members. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and shall serve until a successor has been appointed and has qualified.

At least nine of the council members shall be residents of counties wherein riparian lands are located and have been mapped. A person who is a member of the council on the effective date of P.L.1997, c.239 (C.12:3-12.1 et al.) shall not be removed from the council for failing to meet the aforementioned residency requirements, but may be reappointed by the Governor at the expiration of that term only if that reappointment would comply with the residency requirement for the council set forth in this section.

Each Governor shall designate one of the members of the council as chairperson and one of the members as vice-chairperson. Any member of the council so designated shall serve as chairperson or vice-chairperson at the pleasure of the Governor designating that member and until a successor

has been designated. The chairperson of the council shall be its presiding officer and the vice-chairperson shall act as chairperson in the chairperson's absence.

Any vacancies in the membership of the council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the council may be removed from office by the Governor for cause, upon notice and opportunity to be heard. A member of the council may be removed from office by a majority vote of the membership of the council upon failure of that member to attend three consecutive meetings of the council without good cause.

The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

5. Section 13 of P.L.1948, c.448 (C.13:1B-13) is amended to read as follows:

C.13:1B-13 Approval of riparian leases, grants.

13. No action shall be taken by the council except upon the approval of the Commissioner of Environmental Protection. No riparian leases or grants shall hereafter be allowed except when approved by at least a majority of the council and signed by the chairperson of the council; and no such leases or grants shall hereafter in any case be allowed except when approved and signed by the Governor and the Commissioner of Environmental Protection.

6. This act shall take effect 180 days following enactment.

Approved September 5, 1997.

CHAPTER 240

AN ACT concerning the nonrenewal of automobile insurance policies and amending P.L.1968, c.158.

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

1. Section 4 of P.L.1968, c.158 (C.17:29C-9) is amended to read as follows:

C.17:29C-9 Intention not to renew or to renew at non-standard rates, notice required.

4. No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least 60 days' advance notice of its intention not to renew. This section shall not apply:

(a) If the insurer has manifested its willingness to renew; nor

(b) In case of nonpayment of premium;

provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

If a named insured qualifies for his insurer's non-standard rate level after having been insured at the standard rate level, the insurer shall mail or deliver to the named insured, at the address shown in the policy, at least 60 days' advance notice of its intention to renew at the non-standard rate level.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

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

Approved September 5, 1997.

CHAPTER 241

AN ACT concerning nursing homes and amending and supplementing P.L.1976, c.120.

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

1. Section 3 of P.L.1976, c.120 (C.30:13-3) is amended to read as follows:

C.30:13-3 Responsibilities of nursing homes.

3. Every nursing home shall have the responsibility for:

a. Maintaining a complete record of all funds, personal property and possessions of a nursing home resident from any source whatsoever, which have been deposited for safekeeping with the nursing home for use by the resident. This record shall contain a listing of all deposits and withdrawals transacted, and these shall be substantiated by receipts given to the resident or his guardian. A nursing home shall provide to each resident or his guardian a quarterly statement which shall account for all of such resident's

property on deposit at the beginning of the accounting period, all deposits and withdrawals transacted during the period, and the property on deposit at the end of the period. The resident or his guardian shall be allowed daily access to his property on deposit during specific periods established by the nursing home for such transactions at a reasonable hour. A nursing home may, at its own discretion, place a limitation as to dollar value and size of any personal property accepted for safekeeping.

b. Providing for the spiritual needs and wants of residents by notifying, at a resident's request, a clergyman of the resident's choice and allowing unlimited visits by such clergyman. Arrangements shall be made, at the resident's expense, for attendance at religious services of his choice when requested. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident.

c. Admitting only that number of residents for which it reasonably believes it can safely and adequately provide nursing care. Any applicant for admission to a nursing home who is denied such admission shall be given the reason for such denial in writing.

d. Ensuring that an applicant for admission or a resident is treated without discrimination as to age, race, religion, sex or national origin. However, the participation of a resident in recreational activities, meals or other social functions may be restricted or prohibited if recommended by a resident's attending physician in writing and consented to by the resident.

e. Ensuring that no resident shall be subjected to physical restraints except upon written orders of an attending physician for a specific period of time when necessary to protect such resident from injury to himself or others. Restraints shall not be employed for purposes of punishment or the convenience of any nursing home staff personnel. The confinement of a resident in a locked room shall be prohibited.

f. Ensuring that drugs and other medications shall not be employed for purposes of punishment, for convenience of any nursing home staff personnel or in such quantities so as to interfere with a resident's rehabilitation or his normal living activities.

g. Permitting citizens, with the consent of the resident being visited, legal services programs, employees of the Office of the Public Defender, employees of the private entity designated by the Governor as the State's mental health protection and advocacy agency pursuant to section 22 of P.L.1994, c.58 (C.52:27E-68), and employees and volunteers of the Office of the Nursing Home Ombudsman Program in the Department of Community Affairs, whose purposes include rendering assistance without charge to nursing home residents, full and free access to the nursing home in order to visit with and make personal, social and legal services available to all residents and to assist and advise residents in the assertion of their rights

with respect to the nursing home, involved governmental agencies and the judicial system.

(1) Such access shall be permitted by the nursing home at a reasonable hour.

(2) Such access shall not substantially disrupt the provision of nursing and other care to residents in the nursing home.

(3) All persons entering a nursing home pursuant to this section shall promptly notify the person in charge of their presence. They shall, upon request, produce identification to substantiate their identity. No such person shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. A resident shall have the right to terminate a visit by a person having access to his living area pursuant to this section at any time. Any communication whatsoever between a resident and such person shall be confidential in nature, unless the resident authorizes the release of such communication in writing.

h. Ensuring compliance with all applicable State and federal statutes and rules and regulations.

i. Ensuring that every resident, prior to or at the time of admission and during his stay, shall receive a written statement of the services provided by the nursing home, including those required to be offered by the nursing home on an as-needed basis, and of related charges, including any charges for services not covered under Title XVIII and Title XIX of the Social Security Act, as amended, or not covered by the nursing home's basic per diem rate. This statement shall further include the payment, fee, deposit and refund policy of the nursing home.

j. Ensuring that a prospective resident or the resident's family or guardian receives a copy of the contract or agreement between the nursing home and the resident prior to or upon the resident's admission.

2. Section 8 of P.L.1976, c.120 (C.30:13-8) is amended to read as follows:

C.30:13-8 Violations; causes of action; damages.

8. a. Any person or resident whose rights as defined herein are violated shall have a cause of action against any person committing such violation. The Department of Health and Senior Services may maintain an action in the name of the State to enforce the provisions of this act and any rules or regulations promulgated pursuant to this act. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for their violation. Any plaintiff who prevails

in any such action shall be entitled to recover reasonable attorney's fees and costs of the action.

b. In addition to the provisions of subsection a. of this section, treble damages may be awarded to a resident or alleged third party guarantor of payment who prevails in any action to enforce the provisions of section 3 of P.L.1997, c.241 (C.30:13-3.1).

C.30:13-3.1 Provisions relative to Medicare, Medicaid.

3. a. A nursing home shall not, with respect to an applicant for admission or a resident of the facility:

(1) require that the applicant or resident waive any rights to benefits to which he may be entitled under the Medicare program established pursuant to Title XVIII of the federal Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.) or the Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.); or

(2) require a third party guarantee of payment to the facility as a condition of admission or expedited admission to, or continued residence in, that facility; except that when an individual has legal access to a resident's income or resources available to pay for facility care pursuant to a durable power of attorney, order of guardianship or other valid document, the facility may require the individual to sign a contract to provide payment to the facility from the resident's income or resources without incurring personal financial liability.

b. A nursing home shall prominently display in that facility, and provide to an applicant for admission or a resident of the facility, written information about how to apply for benefits under the Medicare or Medicaid program, and how to receive a refund of previous payments to the facility which may be covered by those benefits.

c. The provisions of subsections a. and b. of this section shall only apply to those distinct parts of a nursing home certified to participate in the Medicare or Medicaid program.

C.30:13-3.2 Applicability of act.

4. Except as otherwise provided in this act, the provisions of P.L.1976, c.120 (C.30:13-1 et seq.) and section 3 of P.L.1997, c.241 (C.30:13-3.1) shall apply to any applicant for admission to a nursing home or any resident of the facility, whether the applicant or resident is eligible for benefits under the Medicare or Medicaid program or is a private pay patient, or may in the future convert from a private pay patient to a Medicare or Medicaid patient.

C.30:13-10.1 Written explanation of Medicare, Medicaid provisions required.

5. The Department of Health and Senior Services shall provide a written explanation of the provisions of section 3 of P.L.1997, c.241

(C.30:13-3.1) to each nursing home which participates in the Medicare or Medicaid program, and the nursing home shall include the written explanation in the contract or agreement which it furnishes to a prospective resident or the resident's family or guardian prior to or upon admission.

6. This act shall take effect immediately.

Approved September 5, 1997.

CHAPTER 242

AN ACT concerning pupils 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:37-6.1 Strip, body cavity searches of pupil prohibited.

1. Any teaching staff member, principal or other educational personnel shall be prohibited from conducting any strip search or body cavity search of pupil under any circumstances.

2. This act shall take effect immediately.

Approved September 5, 1997.

CHAPTER 243

AN ACT concerning certain notifications relating to bidding on local 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 23 of P.L.1971, c.198 (C.40A:11-23) is amended to read as follows:

C.40A:11-23 Advertisements for bids; bids; general requirements.

23. a. Advertisements for bids; bids; general requirements. All advertisements for bids shall be published in a legal newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive

bidding, but in no event less than 10 days prior to such date; except that all advertisements for bids on contracts for the collection and disposal of municipal solid waste shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than 60 days prior to that date.

b. The advertisement shall designate the manner of submitting and the method of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the contracting unit shall be sealed and shall only be opened for examination at such time and place as all bids received are unsealed and announced. At such time and place the contracting agent of the contracting unit shall publicly receive the bids, and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents, who are then and there present, and shall also make proper record of the prices and terms, upon the minutes of the governing body, if the award is to be made by the governing body of the contracting unit, or in a book kept for that purpose, if the award is to be made by other than the governing body, and in such latter case it shall be reported to the governing body of the contracting unit for its action thereon, when such action thereon is required. No bids shall be received after the time designated in the advertisement.

c. Notice of revisions or addenda to advertisements or bid documents shall be provided as follows:

1) For all contracts except those for construction work and municipal solid waste collection and disposal service, notice shall be published no later than five days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids, in an official newspaper of the contracting unit and be provided to any person who has submitted a bid or who has received a bid package, in one of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

2) For all contracts for construction work, notice shall be provided no later than seven days, Saturday, Sundays, or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of

transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

3) For municipal solid waste collection and disposal contracts, notice shall be published in an official newspaper of the contracting unit and in at least one newspaper of general circulation published in the State no later than five days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids.

d. Failure of the contracting unit to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the contracting unit from accepting the bids and require the readvertisement for bids pursuant to subsection a. of this section. Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the contracting unit shall not be considered failure by the contracting unit to provide notice.

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

Approved September 5, 1997.

CHAPTER 244

AN ACT authorizing special preference in appointments and promotions for certain former members of the United States Coast Guard and amending N.J.S.11A:5-12.

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

1. N.J.S.11A:5-12 is amended to read as follows:

Employment or promotion of persons awarded Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross.

11A:5-12. Employment or promotion of persons awarded Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross. Any individual who has served in the Army, Air Force, Navy, or Marine Corps of the United States and who has been awarded the Medal of Honor, the Distinguished Service Cross, Air Force Cross or Navy Cross, while a resident of this State, and any individual who has served in the United States Coast Guard and who has been awarded the Medal of Honor or the Navy Cross while a resident of this State, shall be appointed or promoted without complying with the rules of the board. The appointing authority to whom

the individual applies for appointment or promotion shall, at its discretion, appoint or promote that person. Upon promotion or appointment, that person shall become subject to the rules of the board. A person who qualifies under this section shall not be limited to only one appointment or promotion.

2. This act shall take effect immediately.

Approved September 5, 1997.

CHAPTER 245

AN ACT concerning certain trust powers of certain not-for-profit corporations and amending P.L.1948, c.67.

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

1. Section 213 of P.L.1948, c.67 (C.17:9A-213) is amended to read as follows:

C.17:9A-213 Limitations on exercise of powers.

213. Limitations on exercise of powers.

(a) Except as otherwise provided by law, only a banking institution shall exercise within this State any of the powers enumerated in paragraph (4) of section 24 of P.L.1948, c.67 (C.17:9A-24), paragraphs (4), (5) and (13) of section 25 of P.L.1948, c.67 (C.17:9A-25), and paragraphs (1) and (5) of section 26 of P.L.1948, c.67 (C.17:9A-26), and except as otherwise provided in this section, no corporation other than a qualified bank shall exercise within this State any of the powers specified in paragraphs (3), (4), (5), (6), (7), (8) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28), provided that no corporation organized prior to March 24, 1899, authorized to exercise all or any of the powers specified in paragraph (13) of section 25 of P.L.1948, c.67 (C.17:9A-25) or in paragraph (3) of section 28 of P.L.1948, c.67 (C.17:9A-28), shall be prohibited from exercising such powers, and further provided that if, prior to the effective date of this amendatory act, a not-for-profit corporation was exercising any of the powers specified in paragraph (6) or (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of a trust created to administer insurance programs, that corporation shall not be prohibited, on and after the effective date of this act, from exercising the powers specified in paragraph (6) or (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) over the trust, and further provided that no qualified corporation, as hereinafter

defined, shall be prohibited from exercising all or any of the powers specified in paragraph (3) of section 28 of P.L.1948, c.67 (C.17:9A-28), or in paragraph (13) of section 25 of P.L.1948, c.67 (C.17:9A-25). A qualified corporation shall mean a domestic corporation or a foreign corporation authorized to transact business in this State and registered with the Department of Banking and Insurance which (a) has such capital, surplus and undivided profits as may be fixed by the Commissioner of Banking and Insurance commensurate with the nature and volume of its business; (b) has adequate vault or other safe keeping facilities for the safeguarding of stocks and other securities received, processed or otherwise held for the account of customers; and (c) is adequately insured, as may be provided by regulation, to protect its customers and the holders or transferees of securities issued by its customers.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, a qualified educational institution shall not be prohibited from exercising the powers specified in paragraphs (6) and (9) of section 28 of P.L.1948, c.67 (C.17:9A-28) as trustee of funds in which the qualified educational institution has a qualifying interest. For the purposes of this subsection, a "qualified educational institution" means a not-for-profit corporation which is operated pursuant to Title 15A of the New Jersey Statutes (N.J.S.15A:1-1 et seq.) and which is organized and operated exclusively for educational purposes, is exempt from federal income taxation pursuant to paragraph (3) of subsection (c) of section 501 or section 115 of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c)(3) and 26 U.S.C. s.115, and has registered with the department pursuant to this section. A "qualified interest" means the interest of the qualified educational institution as an income beneficiary, a principal beneficiary of a trust, or both, which is a charitable remainder trust, charitable lead trust or a pooled income fund, as those terms are commonly used under the Internal Revenue Code, or a similar split interest trust, and in which the qualified educational institution is entitled to receive at least 51% of the income of the trust or 51% of the principal.

(c) Each qualified educational institution shall:

(1) have unrestricted net assets (as defined by the Statement of Financial Accounting Standard (SFAS) No. 117, "Financial Statement of Not-for-Profit") in an amount fixed by the commissioner commensurate with the volume of its trust operations;

(2) provide for adequate vault or other safe-keeping facilities for the safeguarding of stocks and other securities held for their trust accounts;

(3) be adequately insured, as required by regulation;

(4) have officers or other employees determined by the commissioner to possess the qualifications, experience and character required for the

duties and responsibilities for which they will be responsible in administering and investing the assets of the trusts: and

(5) have available competent legal counsel to advise and pass upon trust matters whenever necessary.

(d) A qualified corporation and qualified educational institution shall be subject to any regulations which may be adopted by the Commissioner of Banking and Insurance and subject to examination by the Department of Banking and Insurance to ensure compliance with those regulations, the cost of which shall be paid by the qualified corporation or qualified educational institution. The Commissioner of Banking and Insurance may require qualified corporations and qualified educational institutions to file any reports the commissioner deems necessary to determine compliance with any regulations which may be issued and to pay fees set by regulation for filing those reports and for registering with the Department of Banking and Insurance.

(e) All moneys, securities and other properties held by a qualified educational institution in trust pursuant to this section shall be kept separate and apart from the moneys, securities and other property belonging to the qualified educational institution. The requirements of this subsection shall be satisfied as long as the qualified educational institution maintains at all times records that show the name of the party on whose account the moneys, securities and other property are held. All moneys, securities and other property held by a qualified educational institution in trust pursuant to this section shall not be liable for the debts and obligations of the qualified educational institution.

(f) Subsections (c) and (d) of this section shall not apply to any qualified educational institution that was acting as a trustee prior to 1983, that holds in unrestricted assets an amount equal to ten times all assets under trust management and that has over $100 million under trust management.

2. This act shall take effect immediately but the amendments to subsection (d) of section 213 of P.L.1948, c. 61 (C.17:9A-213) contained in section 1 of this act shall remain inoperative until the 180th day after enactment.

Approved September 9, 1997.

CHAPTER 246

AN ACT concerning HIV testing by semen banks and supplementing Title 26 of the Revised Statutes.

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

C.26:5C-21 Definitions relative to HIV testing by semen banks.

1. As used in this act:

"HIV" means the human immunodeficiency virus which has been identified as the probable causative agent of acquired immune deficiency syndrome, or AIDS.

"HIV test" means a laboratory test designed to detect the presence of HIV, its related antigens, or antibodies to HIV.

"Semen bank" means a commercial or noncommercial activity involving the handling of human semen which participates in the collection, processing, storage or distribution of semen.

C.26:5C-22 HIV test on potential semen donor; consent; payment; notification.

2. a. A semen bank shall perform an HIV test on a potential donor prior to that person donating semen and shall freeze all donated semen for a waiting period of at least six months, in accordance with standards adopted by the United States Centers for Disease Control and Prevention.

b. A semen bank shall perform the HIV test only after the donor has provided written informed consent according to standards adopted by the Commissioner of Health and Senior Services. A donor who refuses to provide written informed consent to an HIV test or tests positive for HIV shall not be permitted to donate semen.

c. The cost of the HIV test shall be borne by the recipient of the donation.

d. The Commissioner of Health and Senior Services shall establish procedures for notification by a semen bank to donors of screening results and referrals to appropriate counseling and health care services as necessary.

C.26:5C-23 Violations, penalty.

3. A semen bank which violates any provision of this act is guilty of a disorderly persons offense and is liable to a penalty of not more than $1,000 for each offense.

C.26:5C-24 Rules, regulations.

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

5. This act shall take effect immediately.

Approved September 9, 1997.

CHAPTER 247

AN ACT concerning animal control officers, amending various parts of the statutory law, and supplementing Title 4 of the Revised Statutes.

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

1. Section 1 of P.L.1941, c.151 (C.4:19-15.1) is amended to read as follows:

C.4:19-15.1 Definitions.

1. "Certified animal control officer" means a person 18 years of age or older who has satisfactorily completed the course of study approved by the Commissioner of Health and Senior Services and the Police Training Commission as prescribed by paragraphs (1) through (3) of subsection a. of section 3 of P.L.1983, c.525 (C.4:19-15.16a); or who has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to those required of, a certified animal control officer pursuant to the provisions of P.L.1983, c.525 for a period of three years before January 17, 1987 .

"Dog" shall mean any dog, bitch or spayed bitch.

"Dog of licensing age" shall mean any dog which has attained the age of seven months or which possesses a set of permanent teeth.

"Kennel" shall mean any establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for sale is carried on, except a pet shop.

"Owner" when applied to the proprietorship of a dog shall include every person having a right of property in that dog and every person who has that dog in his keeping, and when applied to the proprietorship of any other animal, including, but not limited to, a cat, shall include every person having a right of property in that animal and every person who has that animal in his keeping.

"Pet shop" shall mean any place of business which is not part of a kennel, wherein animals, including, but not limited to, dogs, cats, birds, fish, reptiles, rabbits, hamsters or gerbils, are kept or displayed chiefly for the purpose of sale to individuals for personal appreciation and companionship rather than for business or research purposes .

"Pound" shall mean an establishment for the confinement of dogs or other animals seized either under the provisions of this act or otherwise.

"Shelter" shall mean any establishment where dogs or other animals are received, housed and distributed.

2. Section 3 of P.L.1983, c.525 (C.4:19-15.16a) is amended to read as follows:

C.4:19-15.16a Rules, regulations concerning training, educational qualifications for animal control officers.

3. a. The Commissioner of Health and Senior Services shall, within 120 days after the effective date of P.L.1983, c.525, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations concerning the training and educational qualifications for the certification of animal control officers, including, but not limited to, a course of study approved by the commissioner and the Police Training Commission, in consultation with the New Jersey Certified Animal Control Officers Association, which acquaints a person with:

(1) The law as it affects animal control, animal welfare, and animal cruelty;

(2) Animal behavior and the handling of stray or diseased animals;

(3) Community safety as it relates to animal control; and

(4) The law enforcement methods and techniques required for an animal control officer to properly exercise the authority to investigate and sign complaints and arrest without warrant pursuant to section 8 of P.L.1997, c.247 (C.4:19-15.16c), including, but not limited to, those methods and techniques which relate to search, seizure and arrest. The training in law enforcement methods and techniques described pursuant to this paragraph shall be part of the course of study for an animal control officer only when required by the governing body of a municipality pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b).

Any person 18 years of age or older may satisfy the courses of study established pursuant to this subsection at that person's own time and expense; however, nothing in this section shall be construed as authorizing a person to exercise the powers and duties of an animal control officer absent municipal appointment or authorization pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b).

b. The commissioner shall provide for the issuance of a certificate to a person who possesses, or acquires, the training and education required to qualify as a certified animal control officer pursuant to paragraphs (1) through (3) of subsection a. of this section and to a person who has been employed in the State of New Jersey in the capacity of, and with similar responsibilities to those required of, a certified animal control officer pursuant to the provisions of P.L.1983, c.525, for a period of three years before January 17, 1987.

3. Section 4 of P.L.1983, c.525 (C.4:19-15.16b) is amended to read as follows:

C.4:19-15.16b Appointment of certified animal control officer.

4. The governing body of a municipality shall, within three years of the effective date of P.L.1983, c.525, appoint a certified animal control officer who shall be responsible for animal control within the jurisdiction of the municipality and who shall enforce and abide by the provisions of section 16 of P.L.1941, c.151 (C.4:19-15.16). The governing body may authorize the certified animal control officer to investigate and sign complaints, arrest violators and otherwise act as an officer for detection, apprehension and arrest of offenders against the animal control, animal welfare and animal cruelty laws of the State and ordinances of the municipality, if the officer has completed the training required pursuant to paragraph 4 of subsection a. of section 3 of P.L.1983, c.525 (C.4:19-15.16a). Only certified animal control officers who have completed the training may be authorized by the governing body to so act as an officer for detection, apprehension and arrest of offenders; however, officers who have completed the training shall not have the authority to so act unless authorized by the governing body which is employing the officer or contracting for the officer's services.

4. R.S.4:22-44 is amended to read as follows:

Arrests with, without warrant.

4:22-44. Any member, officer or agent of the New Jersey Society for the Prevention of Cruelty to Animals, or any sheriff, undersheriff, constable, certified animal control officer who has been properly authorized pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b) or police officer may:

a. Make arrests for violations of this article;

b. Arrest without warrant any person found violating the provisions of this article in the presence of such member, officer, agent, sheriff, undersheriff, constable, police officer or a certified animal control officer who has been properly authorized pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b), and take such person before the nearest judge or magistrate as provided in this article.

5. R.S.4:22-45 is amended to read as follows:

Notice to State, district society of arrest; exceptions.

4:22-45. Where an arrest is made under the provisions of this article by a constable, sheriff, undersheriff or police officer in a locality where the New Jersey society, or a district (county) society, for the prevention of cruelty to animals exists, he shall give notice to the State or district (county)

society at once, whereupon such State or district (county) society shall take charge of the case and prosecute it under the provisions of this article. No magistrate shall hear any such case until proof is made of the service of such notice on the State or district (county) society.

The provisions of this section shall not apply to certified animal control officers who have been properly authorized pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b) to make arrests.

6. R.S.4:22-47 is amended to read as follows:

Warrantless arrest for fighting or baiting offenses.

4:22-47. A sheriff, undersheriff, constable, police, officer, certified animal control officer who has been properly authorized pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b) or agent of the New Jersey Society for the Prevention of Cruelty to Animals, may enter any building or place where there is an exhibition of the fighting or baiting of a living animal or creature, where preparations are being made for such an exhibition, or where a violation otherwise of R.S.4:22-24 is occurring, arrest without warrant all persons there present, and take possession of all living animals or creatures engaged in fighting or there found and all implements or appliances used or to be used in such exhibition.

7. R.S.4:22-55 is amended to read as follows:

Payment, disposition of fines, penalties, moneys imposed and collected.

4:22-55. a. Except as provided pursuant to subsection b. of this section, all fines, penalties and moneys imposed and collected under the provisions of this article, shall be paid by the court or by the clerk or court officer receiving the fines, penalties or moneys, within thirty days and without demand, to the district (county) society for the prevention of cruelty to animals of the county where the fines, penalties or moneys were imposed and collected, if one is in existence in that county, and if not, then to the New Jersey Society for the Prevention of Cruelty to Animals, to be used by the society in aid of the benevolent objects for which it was incorporated.

b. If an enforcement action for a violation of this article is brought primarily as a result of the discovery and investigation of the violation by a certified animal control officer, the fines, penalties or moneys collected shall be paid as follows: one half to the municipality in which the violation occurred and one half to the New Jersey Society for the Prevention of Cruelty to Animals.

c. Any fines, penalties or moneys paid to a municipality or other entity pursuant to subsection b. of this section shall be allocated by the municipality or other entity to defray the cost of:

(1) enforcement of animal control, animal welfare and animal cruelty laws and ordinances within the municipality; and

(2) the training therefor required of certified animal control officers pursuant to law.

C.4:19-15.16c Powers, authority of certified animal control officer.

8. A certified animal control officer authorized pursuant to section 4 of P.L.1983, c.525 (C.4:19-15.16b) shall have the power and authority, within the jurisdiction of the municipality or other entity employing, or contracting for, the animal control officer to:

a. Enforce all laws or ordinances enacted for the protection of animals, including, but not limited to, animal control, animal welfare and animal cruelty laws of the State and ordinances of the municipality;

b. Investigate and sign complaints concerning any violation of an animal control, animal welfare or animal cruelty law of the State or ordinance of the municipality; and

c. Act, by virtue of the officer's appointment or employment and in addition to any other power and authority, as an officer for the detection, apprehension and arrest of offenders against the animal control, animal welfare and animal cruelty laws of the State and ordinances of the municipality.

Upon a request for assistance by a municipality or other entity that does not employ, or contract for, the certified animal control officer, a certified animal control officer may, within the jurisdiction of that municipality or other entity making the request, exercise the powers and authority granted pursuant to this section.

C.4:19-15.16d Forwarding of copy of complaint, summons, arrest warrant or report.

9. A certified animal control officer who signs a complaint, issues a summons, makes an arrest, or otherwise acts pursuant to his authority pursuant to P.L.1983, c.525, R.S.4:22-44, or section 8 of P.L.1997, c.247 (C.4:19-15.16c) shall forward within five business days a copy of that complaint, summons, or arrest warrant or report to the New Jersey Society for the Prevention of Cruelty to Animals and shall forward a report of any related court action within thirty calendar days of final disposition.

C.4:22-56 SPCA, municipality or animal control officer not liable for the other.

10. Although a municipality and the New Jersey Society for the Prevention of Cruelty to Animals or a district (county) society may share in the receipt of fines, penalties or moneys collected with regard to violations occurring in the municipality pursuant to the provisions of R.S.4:22-55:

a. neither a municipality or a certified animal control officer shall be liable for any civil damages as a result of any act or omission of the New

Jersey Society for the Prevention of Cruelty to Animals, a district (county) society or an officer thereof with regard to any investigation, arrest or prosecution of a violator with which the municipality or certified animal control officer was not involved; and

b. neither the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society or an officer thereof shall be liable for any civil damages as a result of any act or omission of a municipality or a certified animal control officer with regard to any investigation, arrest or prosecution of a violator with which the New Jersey Society for the Prevention of Cruelty to Animals, a district (county) society or an officer thereof was not involved.

11. This act shall take effect on the 90th day after the date of enactment.

Approved September 9, 1997.

CHAPTER 248

AN ACT concerning certain secured transactions and amending N.J.S.12A:9-301 and N.J.S.12A:9-312.

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

1. N.J.S.12A:9-301 is amended to read as follows:

Persons who take priority over unperfected security interests; right of "lien creditor."

12A:9-301. Persons who take priority over unperfected security interests; right of "lien creditor."

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under 12A:9-312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

2. N.J.S.12A:9-312 is amended to read as follows:

Priorities among conflicting security interests in the same collateral.

12A:9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this subchapter and in the following sections shall govern when applicable: 12A:4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; 12A:9-103 on security interests related to other jurisdictions; 12A:9-114 on consignments.

(2) (Deleted by amendment, P.L.1962, c.203, s.4.)

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest

is temporarily perfected without filing or possession (subsection (5) of 12A:9-304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 12A:8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances, made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

3. This act shall take effect immediately.

Approved September 9, 1997.

CHAPTER 249

AN ACT concerning the prescribing of controlled drugs and supplementing chapter 9 of Title 45 of the Revised Statutes.

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

C.45:9-22.19 Schedule II controlled dangerous substance, prescription quantities.

1. A physician licensed pursuant to chapter 9 of Title 45 of the Revised Statutes may prescribe a Schedule II controlled dangerous substance for the use of a patient in any quantity which does not exceed a 30-day supply, as defined by regulations adopted by the State Board of Medical Examiners in consultation with the Department of Health and Senior Services. The physician shall document the diagnosis and the medical need for the prescription in the patient's medical record, in accordance with guidelines established by the State Board of Medical Examiners.

C.45:9-22.20 Rules, regulations.

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

3. This act shall take effect immediately.

Approved September 9, 1997.

CHAPTER 250

AN ACT concerning fees a qualified bank acting as fiduciary may charge under certain circumstances and amending N.J.S.3B:14-23.

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

1. N.J.S.3B:14-23 is amended to read as follows:

Powers.

3B:14-23. Powers. In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:

a. To accept additions to any estate or trust from sources other than the estate of the decedent, minor, mental incompetent or the settlor of a trust;

b. To acquire the remaining undivided interest in an estate or trust asset in which the fiduciary, in his fiduciary capacity, holds an undivided interest;

c. To invest and reinvest assets of the estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law and to exchange assets for investments and other property upon terms as may seem advisable to the fiduciary;

d. To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary;

e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of:

(1) To take possession of and manage the property and to collect the rents therefrom, and pay taxes, mortgage interest and other charges against the property;

(2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein;

(3) With respect to fiduciaries other than a trustee, to lease the property for a term not exceeding three years, and in the case of a trustee to lease the property for a term not exceeding 10 years, even though the term extends beyond the duration of the trust, and in either case including the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements;

(4) To mortgage the property;

(5) To grant easements to adjoining owners and utilities;

(6) A fiduciary acting under a will may exercise any of the powers granted by this subsection e. notwithstanding the effects upon the will of the birth of a child after its execution;

f. To make repairs to the property of the estate or trust for the purpose of preserving the property or rendering it rentable or saleable;

g. To grant options for the sale of any property of the estate or trust for a period not exceeding six months;

h. With respect to any mortgage held by the estate or trust to continue it upon and after maturity, with or without renewal or extension, upon terms as may seem advisable to the fiduciary and to foreclose, as an incident to collection of any bond or note, any mortgage and purchase the mortgaged

property or acquire the property by deed from the mortgagor in lieu of foreclosure;

i. In the case of the survivor or survivors of two or more fiduciaries to administer the estate or trust without the appointment of a successor to the fiduciary or fiduciaries who have ceased to act and to exercise or perform all of the powers given unless contrary to the express provision of the will, deed or other instrument;

j. As a new, alternate, successor, substitute or additional fiduciary or fiduciaries, to have or succeed to all of the powers, duties and discretion of the original fiduciary or fiduciaries, with respect to the estate or trust, as were given to the original fiduciary or fiduciaries named in or appointed by a will, deed or other instrument, unless the exercise of the powers, duties or discretion of the original fiduciary or fiduciaries is expressly prohibited by the will, deed or other instrument to any successor or substitute fiduciary or fiduciaries;

k. Where there are three or more fiduciaries qualified to act, to take any action with respect to the estate or trust which a majority of the fiduciaries shall determine; a fiduciary who fails to act through absence or disability, or a dissenting fiduciary who joins in carrying out the decision of a majority of the fiduciaries if his dissent is expressed promptly in writing to his cofiduciaries, shall not be liable for the consequences of any majority decision, provided that liability for failure to join in administering the trust or to prevent a breach of trust may not thus be avoided;

l. To employ and compensate attorneys for services rendered to the estate or trust or to a fiduciary in the performance of his duties;

m. To compromise, contest or otherwise settle any claim in favor of the estate, trust or fiduciary or in favor of third persons and against the estate, trust or fiduciary, including transfer inheritance, estate, income and other taxes;

n. To vote in person or by proxy, discretionary or otherwise, shares of stock or other securities held by the estate or trust;

o. To pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities in the hands of a fiduciary, whenever the payments may be legally enforceable against the fiduciary or any property of the estate or trust or the fiduciary deems payment expedient and for the best interests of the estate or trust;

p. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and to consent to corporate sales or leases and encumbrances, and, in the exercise of those powers, the fiduciary is authorized to deposit stocks, bonds or other securities with any custodian, agent, protective or

other similar committee, or trustee under a voting trust agreement, under terms and conditions respecting the deposit thereof as the fiduciary may approve;

q. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust;

r. In the case of a trustee:

(1) To hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation as between the trusts or parts of the trusts, provided that separate trusts or parts of trusts shall have undivided interests and provided further that no holding shall defer the vesting of any estate in possession or otherwise;

(2) To divide a trust, before or after its initial funding, into two or more separate trusts, provided that such division will not materially impair the accomplishment of the trust purposes or the interests of any beneficiary. Distributions provided for by the governing instrument may be made from one or more of the separate trusts;

s. To distribute in kind any property of the estate or trust as provided in article 1 of chapter 23 of this title;

t. To join with the surviving spouse, the executor of his or her will or the administrator of his or her estate in the execution and filing of a joint income tax return for any period prior to the death of a decedent for which he has not filed a return or a gift tax return on gifts made by the decedent's surviving spouse, and to consent to treat the gifts as being made one-half by the decedent, for any period prior to a decedent's death, and to pay taxes thereon as are chargeable to the decedent;

u. To acquire or dispose of an asset, including real or personal property in this or another state, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

v. To continue any business constituting the whole or any part of the estate for so long a period of time as the fiduciary may deem advisable and advantageous for the estate and persons interested therein;

w. In the case of a qualified bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C. s.80a-1 et seq., and for which the qualified bank is providing services as an investment advisor, investment manager, custodian or otherwise, including those for which it receives compensation, if:

(1) The investment is otherwise in accordance with applicable fiduciary standards; and

(2) The investment is authorized by the agreement or instrument creating the fiduciary account that gives the qualified bank investment authority, or by court order; or

(3) The qualified bank provides written notice not less than annually by prospectus, account statement or otherwise, disclosing to any current income beneficiaries of the trust the services provided by the qualified bank or its affiliate to the investment company, and the rate, formula, or other method by which compensation paid to the qualified bank or its affiliate is determined and the qualified bank does not receive a written objection from any current income beneficiary within 30 days after receipt of this notice. If a written objection is received from any current income beneficiary pursuant to this paragraph (3), no such investment of the trust assets of that fiduciary account shall be made or maintained.

Such investment shall not be deemed self-dealing or a fiduciary conflict; nor shall the fact that other beneficiaries of fiduciary accounts of the qualified bank have similar investments be deemed to be an improper commingling of assets by the qualified bank.

For purposes of this subsection, "fiduciary account" shall include a trust, estate, agency or other account in which funds, property, or both, are held by a qualified bank pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a qualified bank acts as investment advisor or manager; and

x. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

2. This act shall take effect immediately.

Approved September 9, 1997.

CHAPTER 251

AN ACT appropriating $5,008,000 from the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, and authorizing the use of certain interest earnings and loan repayments, to assist local government units to acquire certain lands in the coastal area for recreation and conservation purposes.

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

1. There is appropriated to the Department of Environmental Protection from the "1995 New Jersey Coastal Blue Acres Trust Fund"

established pursuant to section 27 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, the sum of $5,008,000 to provide loans or grants, or both, to assist local government units to acquire, for recreation and conservation purposes, unimproved or largely unimproved lands in the coastal area that may be prone to incurring damage caused by storms or storm-related flooding, or that may buffer or protect other lands from such damage, in accordance with the list of projects approved as eligible for such funding pursuant to section 5 of this act, and which sum shall include administrative costs.

2. There is appropriated to the Department of Environmental Protection such sums as may be or become available on or before June 30, 1998, due to interest earnings or loan repayments, in the "1995 New Jersey Coastal Blue Acres Trust Fund," for the purpose of making loans or grants, or both, to local government units for the projects listed in section 5 of this act and for the purpose of administrative costs associated with any such projects.

3. Pursuant to the provisions of paragraph (3) of subsection a. of section 12 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, all loans made to local government units with moneys appropriated pursuant to this act shall bear interest of not more than 2% per year and shall be for a term of not more than 20 years. All principal and interest payments repaid by the local government units shall be deposited into the "1995 New Jersey Coastal Blue Acres Trust Fund" in accordance with the terms of a written loan agreement. The terms of the loan agreement shall be completed and executed on a form approved by the State Treasurer or his designee.

4. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1995, c.204.

5. a. The following projects are eligible for funding with the moneys appropriated pursuant to sections 1 and 2 of this act:

Local Government Unit	**County**	**Project**	**Approved Amount**
Absecon City	Atlantic	Blue Acres Acq.	$ 257,000
Middletown Twp.	Monmouth	Leonardo Open Space Acq.	$ 190,000
Oceanport Boro	Monmouth	Horseneck Point Acq.	$ 605,000
Union Beach Boro	Monmouth	Waterfront Acq.	$ 300,000
Brick Twp.	Ocean	Ocean Falls Acq.	$ 15,000
Brick Twp.	Ocean	Riverside Park Acq.	$ 119,000
Brick Twp.	Ocean	Barnegat Bay South Acq.	$1,222,000
Long Beach Twp.	Ocean	Oceanfront Acq.	$ 300,000
Seaside Heights Boro	Ocean	Beachfront Acq.	$2,000,000

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

c. To the extent that moneys remain available after the projects listed in subsection a. of this section are offered funding pursuant thereto, those projects shall be eligible for additional funding, including administrative costs, utilizing those remaining moneys, in a sequence consistent with the priority system established by the Department of Environmental Protection, and with the approval of the Joint Budget Oversight Committee or its successor.

6. This act shall take effect immediately.

Approved September 12, 1997.

CHAPTER 252

AN ACT concerning commercial transactions, replacing chaper 8 of Title 12A of the New Jersey Statutes, enacting additional sections of chapter 9 of Title 12A of the New Jersey Statutes and revising various parts of the statutory law.

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

1. Chapter 8 of Title 12A of the New Jersey Statutes (N.J.S.12A:8-101 through 12A:8-805, including any amendments or supplements thereto) is repealed and replaced as follows:

CHAPTER 8. INVESTMENT SECURITIES

PART 1
SHORT TITLE AND GENERAL MATTERS

Short Title.

12A:8-101. Short Title.

This chapter may be cited as Uniform Commercial Code--Investment Securities.

Definitions.

12A:8-102. Definitions.

a. In this chapter:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(a) a person that is registered as a "clearing agency" under the federal securities laws;

(b) a federal reserve bank; or

(c) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(a) send a signed writing; or

(b) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of paragraph (2) or (3) of subsection b. of 12A:8-501, that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in 12A:8-103, means:

(a) a security;

(b) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(c) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly

agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(a) the security certificate specifies a person entitled to the security; and

(b) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(a) a clearing corporation; or

(b) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in 12A:8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(a) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(b) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(c) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in 12A:8-501 through 12A:8-511.

(18) "Uncertificated security" means a security that is not represented by a certificate.

b. Other definitions applying to this chapter and the sections in which they appear are:

Appropriate person	12A:8-107
Control	12A:8-106
Delivery	12A:8-301
Investment company security	12A:8-103
Issuer	12A:8-201
Overissue	12A:8-210
Protected purchaser	12A:8-303
Securities account	12A:8-501

c. In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

d. The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Rule for determining whether certain obligations and interests are securities or financial assets.

12A:8-103. Rule for Determining whether Certain Obligations and Interests are Securities or Financial Assets.

a. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

b. An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

c. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

d. A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

e. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

f. A commodity contract, as defined in 12A:9-115, is not a security or a financial asset.

Acquisition of security or financial asset or interest therein.

12A:8-104. Acquisition of Security or Financial Asset or Interest Therein.

a. A person acquires a security or an interest therein, under this chapter, if:

(1) the person is a purchaser to whom a security is delivered pursuant to 12A:8-301; or

(2) the person acquires a security entitlement to the security pursuant to 12A:8-501.

b. A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

c. A person who acquires a security entitlement to a security or other financial asset has the rights specified in 12A:8-501 through 12A:8-511, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in 12A:8-503.

d. Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection a. or b. of this section.

Notice of adverse claim.

12A:8-105. Notice of Adverse Claim.

a. A person has notice of an adverse claim if:

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

b. Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

c. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) one year after a date set for presentment or surrender for redemption or exchange; or

(2) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

d. A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

e. Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial asset.

Control.

12A:8-106. Control.

a. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

b. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

c. A purchaser has "control" of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

d. A purchaser has "control" of a security entitlement if:

(1) the purchaser becomes the entitlement holder; or

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

e. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

f. A purchaser who has satisfied the requirements of paragraph (2) of subsection c. or paragraph (2) of subsection d. of this section has control even if the registered owner in the case of paragraph (2) of subsection c. or the entitlement holder in the case of paragraph (2) of subsection d. of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

g. An issuer or a securities intermediary may not enter into an agreement of the kind described in paragraph (2) of subsection c. or paragraph (2) of subsection d. of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Whether indorsement, instruction, or entitlement order is effective.

12A:8-107. Whether Indorsement, Instruction, or Entitlement Order is Effective.

a. "Appropriate person" means:

(1) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) with respect to an instruction, the registered owner of an uncertificated security;

(3) with respect to an entitlement order, the entitlement holder;

(4) if the person designated in paragraph (1), (2), or (3) of this subsection a. is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) if the person designated in paragraph (1), (2), or (3) of this subsection a. lacks capacity, the designated person's guardian, conservator,

or other similar representative who has power under other law to transfer the security or financial asset.

b. An indorsement, instruction, or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under paragraph (2) of subsection c. or paragraph (2) of subsection d. of 12A:8-106; or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

c. An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the State having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

d. If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

e. Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Warranties in direct holding.

12A:8-108. Warranties in Direct Holding.

a. A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) the certificate is genuine and has not been materially altered;

(2) the transferor or indorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

b. A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time the instruction is presented to the issuer:

(a) the purchaser will be entitled to the registration of transfer;

(b) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(c) the transfer will not violate any restriction on transfer; and

(d) the requested transfer will otherwise be effective and rightful.

c. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) the uncertificated security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

d. A person who indorses a security certificate warrants to the issuer that:

(1) there is no adverse claim to the security; and

(2) the indorsement is effective.

e. A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

f. A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

g. If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

h. A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection g. of this section.

i. Except as otherwise provided in subsection g. of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections a. through f. of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection a. or b. of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

Warranties in indirect holding.

12A:8-109. Warranties in Indirect Holding.

a. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) there is no adverse claim to the security entitlement.

b. A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in subsection a. or b. of 12A:8-108.

c. If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in subsection a. or b. of 12A:8-108.

Applicability; choice of law.

12A:8-110. Applicability; Choice of Law.

a. The local law of the issuer's jurisdiction, as specified in subsection d. of this section, governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

b. The local law of the securities intermediary's jurisdiction, as specified in subsection e. of this section, governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

c. The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

d. "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) through (5) of subsection a. of this section.

e. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1) of this subsection e., but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph

(1) or (2) of this subsection e., the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) of this subsection e. and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3) of this subsection e., the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

f. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

Clearing corporation rules.

12A:8-111. Clearing Corporation Rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

Creditor's legal process.

12A:8-112. Creditor's Legal Process.

a. The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection d. of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

b. The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection d. of this section.

c. The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection d. of this section.

d. The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement

maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

e. A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Statutes of frauds inapplicable.

12A:8-113. Statute of Frauds Inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

Evidentiary rules concerning certificated securities.

12A:8-114. Evidentiary Rules Concerning Certificated Securities.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

Securities intermediary and others not liable to adverse claimant.

12A:8-115. Securities Intermediary and Others Not Liable to Adverse Claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

Securities intermediary as purchaser for value.

12A:8-116. Securities Intermediary as Purchaser for Value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

PART 2
ISSUE AND ISSUER

Issuer.

12A:8-201. Issuer.

a. With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(1) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) becomes responsible for, or in place of, another person described as an issuer in this section.

b. With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

c. With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

Issuer's responsibility and defenses; notice of defect or defense.

12A:8-202. Issuer's Responsibility and Defenses; Notice of Defect or Defense.

a. Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

b. The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) of this subsection b. applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

c. Except as otherwise provided in 12A:8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

d. All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

e. This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the

contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

f. If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Staleness as notice of defect or defense.

12A:8-203. Staleness as Notice of Defect or Defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

a. requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

b. is not covered by subsection a. of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

Effect of issuer's restriction on transfer.

12A:8-204. Effect of Issuer's Restriction on Transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

a. the security is certificated and the restriction is noted conspicuously on the security certificate; or

b. the security is uncertificated and the registered owner has been notified of the restriction.

Effect of unauthorized signature on security certificate.

12A:8-205. Effect of Unauthorized Signature on Security Certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

a. an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of

similar security certificates, or the immediate preparation for signing of any of them; or

b. an employee of the issuer, or of any of the persons listed in subsection a. of this section, entrusted with responsible handling of the security certificate.

Completion or alteration of security certificate.

12A:8-206. Completion or Alteration of Security Certificate.

a. If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and

(2) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

b. A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

Rights and duties of issuer with respect to registered owners.

12A:8-207. Rights and Duties of Issuer with Respect to Registered Owners.

a. Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

b. This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

Effect of signature of authenticating trustee, registrar, or transfer agent.

12A:8-208. Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent.

a. A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) the certificate is genuine;

(2) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

b. Unless otherwise agreed, a person signing under subsection a. of this section does not assume responsibility for the validity of the security in other respects.

Issuer's lien.

12A:8-209. Issuer's Lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

Overissue.

12A:8-210. Overissue.

a. In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

b. Except as otherwise provided in subsections c. and d. of this section, the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

c. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

d. If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

PART 3
TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

Delivery.

12A:8-301. Delivery.

a. Delivery of a certificated security to a purchaser occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having

previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

b. Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Rights of purchaser.

12A:8-302. Rights of Purchaser.

a. Except as otherwise provided in subsections b. and c. of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

b. A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

c. A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Protected purchaser.

12A:8-303. Protected Purchaser.

a. "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

(3) obtains control of the certificated or uncertificated security.

b. In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

Indorsement.

12A:8-304. Indorsement.

a. An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

b. An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

c. An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

d. If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

e. An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

f. Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in 12A:8-108 and not an obligation that the security will be honored by the issuer.

Instruction.

12A:8-305. Instruction.

a. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

b. Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by 12A:8-108 and not an obligation that the security will be honored by the issuer.

Effect of guaranteeing signature, indorsement, or instruction.

12A:8-306. Effect of Guaranteeing Signature, Indorsement, or Instruction.

a. A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

b. A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) the signer had legal capacity to sign.

c. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection b. of this section and also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

d. A guarantor under subsections a. and b. of this section or a special guarantor under subsection c. of this section does not otherwise warrant the rightfulness of the transfer.

e. A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection a. of this section and also warrants the rightfulness of the transfer in all respects.

f. A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection c. of this section and also warrants the rightfulness of the transfer in all respects.

g. An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

h. The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

Purchaser's right to requisites for registration of transfer.

12A:8-307. Purchaser's Right to Requisites for Registration of Transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a

reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

PART 4
REGISTRATION

Duty of issuer to register transfer.

12A:8-401. Duty of Issuer to Register Transfer.

a. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) reasonable assurance is given that the indorsement or instruction is genuine and authorized (12A:8-402);

(4) any applicable law relating to the collection of taxes has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with 12A:8-204;

(6) a demand that the issuer not register transfer has not become effective under 12A:8-403, or the issuer has complied with subsection b. of 12A:8-403 but no legal process or indemnity bond is obtained as provided in subsection d. of 12A:8-403; and

(7) the transfer is in fact rightful or is to a protected purchaser.

b. If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

Assurance that indorsement or instruction is effective.

12A:8-402. Assurance that Indorsement or Instruction is Effective.

a. An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) if the indorsement is made or the instruction is originated by a fiduciary pursuant to paragraph (4) or (5) of subsection a. of 12A:8-107, appropriate evidence of appointment or incumbency;

(4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

b. An issuer may elect to require reasonable assurance beyond that specified in this section.

c. In this section:

(1) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) "Appropriate evidence of appointment or incumbency" means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

Demand that issuer not register transfer.

12A:8-403. Demand That Issuer Not Register Transfer.

a. A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

b. If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to the person who initiated the demand at the address provided in the demand and the person who presented the security

for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

c. The period described in paragraph (3) of subsection b. of this section may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

d. An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

e. This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

Wrongful registration.

12A:8-404. Wrongful Registration.

a. Except as otherwise provided in 12A:8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under subsection a. of 12A:8-403 and the issuer did not comply with subsection b. of 12A:8-403;

(3) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

b. An issuer that is liable for wrongful registration of transfer under subsection a. of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by 12A:8-210.

c. Except as otherwise provided in subsection a. of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

Replacement of lost, destroyed, or wrongfully taken security.

12A:8-405. Replacement of Lost, Destroyed, or Wrongfully Taken Security.

a. If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies other reasonable requirements imposed by the issuer.

b. If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by 12A:8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

12A:8-406. Obligation to Notify Issuer of Lost, Destroyed, or Wrongfully Taken Security Certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under 12A:8-404 or a claim to a new security certificate under 12A:8-405.

Authenticating trustee, transfer agent, and registrar.

12A:8-407. Authenticating Trustee, Transfer Agent, and Registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in

the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates, has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

PART 5
SECURITY ENTITLEMENTS

Securities account; acquisition of security entitlement from securities intermediary.

12A:8-501. Securities Account; Acquisition of Security Entitlement from Securities Intermediary.

a. "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

b. Except as otherwise provided in subsections d. and e. of this section, a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

c. If a condition of subsection b. of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

d. If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

e. Issuance of a security is not establishment of a security entitlement.

Assertion of adverse claim against entitlement holder.

12A:8-502. Assertion of Adverse Claim Against Entitlement Holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security

entitlement under 12A:8-501 for value and without notice of the adverse claim.

Property interest of entitlement holder in financial asset held by securities intermediary.

12A:8-503. Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary.

a. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in 12A:8-511.

b. An entitlement holder's property interest with respect to a particular financial asset under subsection a. of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

c. An entitlement holder's property interest with respect to a particular financial asset under subsection a. may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under 12A:8-505 through 12A:8-508.

d. An entitlement holder's property interest with respect to a particular financial asset under subsection a. of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under 12A:8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection e. of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

e. An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection a. of this section, whether framed in conversion, replevin, constructive trust, equitable lien,

or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under 12A:8-504.

Duty of securities intermediary to maintain financial asset.

12A:8-504. Duty of Securities Intermediary to Maintain Financial Asset.

a. A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

b. Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection a. of this section.

c. A securities intermediary satisfies the duty in subsection a. of this section if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

d. This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Duty of securities intermediary with respect to payments and distributions.

12A:8-505. Duty of Securities Intermediary with Respect to Payments and Distributions.

a. A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

b. A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Duty of securities intermediary to exercise rights as directed by entitlement holder.

12A:8-506. Duty of Securities Intermediary to Exercise Rights as Directed by Entitlement Holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

a. the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Duty of securities intermediary to comply with entitlement order.

12A:8-507. Duty of Securities Intermediary to Comply with Entitlement Order.

a. A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

b. If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

Duty of securities intermediary to change entitlement holder's position to other form of security holding.

12A:8-508. Duty of Securities Intermediary to Change Entitlement Holder's Position to Other Form of Security Holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with

another securities intermediary. A securities intermediary satisfies the duty if:

a. the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

b. in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

12A:8-509. Specification of Duties of Securities Intermediary by Other Statute or Regulation; Manner of Performance of Duties of Securities Intermediary and Exercise of Rights of Entitlement Holder.

a. If the substance of a duty imposed upon a securities intermediary by 12A:8-504 through 12A:8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

b. To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

c. The obligation of a securities intermediary to perform the duties imposed by 12A:8-504 through 12A:8-508 is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

d. The provisions of 12A:8-504 through 12A:8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

Rights of purchaser of security entitlement from entitlement holder.

12A:8-510. Rights of Purchaser of Security Entitlement from Entitlement Holder.

a. An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

b. If an adverse claim could not have been asserted against an entitlement holder under 12A:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

c. In a case not covered by the priority rules in chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Priority among security interests and entitlement holders.

12A:8-511. Priority Among Security Interests and Entitlement Holders.

a. Except as otherwise provided in subsections b. and c. of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

b. A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

c. If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

PART 6
TRANSITION PROVISION

Savings clause.

12A:8-601. Savings Clause.

a. This act does not affect an action or proceeding commenced before this act takes effect.

b. If a security interest in a security is perfected at the date this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is

perfected at the date this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

2. N.J.S.12A:9-103 is amended to read as follows:

Perfection of security interests in multiple state transactions.

12A:9-103. Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by subchapter 3 of this chapter to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is

thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of 12A:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without the knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like,

if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, 49 U.S.C. s.1301 et seq., as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at

the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection d. of 12A:8-110.

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in subsection e. of 12A:8-110.

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's

jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

3. N.J.S.12A:9-105 is amended to read as follows:

Definitions and index of definitions.

12A:9-105. Definitions and Index of Definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (12A:1-201), and a receipt of the kind described in subsection (2) of 12A:7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (12A:9-313), but does not include money, documents, instruments, investment property, accounts,

chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in 12A:3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account."	12A:9-106.
"Attach."	12A:9-203.
"Commodity contract."	12A:9-115.
"Commodity customer."	12A:9-115.
"Commodity intermediary."	12A:9-115.
"Construction mortgage."	12A:9-313(1).
"Consumer goods."	12A:9-109(1).
"Control."	12A:9-115.
"Equipment."	12A:9-109(2).
"Farm products."	12A:9-109(3).
"Fixture."	12A:9-313(1).
"Fixture filing."	12A:9-313(1).
"General intangibles."	12A:9-106.
"Inventory."	12A:9-109(4)
"Investment property."	12A:9-115.
"Lien creditor."	12A:9-301(3).
"Proceeds."	12A:9-306(1).
"Purchase money security interest."	12A:9-107.

"United States."	12A:9-103 (3).

(3) The following definitions in other chapters apply to this chapter:

"Broker."	12A:8-102.
"Certificated security."	12A:8-102.
"Check."	12A:3-104.
"Clearing corporation."	12A:8-102.
"Contract for sale."	12A:2-106.
"Control."	12A:8-106.
"Delivery."	12A:8-301.
"Entitlement holder."	12A:8-102.
"Financial asset."	12A:8-102.
"Holder in due course."	12A:3-302.
"Note."	12A:3-104.
"Sale."	12A:2-106.
"Securities intermediary."	12A:8-102.
"Security."	12A:8-102.
"Security certificate."	12A:8-102.
"Security entitlement."	12A:8-102.
"Uncertificated security."	12A:8-102.

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

4. N.J.S.12A:9-106 is amended to read as follows:

Definitions: "Account"; "General intangibles."

12A:9-106. Definitions: "Account"; "General Intangibles."

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property and money.

Investment property.

5. N.J.S.12A:9-115. Investment Property.

(1) In this chapter 9 of Title 12A of the New Jersey Statutes:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in 12A:8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted

to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by subsections (5), (6) and (7) of 12A:9-312. The provisions of subsection (4) of 12A:9-312 do not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

Security interest arising in purchase or delivery of financial asset.

6. N.J.S.12A:9-116. Security Interest Arising in Purchase or Delivery of Financial Asset.

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment, is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

7. N.J.S.12A:9-203 is amended to read as follows:

Attachment and enforceability of security interest; proceeds; formal requisites.

12A:9-203. Attachment and Enforceability of Security Interest; Proceeds; Formal Requisites.

(1) Subject to the provisions of 12A:4-210 on the security interest of a collecting bank, 12A:9-113 on a security interest arising under the chapter on sales and 12A:9-115 and 12A:9-116 on security interests in investment property, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 12A:9-306.

(4) A transaction, although subject to this chapter, is also subject to the provisions of those statutes set forth as saved from repeal by this subtitle in section 12A:10-104, and in case of conflict between the provisions of this chapter and any such statute so saved from repeal, the provisions of such statute control. Failure to comply with any such applicable statute has only the effect which is specified therein.

(5) In case of conflict between this chapter and the provisions of "The Credit Union Act of 1984," P.L.1984, c.171, ss.2 to 46 (C.17:13-79 to C.17:13-124), concerning a transaction subject to this chapter and also subject to the provisions of "The Credit Union Act of 1984," the provisions of "The Credit Union Act of 1984" shall control.

8. N.J.S.12A:9-301 is amended to read as follows:

Persons who take priority over unperfected security interests; right of "lien creditor."

12A:9-301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor."

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under 12A:9-312;

(b) A person who becomes a lien creditor before the security interest is perfected;

(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

9. N.J.S.12A:9-302 is amended to read as follows:

When filing is required to perfect security interests; security interests to which filing provisions of this chapter do not apply.

12A:9-302. When Filing Is Required to Perfect Security Interests; Security Interests to Which Filing Provisions of This Chapter Do Not Apply.

(1) A financing statement shall be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under 12A:9-305;

(b) a security interest temporarily perfected in instruments, certificated securities or documents without delivery under 12A:9-304 or in proceeds for a 10-day period under 12A: 9-306;

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 12A:9-313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (12A:4-210) or arising under the chapter on sales (see 12A:9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property which is perfected without filing under 12A:9-115 or 12A: 9-116.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following statutes of this State:

R.S.39:10-1 to R.S.39:10-9 both inclusive;

P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

R.S.39:10-10 to R.S.39:10-16 both inclusive;

R.S.39:10-18 to R.S.39:10-25 both inclusive;

P.L.1984, c.152 (C.12:7A-1 to C.12:7A-29 both inclusive);

but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (subchapter 4) apply to a security interest in that collateral created by him as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of 12A:9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected

only by compliance therewith except as provided in 12A:9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

10. N.J.S.12A:9-303 is amended to read as follows:

When security interest is perfected; continuity of perfection.

12A:9-303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in 12A:9-115, 12A:9-302, 12A:9-304, 12A:9-305, and 12A:9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

11. N.J.S.12A:9-304 is amended to read as follows:

Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

12A:9-304. Perfection of Security Interest In Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 12A:9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of 12A:9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

12. N.J.S.12A:9-305 is amended to read as follows:

When possession by secured party perfects security interest without filing.

12A:9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in letters of credit and advices of credit (subsection (2)(a) of 12A: 5-116), goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

13. N.J.S.12A:9-306 is amended to read as follows:

"Proceeds"; secured party's rights on disposition of collateral.

12A:9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received upon the sale, lease, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like, are "cash proceeds." All other proceeds are "non-cash proceeds."

(2) Except where this chapter or the chapter on leases (2A) otherwise provides, a security interest continues in collateral notwithstanding sale, lease, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(c) The original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) Subject to any right of set-off; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during that period and (II) the cash proceeds received by the debtor during that period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale or lease of goods results in an account or chattel paper which is transferred by the seller or lessor to a secured party, and if the goods are returned to or are repossessed by the seller or lessor or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale or lease, for an indebtedness of the seller or lessor which is still unpaid, the original security interest attaches again to the goods covered by the sale or lease and continues as a perfected security interest if it was perfected at the time when the goods were sold or leased. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party shall take possession of the returned or repossessed goods or shall file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. This security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 12A:9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. This security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) shall be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

14. N.J.S.12A:9-309 is amended to read as follows:

Protection of purchasers of instruments, documents, and securities.

12A:9-309. Protection of Purchasers of Instruments, Documents, and Securities.

Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (12A:3-302) or a holder to whom a negotiable document of title has been duly negotiated (12A:7-501) or a protected purchaser of a security (12A:8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

15. N.J.S.12A:9-312 is amended to read as follows:

Priorities among conflicting security interests in the same collateral.

12A:9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(1) The rules of priority stated in other sections of this subchapter, and in the following sections shall govern when applicable: 12A:4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; 12A:9-103 on security interests related to other jurisdictions; 12A:9-114 on consignments; 12A:9-115 on security interests in investment property.

(2) (Deleted by amendment, P.L.1962, c.203, s.4.)

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of 12A:9-304); and

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its

proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under 12A:9-115 or 12A:9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) of this section or subsection (5) of 12A:9-115 with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

16. N.J.S.12A:1-105 is amended to read as follows:

Territorial application of the act; parties' power to choose applicable law.

12A:1-105. Territorial Application of the Act; Parties' Power to Choose Applicable Law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this State.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 12A:2-402.

Applicability of the Chapter on Leases. 12A:2A-105 and 12A:2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 12A:4-102.

Governing law in the Chapter on Funds Transfers. 12A:4A-507.
Applicability of the Chapter on Investment Securities. 12A:8-110.
Perfection provisions of the Chapter on Secured Transactions. 12A:9-103.

17. N.J.S.12A:1-206 is amended to read as follows:

Statute of frauds for kinds of personal property not otherwise covered.

12A:1-206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

(1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (12A:2-201) nor of securities (12A:8-113) nor to security agreements (12A:9-203).

18. N.J.S.12A:4-104 is amended to read as follows:

Definitions and index of definitions.

12A:4-104. Definitions and Index of Definitions.

a. In this chapter, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (12A:8-102) or instructions for uncertificated securities (12A:8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in 12A:3-104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

b. Other definitions applying to this chapter and the sections in which they appear are:

"Agreement for electronic presentment"	12A:4-110.
"Bank"	12A:4-105.
"Collecting bank"	12A:4-105.
"Depository bank"	12A:4-105.
"Intermediary bank"	12A:4-105.
"Payor bank"	12A:4-105.
"Presenting bank"	12A:4-105.
"Presentment notice"	12A:4-110.

c. The following definitions in other chapters apply to this chapter:

"Acceptance"	12A:3-409.
"Alteration"	12A:3-407.
"Cashier's check"	12A:3-104.
"Certificate of deposit"	12A:3-104.
"Certified check"	12A:3-409.
"Check"	12A:3-104.
"Good faith"	12A:3-103.
"Holder in due course"	12A:3-302.
"Instrument"	12A:3-104.
"Notice of dishonor"	12A:3-503.
"Order"	12A:3-103.
"Ordinary care"	12A:3-103.
"Person entitled to enforce"	12A:3-301.
"Presentment"	12A:3-501.
"Promise"	12A:3-103.
"Prove"	12A:3-103.

"Teller's check"	12A:3-104.
"Unauthorized signature"	12A:3-403.

d. In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

19. N.J.S.12A:5-114 is amended to read as follows:

Issuer's duty and privilege to honor; right to reimbursement.

12A:5-114. Issuer's Duty and Privilege to Honor; Right to Reimbursement.

(1) An issuer shall honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents shall be satisfactory to the issuer, but an issuer may require that specified documents shall be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (12A:7-507) or of a certificated security (12A:8-108) or is forged or fraudulent or there is fraud in the transaction:

(a) The issuer shall honor the draft on demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (12A:3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (12A:7-502) or a protected purchaser of a certificated security (12A:8-302); and

(b) In all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

20. N.J.S.14A:7-3 is amended to read as follows:

Subscription for shares.

14A:7-3. Subscription for shares.

(1) Unless otherwise provided by the subscription agreement or unless all of the subscribers consent to the revocation of such subscription, a subscription for shares of a corporation to be formed shall be irrevocable for

a period of six months if no certificate of incorporation shall be filed within such period. If the certificate of incorporation is filed within such period, or if it is filed at any later time before revocation, such subscription shall also be irrevocable until 60 days after the filing of the certificate of incorporation. Subscriptions for shares, whether made before or after the organization of a corporation, shall be accepted or rejected by the board, unless the certificate of incorporation or the bylaws require action by the shareholders.

(2) (Deleted by amendment, P.L.1997, c.252.)

(3) A subscriber shall not become a holder of any shares for which the full consideration has not been paid. Unless otherwise provided by the subscription agreement

(a) Any payment made by the subscriber, in accordance with the subscription agreement or as called for by the board, shall be applied to pay the full consideration for as many whole shares as possible and any remaining balance of such payment shall be applied as part payment of a share;

(b) A share certificate shall be registered in the name of the subscriber for the number of shares so paid for in full; and

(c) The corporation shall be entitled to retain such share certificate as security for the performance by the subscriber of his obligations under the subscription agreement and subject to the power of sale or rescission upon default provided in paragraphs 14A:7-3(5)(b) and 14A:7-3(5)(c).

(4) Unless otherwise provided by the subscription agreement

(a) Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board;

(b) Any call made by the board for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be;

(c) All such calls for payments on subscriptions shall be upon 30 days' notice thereof and of the time and place of payment, which notice shall be given personally or by registered or certified mail.

(5) In the event of default in the payment of any installment or call or other amount due under the terms of the subscription agreement, including any amount which may become due as a result of a default in the performance of any provision thereof, the corporation shall have the following rights and duties:

(a) It may proceed to collect the amount due in the same manner as any other debt owing to it. At any time before full satisfaction of the claim or any judgment therefor, it may proceed as provided in paragraph 14A:7-3(5)(b).

(b) It may sell the shares in any reasonable manner. Notice of the time and place of any public sale or of the time after which any private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail at least 20

days before any such time stated in the notice. Unless otherwise provided in the subscription agreement, the corporation may not be the purchaser at any sale. Any excess of net proceeds realized over the amount due plus interest shall be paid over to the subscriber. If the sale is made in good faith, in a reasonable manner and upon the notice required by this paragraph, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value shall acquire title to the sold shares free of any rights of the subscriber even though the corporation fails to comply with one or more of the requirements of this subsection.

(c) It may rescind the subscription, with the effect provided in subsection 14A:7-3(6), and may recover damages for breach of contract. Unless special circumstances show proximate damages of a different amount, the measure of damages shall be the difference between the market price at the time and place for tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement in an amount which is reasonable under the circumstances, including the difficulties of proof of loss. The subscriber shall be entitled to restitution of any amount by which the sum of his payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

The rights and duties set forth in subsection 14A:7-3(5) shall be interpreted as cumulative so far as is consistent with the purpose of entitling the corporation to a full and single recovery of the amount due or its damages. The subscription agreement may limit the rights and remedies of the corporation set forth in subsection 14A:7-3(5), and may add to them so far as is consistent with the preceding sentence.

(6) The rescission by the corporation of a subscription under which a portion of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in subsection 14A:7-3(3), shall effect the cancellation of such shares.

(7) A contract made with a corporation to purchase its shares is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the agreement.

Repealer.

21. Sections 1 through 12 of P.L.1959, c.200 (C.14:18-1 through 14:18-12) are repealed.

22. This act shall take effect immediately.

Approved September 12, 1997.

CHAPTER 253

AN ACT concerning restitution for extradition costs amending N.J.S.2C:43-2 P.L.1979, c.396 and P.L.1991, c.329 and supplementing Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:43-2 is amended to read as follows:

Sentence in accordance with code; authorized dispositions.

2C:43-2. Sentence in accordance with code; authorized dispositions. a. Except as otherwise provided by this code, all persons convicted of an offense or offenses shall be sentenced in accordance with this chapter.

b. Except as provided in subsection a. of this section and subject to the applicable provisions of the code, the court may suspend the imposition of sentence on a person who has been convicted of an offense, or may sentence him as follows:

(1) To pay a fine or make restitution authorized by N.J.S.2C:43-3 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

(2) To be placed on probation and, in the case of a person convicted of a crime, to imprisonment for a term fixed by the court not exceeding 364 days to be served as a condition of probation, or in the case of a person convicted of a disorderly persons offense, to imprisonment for a term fixed by the court not exceeding 90 days to be served as a condition of probation; or

(3) To imprisonment for a term authorized by sections 2C:11-3, 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

(4) To pay a fine, make restitution and probation, or fine, restitution and imprisonment; or

(5) To release under supervision in the community or to require the performance of community-related service; or

(6) To a halfway house or other residential facility in the community, including agencies which are not operated by the Department of Human Services; or

(7) To imprisonment at night or on weekends with liberty to work or to participate in training or educational programs.

c. Instead of or in addition to any disposition made according to this section, the court may postpone, suspend, or revoke for a period not to exceed two years the driver's license, registration certificate, or both of any person convicted of a crime, disorderly persons offense, or petty disorderly

persons offense in the course of which a motor vehicle was used. In imposing this disposition and in deciding the duration of the postponement, suspension, or revocation, the court shall consider the severity of the crime or offense and the potential effect of the loss of driving privileges on the person's ability to be rehabilitated. Any postponement, suspension, or revocation shall be imposed consecutively with any custodial sentence.

d. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

e. The court shall state on the record the reasons for imposing the sentence, including its findings pursuant to the criteria for withholding or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration of the defendant's eligibility for release under the law governing parole and the factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence.

f. The court shall explain the parole laws as they apply to the sentence and shall state:

(1) the approximate period of time in years and months the defendant will serve in custody before parole eligibility;

(2) the jail credits or the amount of time the defendant has already served;

(3) that the defendant may be entitled to good time and work credits; and

(4) that the defendant may be eligible for participation in the Intensive Supervision Program.

2. 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 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution shall have the assessment or restitution deducted from any income the inmate receives as a result of labor performed at the institution or on any type of work release program or, pursuant to regulations promulgated by the Commissioner of the Department of Corrections 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 administrator 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 and except as provided in subsection i. with respect to restitution imposed under the provisions of P.L.1997, c.253 (C.2C:43-3.4 et al.), 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, except a central municipal court established pursuant to N.J.S.2B:12-1 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.

In the case of a central municipal court, established by a county pursuant to N.J.S.2B:12-1, all costs, fines, fees and forfeitures of bail shall be paid

into the county treasury of the county where the central municipal court is located.

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.

i. All restitution imposed on defendants under the provisions of P.L.1997, c.253 (C.2C:43-3.4 et al.) for costs incurred by a law enforcement entity in extraditing the defendant from another jurisdiction shall be paid over by the officer entitled to collect same to the law enforcement entities which participated in the extradition of the defendant.

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, except as provided in subsection f. of this section, 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;

f. sixth, in satisfaction of any anti-drug profiteering penalty imposed pursuant to section 2 of P.L.1997, c.187 (N.J.S.2C:35A-1 et seq.);

g. seventh, in satisfaction of restitution for any extradition costs imposed pursuant to section 4 of P.L.1997, c.253 (C.2C:43-3.4); and

h. eighth, in satisfaction of any fine.

C.2C:43-3.4 Restitution for extradition costs.

4. In addition to any fine or restitution authorized by N.J.S.2C:43-3, the court may sentence a defendant to make restitution for costs incurred by any law enforcement entity in extraditing the defendant from another jurisdiction if the court finds that, at the time of the extradition, the defendant was located in the other jurisdiction in order to avoid prosecution for a crime committed in this State or service of a criminal sentence imposed by a court of this State.

5. This act shall take effect immediately.

Approved September 12, 1997.

CHAPTER 254

AN ACT requiring child abuse record information checks for staff members of child care centers and supplementing Title 30 of the Revised Statutes.

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

C.30:5B-6.1 Definitions relative to child abuse record information checks.

1. As used in this act:

"Department" means the Department of Human Services.

"Division" means the Division of Youth and Family Services in the Department of Human Services.

"Staff member" means any owner, sponsor, director or person employed by or working at a child care center on a regularly scheduled basis during the center's operating hours, including full-time, part-time, voluntary, contract, consulting, and substitute staff, whether compensated or not.

"Child care center" or "Center" means any facility which is maintained for the care, development or supervision of six or more children under 13 years of age who attend the facility for less than 24 hours a day, and which is subject to State licensure or life-safety approval, pursuant to the provisions of the "Child Care Licensing Act," P.L. 1983, c.492 (C.30:5B-1 to 30:5B-15) .

C.30:5B-6.2 License conditional upon check of child abuse records.

2. a. As a condition of securing a new or renewal license or approval, the division shall conduct a check of the division's child abuse records to determine if an incident of child abuse or neglect has been substantiated pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11), against any staff member of a child care center.

b. The division shall not issue a regular license or approval to a center until the division determines that no staff member employed by or working at the center has a record of substantiated child abuse or neglect.

c. The division shall deny, revoke or refuse to renew the center's license or approval, as appropriate, if the division determines that an incident of child abuse or neglect by an owner or sponsor of a center has been substantiated.

C.30:5B-6.3 Written consent for check of records.

3. a. The staff member shall provide prior written consent for the division to conduct a check of its child abuse records.

b. If the owner or sponsor of the center refuses to consent to, or cooperate in, the securing of a division child abuse record information check, the division shall suspend, deny, revoke or refuse to renew the center's license or approval, as appropriate.

c. If a staff member of a center, other than the owner or sponsor, refuses to consent to, or cooperate in, the securing of a division child abuse record information check, the person shall be immediately terminated from employment at the center.

C.30:5B-6.4 Notification to division to conduct check of records; results.

4. a. Within two weeks after a new staff member's employment, the owner or sponsor of a center shall notify the division to conduct a check of its child abuse records to determine if an incident of child abuse or neglect has been substantiated against the staff member.

b. Until the results of the child abuse record information check on a new staff member have been received by the center owner or sponsor, the staff member shall not be left alone at the center caring for children.

c. If the division determines that an incident of child abuse or neglect by the staff member has been substantiated, the division shall advise the center owner or sponsor of the results of the child abuse record information check and the center shall immediately terminate the person from employment at the center.

C.30:5B-6.5 Completion of check.

5. The division shall complete the child abuse record information check within 45 days after receiving the request for the check.

C.30:5B-6.6 Incidents considered.

6. The division shall consider, for the purposes of this act, any incidents of child abuse or neglect that were substantiated on or after June 29, 1995, to ensure that perpetrators have had an opportunity to appeal a substantiated finding of abuse or neglect; except that the division may consider substantiated incidents prior to that date if the division, in its judgment, determines that the individual poses a risk of harm to children in a child care center. In cases involving incidents substantiated prior to June 29, 1995, the division shall offer the individual an opportunity for a hearing to contest its action restricting the individual from employment in a child care center.

C.30:5B-6.7 Rules, regulations pertaining to child abuse record information checks.

7. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the department shall adopt rules and regulations necessary to implement the provisions of this act, including but not limited to:

a. Procedures for centers to follow in submitting requests for child abuse record information checks on staff members;

b. Implementation of an appeals process to be used in the case of a suspension, denial, revocation, or refusal to renew a license or approval based on a finding of substantiated child abuse or neglect; and

c. Establishment of procedures for conducting a child abuse record information check and providing the center with the results of the check.

C.30:5B-6.8 Report to Governor, Legislature.

8. The Commissioner of Human Services shall report to the Governor and the Legislature no later than three years from the effective date of this act on the effectiveness of the child abuse record information checks in screening staff members and sponsors of child care centers. The commissioner shall include in the report recommendations for modifying the provisions of this act which he believes to be necessary and appropriate.

C.30:5B-6.9 Fee charged to staff member; disposition.

9. a. Notwithstanding the provisions of section 2 of P.L.1985, c.69 (C.53:1-20.6), a staff member subject to this act shall be charged a fee established by the department to help defray the cost to the State of the division's child abuse record information check. The center may use its own discretion in offering to pay or reimburse the staff member for the cost of the child abuse record information check.

b. The money collected by the division for child abuse record information checks shall be deposited in a special fund and shall constitute

dedicated revenues to be used as necessary by the division to effectuate the purpose of this act.

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

Approved September 17, 1997.

CHAPTER 255

AN ACT concerning employer contributions to the unemployment compensation fund and amending R.S. 43:21-3, R.S.43:21-7, R.S. 43:21-14 and R.S. 43:21-16.

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

1. 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 individual'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 as provided pursuant to paragraph (1) of subsection (c) of R.S.43:21-7, 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) (Deleted by amendment, P.L.1997, c.255.)

(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.)

2. 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. s.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, except that, with respect to benefit years commencing after January 4, 1998, an employer's account shall not be charged for benefits paid to a claimant if the claimant's employment by that employer was ended in any way which, pursuant to subsection (a), (b), (c), (f), (g) or (h) of R.S.43:21-5, would have disqualified the claimant for benefits if the claimant had applied for benefits at the time when that employment ended. 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. s.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. s.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)(i) With respect to experience rating years beginning on or after July 1, 1986 and before July 1, 1997, 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).

(ii) With respect to experience rating years beginning on or after July 1, 1997, 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]	6.00% and Over A	4.00% to 5.99% B	3.00% to 3.99% C	2.50% to 2.99% 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)(i) With respect to experience rating years beginning on or after July 1, 1986 and before July 1, 1997, 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.

(ii) With respect to experience rating years beginning on or after July 1, 1997, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 1.00%, 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%.

On or after April 1, 1996 until December 31, 1996, 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 25.0% 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, 1997 until December 31, 1997, 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 10.0% 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.

If, upon calculating the unemployment compensation fund reserve ratio pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 1997, the controller finds that the fund reserve ratio has decreased to a level of less than 3.00%, the Commissioner of Labor shall notify the State Treasurer of this fact and of the dollar amount necessary to bring the fund reserve ratio up to a level

of 3.00%. The State Treasurer shall, prior to March 31, 1997, transfer from the General Fund to the unemployment compensation fund, revenues in the amount specified by the commissioner and which, upon deposit in the unemployment compensation fund, shall result, upon recalculation, in a fund reserve ratio used to determine employer contributions beginning July 1, 1997, of at least 3.00%.

If, upon calculating the unemployment compensation fund reserve ratio pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 1998, the controller finds that the fund reserve ratio has decreased to a level of less than 3.00%, the Commissioner of Labor shall notify the State Treasurer of this fact and of the dollar amount necessary to bring the fund reserve ratio up to a level of 3.00%. The State Treasurer shall, prior to March 31, 1998, transfer from the General Fund to the unemployment compensation fund, revenues in the amount specified by the commissioner and which, upon deposit in the unemployment compensation fund, shall result, upon recalculation, in a fund reserve ratio used to determine employer contributions beginning July 1, 1998 of at least 3.00%.

(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 and ending March 31, 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.

Each worker shall, starting on January 1, 1998 contribute to the unemployment compensation fund 0.40% 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) (Deleted by amendment, P.L.1996, c.28.)
(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 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 (G) of paragraph (1) 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.

3. 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. s.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 shall be first 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.

4. R.S.43:21-16 is amended to read as follows:

Unemployment compensation offenses and penalties.

43:21-16. (a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase or attempts to obtain or increase any benefit or other payment under this chapter (R.S.43:21-1 et seq.), or under an employment security law of any other state or of the federal government, either for himself or for any other person, shall be liable to a fine of $20.00 for each offense, or 25% of the amount fraudulently obtained, whichever is greater, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(b) (1) An employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter (R.S.43:21-1 et seq.), or under an employment security law of any other state or of the federal government, or who willfully fails or refuses to furnish any reports required hereunder (except for such reports as may be required under subsection (b) of R.S.43:21-6) or to produce or permit the inspection or copying of records, as required hereunder, shall be liable to a fine of $100.00, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each such false statement or representation or failure to disclose a material fact, and

each day of such failure or refusal shall constitute a separate offense. Any penalties imposed by this paragraph shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(2) Any employing unit or any officer or agent of an employing unit or any other person who fails to submit any report required under subsection (b) of R.S.43:21-6 shall be subject to a penalty of $25.00 for the first report not submitted within 10 days after the mailing of a request for such report, and an additional $25.00 penalty may be assessed for the next 10-day period, which may elapse after the end of the initial 10-day period and before the report is filed; provided that when such report or reports are not filed within the prescribed time but it is shown to the satisfaction of the director that the failure was due to a reasonable cause, no such penalty shall be imposed. Any penalties imposed by this paragraph shall be recovered as provided in subsection (e) of R.S.43:21-14, and when recovered shall be paid to the unemployment compensation auxiliary fund for the use of said fund.

(c) Any person who shall willfully violate any provision of this chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter (R.S.43:21-1 et seq.), and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of $50.00, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund; and each day such violation continues shall be deemed to be a separate offense.

(d) (1) When it is determined by a representative or representatives designated by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey that any person, whether (i) by reason of the nondisclosure or misrepresentation by him or by another of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits, such person, unless the director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full. The sum shall be deducted from any future benefits payable to the individual under this chapter (R.S.43:21-1 et seq.) or shall be paid by the individual to the division for the unemployment

compensation fund, and such sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; provided, however, that, except in the event of fraud, no person shall be liable for any such refunds or deductions against future benefits unless so notified before four years have elapsed from the time the benefits in question were paid. Such person shall be promptly notified of the determination and the reasons therefor. Unless such person, within seven calendar days after the delivery of such determination, or within 10 calendar days after such notification was mailed to his last-known address, files an appeal from such determination, such determination shall be final.

(2) Interstate and cross-offset of state and federal unemployment benefits. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor, or both, whereby:

(A) Overpayments of unemployment benefits as determined under subsection (d) of R.S.43:21-16 shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, and overpayments of unemployment benefits as determined under the unemployment compensation law of another state shall be recovered by offset from unemployment benefits otherwise payable under R.S.43:21-1 et seq.; and

(B) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment benefits otherwise payable under R.S.43:21-1 et seq., or any federal program administered by this State, or under the unemployment compensation law of another state or any federal unemployment benefit or allowance program administered by another state under an agreement with the United States Secretary of Labor, if the other state has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, and if the United States agrees, as provided in the reciprocal agreement with this State entered into under subsection (g) of 42 U.S.C.s.503, that overpayments of unemployment benefits as determined under subsection (d) of R.S.43:21-16 and overpayments as determined under the unemployment compensation law of another state which has in effect a reciprocal agreement with the United States Secretary of Labor as authorized by subsection (g) of 42 U.S.C.s.503, shall be recovered by offset from benefits or allowances otherwise payable

under a federal program administered by this State or another state under an agreement with the United States Secretary of Labor.

(e) Any employing unit, or any officer or agent of an employing unit, which officer or agent is directly or indirectly responsible for collecting, truthfully accounting for, remitting when payable any contribution, or filing or causing to be filed any report or statement required by this chapter, or employer, or person failing to remit, when payable, any employer contributions, or worker contributions (if withheld or deducted), or the amount of such worker contributions (if not withheld or deducted), or filing or causing to be filed with the controller or the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey, any false or fraudulent report or statement, and any person who aids or abets an employing unit, employer, or any person in the preparation or filing of any false or fraudulent report or statement with intent to defraud the State of New Jersey or an employment security agency of any other state or of the federal government, or with intent to evade the payment of any contributions, interest or penalties, or any part thereof, which shall be due under the provisions of this chapter (R.S.43:21-1 et seq.), shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed $1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(f) Any employing unit or any officer or agent of an employing unit or any other person who aids and abets any person to obtain any sum of benefits under this chapter to which he is not entitled, or a larger amount as benefits than that to which he is justly entitled, shall be liable for each offense upon conviction before any Superior Court or municipal court, to a fine not to exceed $1,000.00 or by imprisonment for a term not to exceed 90 days, or both, at the discretion of the court. The fine upon conviction shall be payable to the unemployment compensation auxiliary fund. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

(g) There shall be created in the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey an investigative staff for the purpose of investigating violations referred to in this section and enforcing the provisions thereof.

(h) An employing unit or any officer or agent of an employing unit who makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact, to reduce benefit charges to the employing unit pursuant to paragraph (1) of subsection (c) of R.S.43:21-7,

shall be liable to a fine of $1,000, to be recovered in an action at law in the name of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey or as provided in subsection (e) of R.S.43:21-14. The fine when recovered shall be paid to the unemployment compensation auxiliary fund for the use of the fund. Each false statement or representation or failure to disclose a material fact, and each day of that failure or refusal shall constitute a separate offense. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in R.S.43:21-1 et seq.

5. This act shall take effect immediately.

Approved September 17, 1997.

CHAPTER 256

AN ACT concerning the appointment and funding of municipal public defenders, supplementing Title 2B of the New Jersey Statutes and repealing N.J.S.2B:12-28.

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

C.2B:24-1 Findings, declarations relative to municipal public defenders.

1. The Legislature finds and declares:

a. Municipal public defenders are a critical component of New Jersey's system for the administration of justice and the effective, fair and equal representation of the poor.

b. As the New Jersey Supreme Court stated in Rodriguez v. Rosenblatt, 58 N.J.281 (1971), "as a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequence of magnitude without first having had due and fair opportunity to have counsel assigned without cost."

c. The appointment of municipal public defenders increases the efficiency and effectiveness of the system and the professionalism of the municipal courts.

d. Not all municipalities employ municipal public defenders, and in order to ensure the uniform and proper administration of justice, it is essential to require the appointment of municipal public defenders by each municipal government in the State.

C.2B:24-2 Definitions relative to municipal public defenders.

2. As used in this act:

"Indigent defendant" means a person who is entitled to be represented by a municipal public defender pursuant to this act, and does not have the present financial ability to secure competent legal representation, as determined by section 9 of this act.

"Municipal court" means a municipal, central or joint municipal court established pursuant to N.J.S.2B:12-1.

"Municipal public defender" means a person, as defined in section 4 of this act, appointed to represent indigent defendants in proceedings over which the municipal court has jurisdiction.

C.2B:24-3 Appointment of municipal public defenders, chief municipal public defender.

3. Each municipal court in this State shall have at least one municipal public defender appointed by the governing body of the municipality in accordance with applicable laws, ordinances and resolutions. Any municipal court with two or more municipal public defenders shall have a "chief municipal public defender" who shall be appointed by the governing body of the municipality. The chief municipal public defender of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each municipality. The chief municipal public defender shall have authority over other municipal public defenders serving that court with respect to the performance of their duties.

C.2B:24-4 Requirements for municipal public defenders.

4. a. A municipal public defender shall be an attorney-at-law of this State in good standing, and shall serve for a term of one year from the date of his appointment, and may continue to serve in office pending re-appointment or appointment of a successor. A municipal public defender may be appointed to that position in one or more municipal courts. The provisions of this act shall apply to each such position held. A municipal public defender need not reside in the municipality where he acts as a municipal public defender.

b. A municipal public defender of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each of the municipalities in accordance with applicable laws, ordinances or resolutions.

c. In accordance with applicable laws, ordinances and resolutions, a municipality may appoint additional municipal public defenders as necessary to administer justice in a timely and effective manner in its municipal court. Additional appointments shall be subject to the provisions of this act, including appointments in a joint municipal court.

d. Appointments to fill vacancies in the position of municipal public defender shall be made in accordance with the provisions of this act as soon as practicable.

e. In addition to any other means provided by law for the removal from office of a public official, a municipal public defender may be removed by the governing body of a municipality for good cause shown and after a public hearing, and upon due notice and an opportunity to be heard. Failure to reappoint a municipal public defender for a second or subsequent term does not constitute a "removal from office" within the meaning of this subsection.

f. The municipal public defenders may represent private clients in any municipality, including the municipality where they act as a municipal public defender, subject to the Rules of Court Governing the Conduct of Lawyers, Judges and Court Personnel.

C.2B:24-5 Compensation of municipal public defender.

5. A municipal public defender shall receive compensation, either on an hourly, per diem, annual or other basis as the municipality may provide. In the case of a joint municipal court, participating municipalities, by similar ordinances, shall enter into an agreement fixing the compensation of the municipal public defender and providing for payment. The compensation of a municipal public defender for services rendered pursuant to the provisions of this act shall be in lieu of any and all other compensation by the municipality. The ordinance, resolution or agreement setting compensation shall set forth any additional compensation to be paid for interlocutory appeals in the Superior Court.

C.2B:24-6 Duties of municipal public defender.

6. a. It shall be the duty of the municipal public defender to represent, except in the case of temporary unavailability or conflict of interest, any defendant charged with an offense in municipal court who is an indigent municipal defendant entitled to representation pursuant to this act. All necessary services and facilities of representation, including both expert and lay investigation and testimony as well as other preparations, shall be provided in every case. The municipality shall be responsible for payment for services pursuant to this section. The factors of need and real value to a defendant may be weighed against the financial constraints of the municipality in determining the necessary services and facilities of representation. The final determination as to necessity for services required pursuant to this section shall be made by the court.

b. A municipal public defender shall be responsible for handling all phases of the defense, including but not limited to discovery, pretrial and post-trial hearings, motions, removals to federal district court and other

collateral functions reasonably related to the defense. As used in this subsection, "post-trial hearing" shall not include de novo appeals in Superior Court.

c. Nothing in this section shall be deemed to require a municipality to pay for expert and lay investigation or testimony for a period of one year after the effective date of P.L.1997, c.256 (C.2B:24-1 et seq.).

C.2B:24-7 Representation of indigent defendants.

7. a. The municipal public defender shall represent an indigent defendant charged in municipal court with a crime as specified in N.J.S.2B:12-18 or, if in the opinion of the municipal court there is a likelihood that the defendant, if convicted, of any other offense will be subject to imprisonment or other consequence of magnitude, the municipal public defender shall represent an indigent defendant.

b. If there is a vacancy in the office of municipal public defender, if the municipal public defender is temporarily unavailable or if a finding of conflict of interest precludes the municipal public defender from representing an indigent defendant, the municipal prosecutor may prosecute the offense if the municipal court appoints a qualified attorney to represent the indigent defendant. Unless rates are otherwise established by the municipality, the attorney shall be entitled to compensation at the same rate as attorneys hired by the Office of the Public Defender in conflict cases, with payment to be made within 30 days. Once appointed, the attorney shall carry out all duties of the municipal public defender in connection with the case that is the subject of the appointment.

C.2B:24-8 Communications protected under attorney-client privilege.

8. All communications between the indigent defendant and the municipal public defender or any other attorney appointed to act as a municipal public defender shall be fully protected by the attorney-client privilege to the same extent and degree as though counsel has been privately engaged. This shall not preclude the use by the municipal public defender of privileged material for the preparation and disclosure of statistical, case study and other sociological data, provided that in any such use there shall be no disclosure of the identity of or means for discovery of the identity of particular defendants.

C.2B:24-9 Eligibility for services of municipal public defender.

9. Eligibility for services of the municipal public defender shall be determined by the municipal court on the basis of the need of the defendant, except as provided in section 11 of this act. Need shall be measured

according to section 14 of P.L.1967, c.43 (C.2A:158A-14) and guidelines promulgated by the New Jersey Supreme Court.

In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the municipal court shall refer the defendant to the municipal public defender provisionally, and if subsequently it is determined that the defendant is ineligible the municipal court shall inform the defendant, and the defendant shall be obliged to engage his own counsel and to reimburse the municipality for the cost of the services rendered to that time.

C.2B:24-10 Investigation of financial status of defendant.

10. The municipal court shall make an investigation of the financial status of each defendant seeking representation pursuant to this act and shall have the authority to require a defendant to execute and deliver written requests or authorizations required under applicable law to provide the court with access to records of public or private sources, otherwise confidential, as may be of aid in evaluating eligibility. The court is authorized to obtain information from any public record office of the State or of any subdivision or agency thereof on request and without payment of the fees ordinarily required by law.

C.2B:24-11 Eligibility of defendant under 18 years of age.

11. Whenever a person entitled to representation by a municipal public defender pursuant to this act, is under the age of 18 years, the eligibility for services shall be determined on the basis of the financial circumstances of the individual and the financial circumstances of the individual's parents or legal guardians. The municipality shall be entitled to recover the cost of legal services from the parents or legal guardians as provided in section 16 of this act and the municipal court shall have authority to require parents or legal guardians to execute and deliver the written requests or authorization required under applicable law in order to provide the court with access to records of public or private sources, otherwise confidential, as may be of aid to it in evaluating eligibility.

C.2B:24-12 Reimbursement to municipality.

12. If the defendant has or reasonably expects to have means to meet some part, though not all, of the cost of the services rendered, the defendant shall be required to reimburse the municipality, either by a single payment or in installments in such amounts as he can reasonably be expected to pay; but no default or failure in making payment shall affect or reduce the rendering of services.

C.2B:24-13 Lien on property of defendant.

13. a. A municipality shall have a lien on any property to which the defendant shall have or acquire an interest for an amount equal to the reasonable value of the services rendered to a defendant pursuant to this act as calculated at the same rate as the Office of the Public Defender bills clients at that time.

b. To effectuate such a lien for the municipality, the municipal attorney shall file a notice setting forth services rendered to the defendant and the reasonable value thereof with the Clerk of the Superior Court. The filing of the notice with the Clerk of the Superior Court shall constitute a lien on property for a period of 10 years from the date of filing, unless discharged sooner, and, except for such time limitations, shall have the force and effect of a judgment. Within 10 days of the filing of the notice, the municipal attorney shall send by certified mail, or serve personally, a copy of the notice with a statement of the date of the filing to or upon the defendant at the defendant's last known address. If the municipal attorney shall fail to give notice, the lien is void.

C.2B:24-14 Compromise, settlement of claims.

14. The municipal attorney is authorized to compromise and settle any claim for services performed pursuant to this act whenever the financial circumstances of the person receiving the services are such that, in the judgment of the municipal attorney, the best interest of the State will be served by compromise and settlement.

C.2B:24-15 Books for recording liens.

15. The Clerk of the Superior Court shall provide separate books for the recording of liens established pursuant to section 13 of this act, which books shall be properly indexed in the name of the judgment debtor. The municipal attorney shall not be required to pay filing or recording fees.

C.2B:24-16 Collection of money due municipality.

16. The municipal attorney in the name of the municipality may do all things necessary to collect any money due to the municipality by way of reimbursement for services rendered by a municipal public defender pursuant to this act. The municipal attorney may enter into arrangements with any State or county agency to handle collections on a cost basis. The municipal attorney shall have all the remedies and proceedings available for collection which are available for or upon the recovery of a judgment in a civil action and shall also be permitted to collect counsel fees and costs from the defendant for such collection action so that the same are not borne by the municipality.

C.2B:24-17 Application fee, waiver; deposit in dedicated fund.

17. a. A municipality may require by ordinance a person applying for representation by a municipal public defender or court approved counsel to pay an application fee of not more than $200.00, but only in an amount necessary to pay the costs of municipal public defender services. In accordance with guidelines promulgated by the Supreme Court, the municipal court may waive any required application fee, in whole or in part, only if the court determines, in its discretion, upon a clear and convincing showing by the applicant that the application fee represents an unreasonable burden on the person seeking representation. The municipal court may permit a person to pay the application fee over a specific period of time not to exceed four months.

b. Funds collected pursuant to subsection a. of this section shall be deposited in a dedicated fund administered by the chief financial officer of the municipality or in the case of a joint municipal court in a manner agreed to by the constituent municipalities. Such funds shall be used exclusively to meet the costs incurred in providing the services of a municipal public defender including, when required, expert and lay investigation and testimony.

c. Beginning in 1999, if it is determined by the Division of Local Government Services during its annual review of a municipal budget that the amount of money in a dedicated fund established pursuant to this section exceeds by more than 25% the amount which the municipality expended during the prior year providing the services of a municipal public defender, the amount in excess of the amount expended shall be forwarded to the Criminal Disposition and Review Collection Fund administered by Victims of Crime Compensation Board.

Repealer.

18. N.J.S.2B:12-28 is repealed.

19. This act shall take effect on January 1, 1998 or on the 180th day after enactment, whichever is later except that sections 17 and 18 of this act shall take effect on the 90th day after enactment.

Approved September 23, 1997.

CHAPTER 257

AN ACT creating the New Jersey Human Relations Council and supplementing chapter 9DD of Title 52 of the Revised Statutes and making an appropriation.

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

C.52:9DD-8 New Jersey Human Relations Council.

1. a. There is hereby created the New Jersey Human Relations Council, referred to hereinafter as the council, which shall promote prejudice reduction education and address the problem of bias and violent acts based on the victim's race, color, religion, national origin, ethnicity, sexual orientation, gender or disability. The council shall be a permanent, independent body in but not of the Department of Law and Public Safety.

b. The council shall consist of an executive committee which shall include ten public members who shall be representative of the various ethnic; religious; national origin; racial; sexual orientation; gender; and disabilities organizations in this State, of whom four shall be appointed by the Governor, no more than two of whom shall be of the same political party; three shall be appointed by the President of the Senate, no more than two of whom shall be of the same political party; and three shall be appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party; two members of the Senate appointed by the President of the Senate, no more than one of whom shall be of the same political party; two members of the General Assembly appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party; seven representatives from county human relations commissions representing the diversity of all county human relations commissions from the 21 counties of the State appointed by the Governor; and the following ex officio members: the Attorney General of the State of New Jersey; Commissioner of the Department of Education; the Commissioner of the Department of Community Affairs; the Commissioner of the Department of Corrections; the Commissioner of the Department of Human Services; the Public Defender; the Director of the Administrative Office of the Courts; the Director of the Division of Criminal Justice; the Superintendent of the Division of State Police; the Director of the Division on Civil Rights; the President of the County Prosecutors Association of New Jersey; the President of the New Jersey State Association of Chiefs of Police; the President of the Bias Crime Officers Association of New Jersey; a county Superintendent of Schools selected by the Commissioner of the Department of Education; the President of the New Jersey Principals and Supervisors Association; and the President of the New Jersey Education Association.

c. Of the public members first appointed to the council, six shall be appointed for a term of three years, two shall be appointed for terms of two years and two shall be appointed for a term of one year. The seven county

human relations commissions representatives shall be appointed for terms of two years. The legislative members appointed initially under this act shall serve until the end of the legislative session in which the appointment is made. Thereafter, the legislative members shall be appointed for two-year terms to coincide with the two-year legislative term in which they serve on the council. Thereafter, the public members shall be appointed for terms of three years. Vacancies on the council shall be filled in the same manner as the original appointment but for the unexpired term. A chairperson shall be selected from among the public members of the council. The council shall have the authority to establish subcommittees as it deems appropriate and pursuant to this act. The public members of the council shall adopt bylaws to govern the council and elect officers from among the public members as it deems appropriate and pursuant to this act.

d. Each ex officio member may designate a person from the member's department or agency to represent the member at hearings of the council. All designees may lawfully vote and otherwise act on behalf of the member for whom they constitute the designee.

C.52:9DD-9 Duties of council.

2. It shall be the duty of the council:

a. to develop policy proposals for the State and assist with coordinating efforts to promote prejudice reduction and prevent and deter crimes based upon the victim's race, color, religion, national origin, sexual orientation, ethnicity, gender, or physical, mental or cognitive disability;

b. to assist in diffusing tensions in communities affected by such crimes;

c. to act as a clearinghouse for information and program ideas among the existing county human relations commissions;

d. to assist the efforts of the county human relations commissions in relieving tensions within the community;

e. to assist in providing training programs for members of the county human relations commissions and other interested community leaders;

f. to develop and present a biennial report to the Governor and Legislature on the status of bias and violence based upon race, color, religion, national origin, sexual orientation, ethnicity, gender, or physical, mental or cognitive disability;

g. to establish and maintain a listing of conflict resolution programs and experts to be available as a resource for communities in time of crisis;

h. to develop in conjunction with law enforcement agencies, including the Office of Bias Crimes and Community Relations in the Division of Criminal Justice, and the educational community cultural diversity training for law enforcement personnel;

i. to develop in conjunction with the Department of Education and the educational, civil rights and human relations communities educational programs intended to educate, encourage, develop, promote and strengthen respect for human rights and cultural diversity and prevent and combat racism, intolerance and bigotry;

j. to assist local communities in establishing local human relations commissions;

k. to assess changes in local demographics and assist communities in adapting to minority population shifts;

l. to assist State, county and local government agencies with multi-cultural awareness programs;

m. to require that the representatives from the county human relations commissions report back to the counties regarding the work and activities of the State council;

n. to provide conciliation assistance and conduct all activities in confidence and without publicity; and

o. to make recommendations to governmental entities for the development of policies and procedures in general and for programs of formal and informal education that will aid in eliminating all types of discrimination based on race, color, religion, national origin, sexual orientation, ethnicity, gender, or physical, mental or cognitive disability.

C.52:9DD-10 Confidentiality.

3. The council shall hold confidential any information acquired during the course of mediation or dispute resolution.

C.52:9DD-11 Powers of council.

4. The council shall have the following powers:

a. to conduct public hearings throughout the State;

b. to establish subcommittees;

c. to perform fact finding functions and prepare reports on particular issues regarding race; color; religion; sexual orientation; ethnicity; gender; or physical, mental or cognitive disability; and

d. to call to its assistance and avail itself of the services of any official of this State and its political subdivisions and their departments, boards, bureaus, commissions and agencies as it may require and may expend any funds appropriated or otherwise made available to it.

C.52:9DD-12 Meetings of council.

5. The council shall meet at least quarterly and hold hearings at such place or places it shall deem necessary.

C.52:9DD-13 Appropriations.

6. The Legislature shall annually appropriate such sums as are necessary to effectuate the purposes of this act.

7. This act shall take effect immediately.

Approved September 23, 1997.

CHAPTER 258

AN ACT concerning funding for community mental health and developmental disability services and supplementing Title 30 of the Revised Statutes.

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

C.30:4-177.53 Short title.

1. This act shall be known and may be cited as the "Community Mental Health and Developmental Disability Services Investment Act."

C.30:4-177.54 Findings, declarations relative to funding for community mental health, developmental disability services.

2. The Legislature finds and declares that:

a. It is desirable for persons with serious mental illness, including children and adolescents with serious emotional disturbances, as well as persons with developmental disabilities, to receive treatment in their home community;

b. The availability of a range of community-based services will enable many persons who might otherwise require continued institutionalization to return to the community and allow the State to reduce its longstanding reliance on State inpatient care for adults with serious mental illness, and children and adolescents with serious emotional disturbances, as well as persons with developmental disabilities. As more services are provided at the local level, there is a compelling State interest in assuring that these services are coordinated and that resources are provided throughout the State; and

c. As expenditures for State inpatient resources are reduced, additional funding should be invested in community-based mental health services for persons with serious mental illness, including children and adolescents with

serious emotional disturbances, as well as community-based services for persons with developmental disabilities.

C.30:4-177.55 Definitions relative to funding for community mental health, developmental disability services.

3. As used in this act:

"Children and adolescents with serious emotional disturbances" means individuals under 18 years of age who meet criteria established by the commissioner, which shall include children and adolescents who are in psychiatric crisis, or children and adolescents who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness result in substantial functional disability.

"Commissioner" means the Commissioner of Human Services.

"Community mental health and developmental disability services" means the following services for persons with serious mental illness, or for persons with developmental disabilities, as appropriate;

a. emergency and crisis services provided in programs licensed or approved by the commissioner;

b. case management services;

c. outpatient services which provide an adequate level of treatment and rehabilitation to persons with serious mental illness;

d. residential services, other than inpatient services, provided in programs licensed or approved by the commissioner and in long-term health care facilities licensed by the Department of Health and Senior Services, including, but not limited to, assisted living residences, comprehensive personal care homes and residential health care facilities;

e. psychiatric rehabilitation services, including, but not limited to, supported employment, supported living, psychosocial clubhouse and other partial care modalities;

f. other community support services, including, but not limited to, consumer advocacy, consumer operated self-help activities, drop-in centers, and family education and support services;

g. services which are directed toward the alleviation of a developmental disability or mental illness, or toward the social, personal, physical or economic habilitation or rehabilitation of a person with a developmental disability or mental illness, and provided by an agency or program approved by the commissioner; and

h. other services as approved by the commissioner.

"Department" means the Department of Human Services.

"Developmental disability" means a developmental disability as defined in the "Developmentally Disabled Rights Act," P.L.1977, c.82 (C.30:6D-1 et seq.).

"Facility" means a State psychiatric hospital or developmental center operated by the department.

"Persons with serious mental illness" means individuals who meet criteria established by the commissioner, which shall include persons who are in psychiatric crisis, or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness result in substantial functional disability. Persons with serious mental illness shall include children and adolescents with serious emotional disturbances.

C.30:4-177.56 Powers of commissioner.

4. a. The commissioner shall take such actions as are necessary to ensure that as a mental health facility closes that all funds be redirected to services in the community thereby increasing the State's financial support to community mental health services for its citizens, except for money already earmarked for institutional use through the Marlboro Redirection Plan.

b. The commissioner shall ensure that when individuals with a developmental disability move into the community from a developmental center affected by a significant service reduction, funding utilized for the individual in the developmental center shall be used to fund the individual's community placement.

c. Any funding from the developmental center placement not needed to fully fund the community placement for that individual shall be directed toward the reduction of the waiting list for services in the Division of Developmental Disabilities in the department.

C.30:177.57 Use of certain monies received by State.

5. All monies received by the State from the sale of facility property shall be earmarked exclusively for capital and equipment costs associated with the development of community placement for persons with serious mental illness or developmental disabilities, according to criteria to be established by the commissioner.

C.30:4-177.58 Rules, regulations.

6. 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.

7. This act shall take effect immediately.

Approved September 23, 1997.

CHAPTER 259

AN ACT regulating the practice of accounting and repealing parts of the statutory law.

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

C.45:2B-42 Short title.

1. This act shall be known and may be cited as the "Accountancy Act of 1997."

C.45:2B-43 Findings, declarations relative to practice of accounting.

2. The Legislature finds and declares that it is the policy of this State, and the purpose of this act, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The public interest requires that persons preparing financial statements accompanied by reports or professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained those qualifications, including license holders not in public practice, shall not be permitted to hold themselves out as having that special competence or to offer that assurance; that the professional conduct of persons licensed as having special competence in accountancy be regulated in all aspects of the practice of public accountancy; that a public authority competent to prescribe and assess the qualifications and to regulate the professional conduct of practitioners of public accountancy be established; and the use of titles relating to the practice of public accountancy that are likely to mislead the public as to the status or competence of the persons using those titles be prohibited.

C.45:2B-44 Definitions relative to the practice of accounting.

3. As used in this act:

"Board" means the New Jersey State Board of Accountancy.

"Financial statements" means statements and related footnotes that purport to present an actual or a prospective financial position at a particular time, or results of operations, cash flow, or changes in financial position for a period of time, in conformity with generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts or items of such statements, but does not include: incidental financial data included in management advisory service

reports to support recommendations to a client; or tax returns and supporting schedules.

"Firm" means a sole proprietorship, a professional corporation, a partnership, a limited liability company, a limited liability partnership, or any other lawful form of business organization.

"License" means a license or registration issued to an individual or firm permitting the individual or firm to practice public accountancy.

"Licensee" means the holder of a license issued pursuant to this act.

"Manager" means a manager of a limited liability company.

"Member" means a member of a limited liability company.

"Owner of a firm" means any person with an equity or equivalent interest in a firm, such as a shareholder with respect to a corporation or a partner with respect to a partnership, or an individual with respect to a sole proprietorship.

"Practice of public accountancy" or "practicing public accountancy" means the performance or the offering to perform, by a person or firm holding itself out to the public for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the preparation of financial statements or the issuance of reports on financial statements; or the performance as a licensee of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

"Practice unit" means any office of a firm practicing public accountancy in the State of New Jersey.

"Quality review" means a study, appraisal or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person who is a certified public accountant and who is not affiliated with the person or firm being reviewed.

"Report" when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statement and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing, such as a statement or implication of special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when that form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statement referred to or special competence on the part of the person or firm issuing that language, or both; and it includes any other

form of language that is conventionally understood to imply that assurance or that special knowledge or competence, or both.

C.45:2B-45 New Jersey State Board of Accountancy.

4. The New Jersey State Board of Public Accountants created and established by P.L.1904, c.230 as amended and supplemented, continued by R.S.45:2-1 and further continued and constituted as the New Jersey State Board of Certified Public Accountants by P.L.1965, c.99, and further continued and constituted as the New Jersey State Board of Accountancy by P.L.1977, c.144, is further continued as the New Jersey State Board of Accountancy and the members and officers of that board as presently constituted shall continue to hold office until the expiration of their terms.

Wherever in any law, rule, regulation, contract, document, judicial or administrative proceeding or otherwise, reference is made to the New Jersey State Board of Certified Public Accountants, the same shall mean and refer to the New Jersey State Board of Accountancy.

C.45:2B-46 Membership; terms; vacancies; removal.

5. The board shall consist of 12 members, seven of whom shall have been engaged in practice as certified public accountants and two of whom shall have been engaged in practice as public accountants in this State, two of whom shall be public members and one of whom shall be a State executive department member. Each certified public accountant member, public accountant member, and public member shall be appointed by the Governor for a term of three years and shall hold office until reappointed or a successor is appointed and qualified. Any vacancy on the board shall be filled by the Governor for the unexpired term only.

The public members and the State executive department member shall be appointed by the Governor in accordance with and subject to the provisions of P.L.1971, c.60 (C.45:1-2.1 et seq.).

Except for the State executive department member, no member may serve more than two successive terms in addition to any unexpired term to which he has been appointed, except that any member who has served two such successive terms may be reappointed after an intervening period of one year.

The Governor may remove any member of the board, other than the State executive department member, for cause, upon notice and opportunity to be heard.

C.45:2B-47 Oath by members of board, officers, rules, etc.

6. a. Before entering upon the discharge of their duties, the members of the board shall take and subscribe an oath for the faithful performance of

their duties before the Attorney General or any officer authorized to administer oaths in this State and file the same with the Secretary of State.

b. Subject to the approval of the Attorney General, the members of the board shall annually elect a president, a vice president, a treasurer and a secretary from among their members.

c. Notwithstanding the provisions of any other law, the Attorney General shall appoint, as chief administrative officer of the board, an executive director who shall not be a member of the board and who shall serve at the pleasure of the Attorney General. The duties of the executive director shall be determined by the Attorney General. The executive director shall not engage in the practice of public accounting.

d. A majority of the members of the board shall constitute a quorum and no action of the board shall be taken except upon the affirmative vote of a majority of the members of the entire board.

e. Members of the board shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties and shall receive that compensation as determined by the Attorney General. The executive director shall receive that compensation as determined by the Attorney General within the limit of available funds.

f. Expenditures of the board in any fiscal year shall not exceed board revenues and all expenditures shall be in accordance with the provisions of this act and the annual appropriations act.

g. Subject to the approval of the Attorney General, the board may adopt rules and regulations as necessary to implement the provisions of this act, including, without limitations, rules and regulations governing professional conduct.

h. Subject to the provisions of subsection f. of this section, the board may appoint committees or persons to advise or assist the board in the administration and enforcement of this act.

C.45:2B-48 Powers of board.

7. The board shall, in addition to any other powers granted under this act:

a. Administer and enforce the provisions of this act;

b. Adopt and promulgate rules, 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. Establish rules of professional conduct for persons licensed under this act, including, but not limited to, prohibiting the payment to, or receipt or offering of a commission or contingency fee by a licensee and establishing requirements for written disclosures in transactions involving a client of the licensee's accounting practice;

d. Conduct hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). In any hearing or investigation, 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;

e. Take such action as is necessary before any board, agency or court of competent jurisdiction for the enforcement of the provisions of this act;

f. Evaluate and pass upon the qualification of candidates for licensure;

g. Adopt and administer the examinations to be taken by applicants for licensure;

h. Prescribe or change the fees for examinations, licensing, registrations, certifications, renewals, or other services performed pursuant to the provisions of P.L.1974, c.46 (C.45:1-3.1 et seq.);

i. Subject to the requirements of this act, establish standards for and approve continuing education programs and sponsors of continuing education programs; and

j. Have the investigative and enforcement powers provided pursuant to P.L.1978, c.73 (C.45:1-14 et seq.).

C.45:2B-49 Application for licensure; requirements.

8. Every applicant for examination for licensure as a certified public accountant shall present to the board a written application 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; and

c. (1) That the applicant has a baccalaureate degree or its equivalent from an institution of higher education acceptable to the board, including such courses in accounting and related professional courses that the board may require by regulation;

(2) After July 1, 2000 and according to regulations established by the board, that the applicant has at least 150 semester hours of education or its equivalent, including a baccalaureate or higher degree, from an institution of higher education accredited by a regional accrediting agency recognized by the Commission on Higher Education. The educational program shall include a concentration in accounting or its equivalent and related professional courses as determined by regulation of the board.

C.45:2B-50 Examination required for issuance of license.

9. Except as otherwise provided, no person shall be issued a license by the board to practice as a certified public accountant until he has passed all sections of an examination designated by the board with a passing grade of 75 in each section. If the candidate does not pass all of the sections of the

examination at one sitting, he may be reexamined with respect to the sections which he did not pass, under terms and conditions established by the board.

Examinations shall be given by the board at least twice a year, and any person who wishes to sit for an examination shall apply to the board at least 60 days prior to the date of the examination. The board may make use of the Uniform Certified Public Accountant Examination, or the Advisor Grading Service of the American Institute of Certified Public Accountants, or any other examination offered by an organization recognized by the board, which the board deems appropriate.

C.45:2B-51 Requirements for licensure.

10. a. Except as provided in subsection b. of this section, every applicant for licensure as a certified public accountant, having passed the examination in compliance with the provisions of section 9 of this act, shall provide satisfactory proof to the board that:

(1) The applicant has had one year of experience in the practice of public accountancy or its equivalent, under the direction of a licensee meeting requirements prescribed by the board; and

(2) The experience includes evidence of intensive and diversified experience in auditing or accounting as determined by regulation of the board.

b. (1) For six years following the effective date of this act, an applicant for licensure as a certified public accountant who has acquired, prior to the effective date of this act, not less than four years of experience deemed acceptable to the board in government, industry or education shall be exempt from the experience requirements of subsection a. of this section; and

(2) For four years following the effective date of this act, an applicant for licensure as a certified public accountant who is working in government, industry or education as of the effective date of this act shall be exempted from the experience requirements of subsection a. of this section so long as that applicant satisfactorily completes not less than four years of experience acceptable to the board.

C.45:2B-52 Persons currently registered continue to hold designation.

11. Any person who is registered as a public accountant pursuant to the provisions of section 13 of P.L.1977, c.144 (C.45:2B-13) on the effective date of this act shall continue to hold that designation under the terms of this act, and shall be registered with the board and eligible for the renewal of any license issued by the board prior to the effective date of this act.

C.45:2B-53 Waiving of examination.

12. a. The board may waive the examination of, and issue a license to, any person who is of good moral character, and who, at the time of his application, holds a valid and unrevoked license as a certified public accountant issued by or under the authority of any state or possession of the United States or the District of Columbia which has education, experience, examination and re-examination requirements which are substantially equivalent to the requirements of this act and the regulations promulgated pursuant to this act for the issuance of a license as a certified public accountant.

b. The board may waive the examination of, and issue a license to, an applicant who within 10 years immediately preceding the date of application has held a valid and unrevoked license as a certified public accountant issued by or under the authority of any state or possession of the United States or the District of Columbia, and who has had experience outside of this State in the practice of public accountancy that is deemed satisfactory to the board, or meets equivalent requirements prescribed by the board by regulation, after passing the examination upon which the applicant's license was based. If an applicant's certificate, license or permit was issued less than three years prior to the application for issuance of an initial license under this section, that applicant shall have also fulfilled the requirements of continuing professional education that would have been applicable under the rules of this State to be eligible for licensure under the provisions of this subsection.

c. The board shall issue a license as a certified public accountant to a holder of a foreign designation, granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy if:

(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid license issued by this State to obtain that foreign authority's comparable designation; and

(2) The foreign designation:

(a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(b) entitles the holder to issue reports upon a financial statement; and

(c) was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law; and

(3) The applicant:

(a) received the designation, based on educational and examination standards substantially equivalent to those in effect in this State, at the time the foreign designation was granted;

(b) completed an experience requirement, substantially equivalent to the requirement set out in section 10 of this act, in the jurisdiction which

granted the foreign designation, or has completed five years of experience in the practice of public accountancy in this State; or meets equivalent requirements prescribed by the board, within the 10 years immediately preceding the application; and

(c) passed a uniform qualifying examination in national standards acceptable to the board and an examination on the laws, regulations and code of ethical conduct in effect in this State.

An applicant seeking licensure under this subsection shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a license issued under this subsection shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

C.45:2B-54 Requirements for registration as firm of certified public accountants.

13. a. A firm engaged in this State in the practice of public accountancy shall be eligible to register with the board as a firm of certified public accountants if it meets the following requirements:

(1) At least one owner of the firm shall be a certified public accountant in good standing, and licensed to practice public accountancy in this State;

(2) Each owner of the firm shall be a certified public accountant of any state in the United States in good standing, and licensed to practice public accountancy in that state;

(3) Each resident manager in charge of a practice unit of a firm in this State and each owner thereof personally engaged within this State in the practice of public accountancy shall be a certified public accountant in good standing, and licensed to practice public accountancy in this State.

b. Application for registration of a firm shall be made upon the affidavit of an owner of the firm who is a certified public accountant in good standing and licensed to practice public accountancy in this State. The board shall in each case determine whether the applicant is eligible for registration. A firm which is so registered may use the words "certified public accountant" or the abbreviation "CPAs" in connection with its firm name. Notification shall be given to the board within 90 days after admission or withdrawal of an owner licensed and practicing in this State from any firm so registered.

C.45:2B-55 Requirements for registration as firm of public accountants.

14. a. A firm engaged in this State in the practice of public accountancy shall be eligible to register with the board as a firm of public accountants if it meets the following requirements:

(1) At least one owner of a firm shall be a public accountant in good standing, and licensed to practice public accountancy in this State;

(2) Each owner of the firm shall be a public accountant of some state in good standing, and licensed to practice public accountancy in that state, except that nothing in this section shall preclude a certified public accountant from being an owner of a firm of public accountants;

(3) Each resident manager in charge of a practice unit of a firm in this State and each owner thereof personally engaged within this State in the practice of public accounting shall be a public accountant or a certified public accountant of this State in good standing and licensed to practice public accountancy in this State.

b. Application for registration of a firm shall be made upon the affidavit of an owner of the firm who is a public accountant of this State in good standing and licensed to practice public accountancy in this State. The board shall in each case determine whether the applicant is eligible for registration. A firm which is so registered may use the words "public accountant" or the abbreviation "PAs" in connection with its firm name. Notification shall be given to the board within 90 days after admission or withdrawal of an owner licensed and practicing in this State from any firm so registered.

C.45:2B-56 Requirements for temporary practice.

15. Temporary practice in this State by a licensed certified public accountant or public accountant or firm of another state or by a holder of a comparable foreign designation may be permitted on business incident to that person's regular practice outside this State; but only if the applicant registers with the board and complies with its requirements. Registration shall not be required if services within this State do not exceed a total of 12 days in a calendar year.

C.45:2B-57 Triennial registration for firm; fee.

16. Each firm established or maintained in this State for the practice of public accountancy by certified public accountants or public accountants shall triennially register with and pay to the board a triennial registration fee. Each practice unit shall be under the direct supervision of a resident manager who may be either an owner or a staff employee licensed under this act.

C.45:2B-58 Triennial renewal of license; fee.

17. Every certified public accountant and public accountant licensed to practice public accountancy within this State shall renew his license triennially with the board and pay a triennial license fee established by the board by regulation.

Notice of the failure to renew a license and pay the triennial license fee shall be given to any person who fails to do so within 60 days following the license expiration date, which notice shall state that, upon the continued failure to pay that fee, the license issued to that individual will be forfeited at the time and place stated in the notice, unless the fee is paid by the specified time. The board may make rules regarding the reissuance of a license to any person whose license has been forfeited under this section.

An individual paying the triennial license fee, in addition to furnishing any other information which the board may require, shall state in the application whether any license as a certified public accountant or public accountant or any charter as a chartered accountant or any other license, permit or registration to practice public accountancy ever issued to or made for that individual by any state or political subdivision of the United States, or by any foreign country or political subdivision thereof, or by any professional accounting organization, has been revoked or suspended, and, if so, state those facts relating to that revocation or suspension as the board may require.

No certified public accountant, public accountant, registered municipal accountant or public school accountant of this State, who has not renewed his license pursuant to the requirements of this section, shall, during that period, hold himself out to be engaged in practice as a certified public accountant, public accountant, registered municipal accountant or public school accountant within this State.

C.45:2B-59 Revocation of license, registration.

18. a. After notice and an opportunity to be heard, the board may: revoke any license or registration issued under this act; suspend any license or registration or refuse to renew any license or registration; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine; or place any licensee on probation, for any of the following reasons:

(1) Fraud, deceit or misrepresentation in obtaining a license or registration;

(2) Cancellation, revocation, suspension or refusal to renew the authority to engage in the practice of public accountancy in any other state for reasons consistent with this section;

(3) Failure, on the part of a holder of a license or registration, to maintain compliance with the requirements for issuance or renewal of that license or registration or to report changes to the board in the name or composition of any firm or individual licensed or registered in this State, or a change in the status of a license of a firm licensed in any other jurisdiction;

(4) Revocation or suspension of the right to practice before any state or federal agency;

(5) Dishonesty, fraud, gross negligence or repeated acts of negligence in the practice of public accountancy or in the filing or failure to file the licensee's or registrant's own income tax returns;

(6) Violation of any provision of this act or regulation promulgated by the board under this act;

(7) Violation of any rule of professional conduct promulgated by the board under this act;

(8) Conviction of a crime, an element of which is dishonesty or fraud, under the laws of the United States, of this State, or any other state, if the acts involved would have constituted a crime of the first, second, third or fourth degree under the laws of this State;

(9) Performance of any fraudulent act while holding a license or registration issued under this act, or prior laws regulating accountants in this State;

(10) Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy;

(11) If the licensee is incapable for medical or any other good cause of discharging the functions of a licensee in the manner consistent with the public's health, safety and welfare; or

(12) The failure of an individual or a firm to have all the qualifications prescribed by any provision of this act under which the individual or firm qualified for registration or licensing.

b. The board may impose any other disciplinary sanction or civil penalties pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.).

c. In lieu of or in addition to any remedy provided in subsection a. or b. of this section, the board may require of a licensee or registrant:

(1) A quality review conducted in a manner as specified by the board in accordance with the provisions of section 26 of this act.

(2) Satisfactory completion of continuing professional education programs required by the board pursuant to the provisions of section 27 or 30 of this act.

(3) Appropriate community service as the board may require.

d. In any proceeding in which a remedy provided by subsection a., b. or c. of this section is imposed, the board may also require the respondent licensee or registrant to pay the cost of the proceeding.

C.45:2B-60 Modification of suspension, reissuance of license, registration.

19. a. In any case where the board has suspended or revoked a license or registration or refused to renew a license or registration, the board may,

upon application in writing by the person or firm affected and for good cause shown, modify the suspension, or reissue the license or registration.

b. The board shall prescribe the manner in which such an application shall be made, the time within which it shall be made, and the circumstances in which hearings or applications will be held.

c. Before reissuing, or terminating the suspension of a license or registration under this section, and as a condition of reissuance or termination of suspension, the board may require the applicant to show successful completion of the continuing professional education requirements of this act; and the board may make the reinstatement of a license or registration conditional and subject to satisfactory completion of a quality review conducted in a manner required by the board.

C.45:2B-61 Issuance of report on financial statements prohibited; exceptions.

20. a. No individual or firm shall issue a report on financial statements of any other individual, firm, organization, or governmental unit unless that person or firm holds a valid license or registration issued under this act, except that this prohibition shall not apply to: an officer, partner, member, manager or employee of any firm or organization affixing that person's own signature to any statement or report in reference to the financial affairs of that firm or organization with any wording designating the position, title or office that the person holds in the firm or organization; any act of a public official or employee in the performance of that person's duties; the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns or financial statements prepared without the issuance of reports, or providing a management advisory service.

b. The prohibition contained in subsection a. of this section is applicable to the issuance, by a person not holding a valid license or a firm not holding a valid registration, of a report using any form of language conventionally used by licensees respecting review of financial statements or compilation of financial statements.

C.45:2B-62 Use of title, designation requires licensure, registration.

21. a. No person shall use or assume the title or designation "certified public accountant," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless that person holds a current license as a certified public accountant under this act.

b. No firm shall assume or use the title or designation "certified public accountant," or the abbreviation "CPA," unless otherwise provided for by law, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public

accountants, unless the firm holds a valid registration issued under this act, and all partners, officers, members, managers and shareholders of the firm hold licenses as certified public accountants.

c. No individual shall assume or use the title or designation "public accountant," or the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a public accountant unless that individual holds a valid registration as a public accountant as provided under this act.

d. No firm shall assume or use the title or designation "public accountant," or the abbreviation "PA," unless otherwise provided for by law, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of public accountants.

e. No person or firm shall assume or use the title or designation "certified accountant," "chartered accountant," enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," or any other title or designation likely to be confused with the titles "certified public accountant" or "public accountant," or use any of the abbreviations "CA," "LA," "RA," "AA," or similar abbreviations likely to be confused with the abbreviations "CPA" or "PA," unless that person or firm holds a valid license or registration issued under this act.

f. No person or firm shall assume or use the title "enrolled agent" or "EA," unless so designated by the Internal Revenue Service.

g. No person or firm shall assume or use any title or designation that includes the words "accountant," "auditor," or "accounting" in connection with any other language, including the language of a report, that implies that the person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor, unless that person or firm holds a valid license or registration issued under this act, except that this subsection shall not prohibit any officer, partner, member, manager, or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of that firm or organization with any wording designating the positions, title, or office that the person holds in the firm or organization, nor shall this subsection prohibit any act of a public official or employee in the performance of the person's duties.

h. No person holding a license or firm holding a registration under this act shall engage in the practice of public accountancy using a professional or firm name or designation that is misleading with regard to the form in which the firm is organized, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, except that names of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor.

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i. The provisions of this section shall not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country, entitling the holder thereof to engage in the practice of public accountancy or its equivalent in that country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds that entitlement, so long as that person or firm issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this State, and does not use in this State any titles or designation other than the one under which the person practices in the foreign country, followed by a translation of that title or designation into the English language, if it is in a different language, and by the name of that country.

C.45:2B-63 Violations, referral to authority; immunity of board members.

22. Whenever, by reason of an investigation, the board shall have reason to believe that there has been a violation of the laws of this State, the board may refer the matter and any information pertaining to the matter to the Attorney General of this State or the appropriate civil or criminal law enforcement authority. Each member of the board shall have immunity from any civil or criminal liability on account of these referrals, unless a member has acted in bad faith or with malicious purpose.

C.45:2B-64 Single prohibited act justifies penalty.

23. In any action brought under this act, evidence of the commission of a single act prohibited by this act shall be sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.

C.45:2B-65 Disclosure of client information.

24. Except by permission of the client engaging a licensee or firm under this act, or the heirs, successors, or personal representatives of that client, no licensee or partner, officer, member, manager, shareholder, or employee of a licensee or firm shall disclose information communicated to the licensee or firm by the client relating to and in connection with services rendered to the client by the licensee or firm in the practice of public accountancy. Such information shall be deemed confidential; except that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, investigations or proceedings under this act, in ethical investigations conducted by private professional organizations, or in the course of quality reviews.

C.45:2B-66 Disposition of records.

25. a. All statements, records, schedules, working papers, memoranda or other records made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee or firm, incident to, or in the course of, rendering services to a client in the practice of public accountancy, except the reports submitted by the licensee or firm to the client and except for records that are part of the client's records, shall be and remain the property of the licensee or firm, unless there is an express agreement between the licensee or firm and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or the client's designated representative or assignee, to anyone other than one or more surviving partners, shareholders, members or new partners, new shareholders, or new members of the licensee or firm, or any combined or merged firm or successor in interest to the licensee or firm. Nothing in this section shall prohibit any temporary transfer of working papers or other material necessary in the course of carrying out quality reviews or as otherwise interfering with the disclosure of information pursuant to this act.

b. A licensee shall furnish to a client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers or other records, to the extent that these would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) Any accounting or other records belonging to the client, or obtained from or on behalf of the client, that the licensee or firm removed from the client's premises or received for the client's account. The licensee or firm may make and retain copies of such documents of the client when they form the basis for work done by the licensee or firm.

c. Nothing contained in this section shall require a licensee or firm to keep any working papers beyond the period prescribed in any other applicable statute.

C.45:2B-67 Quality Enhancement Program.

26. a. The board may adopt regulations establishing a Quality Enhancement Program for the review of audits, reviews, compilations or other reports issued by licensees or firms engaged in the practice of public accountancy in this State to determine whether the reports comply with accepted accounting and auditing standards.

b. Each licensee or firm may be required to submit copies of audits, reviews, compilations or other reports as required by the board.

c. The Quality Enhancement Program established under this section may include procedures for review of the reports submitted and for

follow-up reviews and remedial and other actions to be taken in cases of reports which are deficient or in some other manner are not in compliance with applicable accounting and auditing standards. The board may exempt firms which have reports reviewed under a program conducted by other states or other public or private entities which the board finds to be equal to or to exceed the Quality Enhancement Program established under this act.

C.45:2B-68 Continuing professional education required for license renewal.

27. a. The board shall, as a condition for triennial license renewal, require any person licensed as a "certified public accountant," or "public accountant," to complete 120 credits of continuing professional education during the immediately preceding triennial period of licensure. Persons who are engaged in the practice of public accountancy, or are involved with the attest function in issuing an audit, review or compilation reports, shall have at least 24 of the required credits in the areas of accounting or auditing. Each credit of continuing professional education required pursuant to this section shall represent, or be equivalent to, 50 minutes of verified course attendance at a course or seminar approved by the board.

b. The board may, in its discretion, waive requirements for continuing professional education on an individual basis for hardship reasons such as health, military service, or other due cause and may establish a policy for the continuing education requirements for inactive or retired accountants who remain certified or registered.

c. The board shall not require completion of continuing education credits as a condition for triennial licensure for the initial renewal of licensure.

d. The board shall:

(1) establish standards for continuing professional education, including the subject matter, contents of courses of study, and the number of credits required;

(2) accredit educational programs and sponsors of educational programs offering credit towards the continuing professional education requirements; and

(3) accredit other equivalent educational programs, such as teaching, conferences, professional seminars, technical reviews, courses with non-hourly attendance, including home study courses, and shall establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs.

C.45:2B-69 Construction of terms.

28. Whenever any law or regulation requires professional services to be performed by a certified public accountant, that requirement shall be construed to mean certified public accountant or public accountant.

C.45:2B-70 Requirements for qualification as registered municipal accountant.

29. Only a certified public accountant licensed in this State or a registered municipal accountant licensed in this State prior to 1985 shall undertake the work of auditing any municipality or county. Such an individual shall qualify as a registered municipal accountant (RMA) of New Jersey by passing a registered municipal accountant's examination and by subscribing to the following declaration:

a. That the individual is fully acquainted with the laws controlling and governing the finances of municipalities and counties of New Jersey; and

b. That the individual will honestly and faithfully audit the books and accounts of a municipality or county when engaged to do so, and report any error, omission, irregularity, violation of law, discrepancy or other nonconformity to the law, together with his recommendations to the governing body of that municipality or county.

The board shall make all rules governing examinations and the issuance of licenses to registered municipal accountants.

The registration fee for a certified public accountant, duly licensed under this act, to practice as a registered municipal accountant of New Jersey, shall be established by the board, and shall be imposed for each triennial registration.

C.45:2B-71 Continuing education required for registered municipal accountant.

30. The board shall require any person licensed as a registered municipal accountant, as a condition for triennial licensure, to complete the required number of credits of continuing professional education as determined by the board during each triennial period of licensure. Persons who are engaged in the practice of municipal auditing shall have at least one-third of the required credits in the areas of accounting or auditing.

Each credit of continuing professional education required pursuant to this section shall represent or be equivalent to 50 minutes of verified course attendance at a course or seminar approved by the board.

C.45:2B-72 Municipal, county audit signed by RMA.

31. A report of audit of a municipality or county shall be signed by the registered municipal accountant making the audit or in charge of the audit.

C.45:2B-73 Qualification as public school accountant.

32. Any person who undertakes the work of auditing the accounts of any school district in New Jersey shall qualify as a public school accountant (PSA) by:

a. Submitting an application to the board, demonstrating satisfactorily to the board that the individual holds a current and valid license in New

Jersey as a certified public accountant, public accountant, or registered municipal accountant, and paying the required fee;

b. Renewing the license triennially and paying the required fee; and

c. Subscribing that the individual: (1) is fully acquainted with the laws controlling and governing the finances of school districts of New Jersey; and (2) will honestly and faithfully audit the books and accounts of any school district when engaged to do so, and report any error, omission, irregularity, violation of law, discrepancy or other nonconformity to the law, together with recommendations to the board of education in charge of that school district.

C.45:2B-74 School district audit signed by PSA.

33. A report of audit of a school district shall be signed by the public school accountant making the audit or in charge of the audit.

C.45:2B-75 Current regulations unaffected.

34. This act shall not affect the regulations currently in effect and promulgated by the board, and those regulations that are consistent with the purposes and provisions of this act shall continue with full force and effect until amended, modified or repealed by the board established pursuant to this act.

Repealer.

35. The following are repealed:

Sections 1 through 17, 19, 22 through 24, and 27 through 32 of P.L.1977, c.144 (C.45:2B-1 through 45:2B-17, 45:2B-19, 45:2B-22 through 45:2B-24, and 45:2B-27 through 45:2B-32);

P.L.1977, c.176 (C.45:2B-33 through 45:2B-37);

Section 6 of P.L.1982, c.96 (C.45:2B-4.1); and

P.L.1987, c.392 (C.45:2B-17.1, 45:2B-35.1 and 45:2B-38 through 45:2B-41).

36. This act shall take effect on the 180th day after enactment, but its provisions shall not affect any proceedings or actions pending prior to its effective date.

Approved October 8, 1997.

CHAPTER 260

AN ACT concerning rooming and boarding houses and amending and supplementing P.L.1979, c.496.

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

1. Section 3 of P.L.1979, c.496 (C.55:13B-3) is amended to read as follows:

C.55:13B-3 Terms defined.

3. As used in this act:

a. "Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guest house wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only, any foster home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1), any community residence for the developmentally disabled and any community residence for the mentally ill as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students, any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the New Jersey Commission on Higher Education, any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the commissioner, and any owner-occupied, one-family residential dwelling made available for occupancy by not more than six guests, where the primary purpose of the occupancy is to provide charitable assistance to the guests and where the owner derives no income from the occupancy. A dwelling shall be deemed "owner-occupied" within the meaning of this section if it is owned or operated by a nonprofit religious or charitable association or corporation and is used as the principal residence of a minister or employee of that corporation or association. For any such dwelling, however, fire detectors shall be required as determined by the Department of Community Affairs.

b. "Commissioner" means the Commissioner of the Department of Community Affairs.

c. "Financial services" means any assistance permitted or required by the commissioner to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to,

the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

d. "Limited tenure" means residence at a rooming or boarding house on a temporary basis, for a period lasting no more than 90 days, when a resident either maintains a primary residence at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

e. "Operator" means any individual who is responsible for the daily operation of a rooming or boarding house.

f. "Owner" means any person who owns, purports to own, or exercises control of any rooming or boarding house.

g. "Personal services" means any services permitted or required to be furnished by an owner or operator to a resident, other than shelter, including, but not limited to, meals or other food services, and assistance in dressing, bathing or attending to other personal needs.

h. "Rooming house" means a boarding house wherein no personal or financial services are provided to the residents.

i. "Single room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), and which is not used for limited tenure occupancy in a hotel, motel or established guest house, regardless of the number of individuals occupying any room or rooms.

j. "Unit of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied for sleeping or dwelling purposes by one or more persons.

k. "Alzheimer's disease and related disorders" means a form of dementia characterized by a general loss of intellectual abilities of sufficient severity to interfere with social or occupational functioning.

l. "Dementia" means a chronic or persistent disorder of the mental processes due to organic brain disease, for which no curative treatment is available, and marked by memory disorders, changes in personality, deterioration in personal care, impaired reasoning ability and disorientation.

2. Section 6 of P.L.1979, c.496 (C.55:13B-6) is amended to read as follows:

C.55:13B-6 Standards.

6. The commissioner shall establish standards to ensure that every rooming and boarding house in this State is constructed and operated in such a manner as will protect the health, safety and welfare of its residents and at the same time preserve and promote a homelike atmosphere appropriate to such facilities, including, but not limited to, standards to provide for the following:

a. Safety from fire;

b. Safety from structural, mechanical, plumbing and electrical deficiencies;

c. Adequate light and ventilation;

d. Physical security;

e. Protection from harassment, fraud and eviction without due cause;

f. Clean and reasonably comfortable surroundings;

g. Adequate personal and financial services rendered in boarding houses;

h. Disclosure of owner identification information;

i. Maintenance of orderly and sufficient financial and occupancy records;

j. Referral of residents, by the operator, to social service and health agencies for needed services;

k. Assurance that no constitutional, civil or legal right will be denied solely by reason of residence in a rooming or boarding house;

l. Reasonable access for employees of public and private agencies, and reasonable access for other citizens upon receiving the consent of the resident to be visited by them;

m. Opportunity for each resident to live with as much independence, autonomy and interaction with the surrounding community as he is capable of; and

n. Assurance that the needs of residents with special needs, including, but not limited to, persons with Alzheimer's disease and related disorders or other forms of dementia, will be met in accordance with standards adopted by regulation of the commissioner, which shall be promulgated no later than 90 days after the effective date of this act, which shall include, at a minimum, the following:

(1) staffing levels;

(2) staff qualifications and training;

(3) special dietary needs of residents;

(4) special supervision requirements relating to the individual needs of residents;

(5) building safety requirements appropriate to the needs of residents;

(6) special health monitoring of residents by qualified, licensed health care professionals, including a requirement that a medical assessment be performed on a resident with special needs as described in this subsection, as determined necessary by the commissioner, prior to admission and on a quarterly basis thereafter to ensure that the facility is appropriate to the needs of the resident; and

(7) criteria for discharging residents which shall be set forth in the admission agreement which shall be provided to the resident or the resident's representative prior to or upon admission. The commissioner may revoke the license of any provider who violates the criteria for discharging residents.

3. Section 7 of P.L.1979, c.496 (C.55:13B-7) is amended to read as follows:

C.55:13B-7 Rooming, boarding house licensure.

7. a. (1) No person shall own or operate a rooming or boarding house, hold out a building as available for rooming or boarding house occupancy, or apply for any necessary construction or planning approvals related to the establishment of a rooming or boarding house without a valid license to own or operate such a facility, issued by the commissioner.

(2) No person shall own or operate a rooming or boarding house that offers or advertises or holds itself out as offering personal care services to residents with special needs, including, but not limited to, persons with Alzheimer's disease and related disorders or other forms of dementia, hold out a building as available for rooming or boarding house occupancy for such residents, or apply for any necessary construction or planning approvals related to the establishment of a rooming or boarding house for such residents without a valid license to own or operate such a facility, issued by the commissioner.

(3) Any person found to be in violation of this subsection shall be liable for a civil penalty of not more than $5,000.00 for each building so owned or operated.

b. The commissioner shall establish separate categories of licensure for owning and for operating a rooming or boarding house, provided, however, that an owner who himself operates such a facility need not also possess an operator's license.

If an owner seeking to be licensed is other than an individual, the application shall state the name of an individual who is a member, officer or stockholder in the corporation or association seeking to be licensed, and the same shall be designated the primary owner of the rooming or boarding house.

Each application for licensure shall contain such information as the commissioner may prescribe and shall be accompanied by a fee established by the commissioner which shall not be less than $75.00 nor more than $150.00. If, upon receipt of the fee and a review of the application, the commissioner determines that the applicant will operate, or provide for the operation of, a rooming or boarding house in accordance with the provisions of this act, he shall issue a license to him.

Each license shall be valid for one year from the date of issuance, but may be renewed upon application by the owner or operator and upon payment of the same fee required for initial licensure.

c. Only one license shall be required to own a rooming or boarding house, but an endorsement thereto shall be required for each separate building owned and operated or intended to be operated as a rooming or boarding house. Each application for licensure or renewal shall indicate every such building for which an endorsement is required. If, during the term of a license, an additional endorsement is required or an existing one is no longer required, an amended application for licensure shall be submitted.

d. A person making application for, or who has been issued, a license to own or operate a rooming or boarding house who conceals the fact that the person has been denied a license to own or operate a residential facility, or that the person's license to own or operate a residential facility has been revoked by a department or agency of state government in this or any other state is liable for a civil penalty of not more than $5,000.00, and any license to own or operate a rooming or boarding house which has been issued to that person shall be immediately revoked.

C.55:13B-10.1 Owner, operator of rooming, boarding house prohibited from providing health care services.

4. No person who owns or operates a rooming or boarding house shall provide health care services in that facility. Nothing in this section shall be construed to prohibit a licensed health care professional acting within the scope of that person's license from providing health care services to a resident of a rooming or boarding house in that facility.

5. This act shall take effect immediately.

Approved October 9, 1997.

CHAPTER 261

AN ACT concerning watershed preservation, protection and management, providing for the expenditure of monies dedicated pursuant to Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution, and making an appropriation.

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

C.58:29-1 Short title.

1. This act shall be known and may be cited as the "Watershed Protection and Management Act of 1997."

C.58:29-2 Findings, declarations relative to watershed protection and management.

2. The Legislature finds and declares that, on November 5, 1996, the voters overwhelmingly approved an amendment to the New Jersey Constitution dedicating the equivalent of 4 percent of the revenues annually generated by the Corporation Business Tax for financing the costs of hazardous discharge site remediation, upgrading hazardous underground storage tanks, and water quality point and nonpoint source pollution monitoring, watershed-based water resource planning and management, and nonpoint source pollution prevention projects; and that, of the 4 percent dedicated for these purposes, a minimum of one-sixth, or a minimum of $5,000,000, whichever is less, is annually dedicated for the purposes of water quality point and nonpoint source pollution monitoring, watershed-based water resource planning and management and nonpoint source pollution prevention projects.

The Legislature further finds and declares that the Department of Environmental Protection currently administers the State's water quality planning, monitoring, permitting and enforcement programs; that the department has recently begun to change its long-standing, permit-based approach to water resource protection and water pollution control to that of a watershed-based planning approach; that such an approach would greatly increase the overall efficiency and precision with which pollution control measures could be applied; and that the federal Clean Water Act establishes policy guidelines requiring states to clean up polluted waters and protect waters that meet water quality standards.

The Legislature further finds and declares that the Fiscal Year 1997 funding levels must be increased in future years to enable the department to meet the requirements of the federal Clean Water Act; and that the constitutionally dedicated and appropriated additional monies, when used to fund a watershed-based approach to water resource management and

pollution control, will greatly assist the State in protecting waters that meet water quality standards and in attaining and complying with federal water quality standards.

The Legislature therefore determines that it is in the public interest and consistent with the intent of Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution to provide statutory guidance to the department for the use of the dedicated monies; that the dedicated monies should be used to support an expansion of department efforts in the area of water resource management; and that the State should adopt a watershed-based approach to most effectively and efficiently comply with federal guidelines.

C.58:29-3 Definitions relative to watershed protection and management.

3. As used in this act:

"Department" means the Department of Environmental Protection;

"Federal Act" means the federal "Clean Water Act" (33 U.S.C. s.1251 et seq.);

"Total maximum daily load" means the sum of individual point and nonpoint sources of pollution, other sources such as tributaries or adjacent segments, and allocations to a reserve or margin of safety for an individual pollutant or as defined in subsequent rules and regulations of the department;

"Watershed" means a geographic area within which water, sediments, and dissolved materials drain to a particular receiving waterbody;

"Watershed management activity" means activities or projects undertaken by the department, the Pinelands Commission established pursuant to section 4 of P.L.1979, c.111 (C.13:18A-4), or a watershed management group to improve the condition or prevent further degradation of a watershed, and may include, but need not be limited to, public meetings to discuss and exchange information on watershed issues, the establishment and operation of a stakeholders advisory group or groups dedicated to preserving and protecting a watershed, the monitoring, water quality modeling or assessment of the condition of a watershed, the development of policy goals to reduce the amount of pollutants discharged into a watershed, the development of projects designed to enhance or restore a watershed, the development, in consultation with the department, of a watershed management plan, or the reassessment of a watershed to determine whether the policy goals or the objectives of a watershed management plan have been attained;

"Watershed management area" means a geographic area in the State, as designated by the department, within which may be found one or more watersheds;

"Watershed management group" means a group recognized by the department as the entity representing the various interests within one or more watersheds located in a watershed management area and whose purpose is to improve the condition or prevent further degradation of a watershed or watersheds. A watershed management group shall include, but need not be limited to, local and county government officials, a representative of water purveyors, a representative of wastewater utilities or authorities, a representative of the business community, a representative of the development community, and a representative of the environmental community; except that a watershed management group need not include all such officials or representatives if any such officials or representatives decline or are unable to participate in the watershed management group as may be determined by the department in accordance with guidelines or rules and regulations adopted by the department. Where a regional planning agency has been created for all or part of the watershed management area to be represented by the watershed management group, an official of that regional planning agency shall be included in the watershed management group; and

"Watershed management plan" means a plan developed by the department, or by the Pinelands Commission or a watershed management group in consultation with the department, designed to improve the condition or prevent further degradation of a watershed or watersheds, and shall include consideration of groundwater quality and quantity, consideration of water supply quality and quantity, a determination of the total maximum daily load amount of pollutants that can be discharged into the watershed or watersheds targeted by the plan, the implementation of water quality-based effluent limits for point sources, and regulatory and best management practices to control nonpoint sources of pollution.

C.58:29-4 "Watershed Management Fund," established.

4. The "Watershed Management Fund," hereinafter referred to as the "fund," is hereby established as a nonlapsing, revolving fund in the Department of Environmental Protection. The fund shall be credited annually with all monies appropriated pursuant to the requirements of Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution. Any interest that accrues on monies in the fund shall be credited to the fund.

C.58:29-5 Purposes of fund.

5. Monies in the fund shall be used only for the following purposes:

a. The development and adoption of a priority list of water quality limited waterbodies pursuant to the requirements of section 303(d)(1)(A) of the Federal Act (33 U.S.C. s.1313);

b. The monitoring and assessment of all State waters pursuant to the requirements of section 305(b) of the Federal Act (33 U.S.C. s.1315);

c. The delineation of watershed management areas and stream segments;

d. The identification of potential causes of the use impairment or water quality standard violations related to waterbodies on the priority list required pursuant to sections 303(d)(1)(A) and 305(b) of the Federal Act by means of assessment of reliable data, including, but not necessarily limited to, identification of point sources, nonpoint sources, habitat degradation, and hydrologic changes. This identification shall include a broad-based intensive survey monitoring program that shall supplement the existing chemical, biological and toxics-in-biota monitoring networks, and that shall intensively sample watersheds or segments of watersheds on a periodic basis and establish a detailed watershed-wide assessment process. The number of monitoring sites within a watershed shall be determined by existing water quality, land uses, known and potential pollution sources, and the amount of available historical data. The supplemental survey monitoring program, shall be designed to provide:

(1) a detailed profile of water quality over specified time periods;

(2) an identification and detailed profile of both point and nonpoint pollution sources;

(3) a quantification of pollutant loadings and pollution impacts on receiving waters from both point and nonpoint sources; and

(4) water quality modeling based upon amounts of point and nonpoint sources of pollution and land use;

e. The development of total maximum daily loads and water quality-based effluent limitations for water quality limited waterbodies, as required pursuant to section 303(d)(1)(C) of the Federal Act, and any rules or regulations adopted pursuant thereto;

f. The development and presentation of data on the department's Geographic Information System (GIS);

g. The development and adoption of pollution prevention best management practices to control point and nonpoint sources of pollution;

h. The characterization of land use and land cover in each watershed;

i. The development and adoption of a watershed management plan;

j. The development and planning by the department of a watershed management program and the integration of the department's rules and regulations with the program; and

k. The development and implementation of a watershed protection loan and grant program, as described pursuant to section 6 of this act.

C.58:29-6 Loan and grant program.

6. a. (1)The department shall establish a loan and grant program to assist watershed management groups in the funding of watershed management activities. A watershed management group may apply to the department for a loan or grant pursuant to this subsection on forms prescribed by the department. The application shall state the objectives of the group, including the watershed management activities proposed and for which loan or grant monies are requested.

(2) A watershed management group may, pursuant to guidance provided or rules or regulations adopted by the department, distribute all or part of the loan or grant to another person who is to perform a watershed management activity for which the loan or grant was provided. If the watershed management group distributes the loan or grant to a person who has a NJPDES permit to discharge pollutants into the waters of the State pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), the distribution shall be conditioned upon the permittee providing a match of one dollar for every dollar provided by the loan or grant. The match may be made either as a monetary payment or as an in-kind contribution. Any person who has a NJPDES permit and who accepts a loan or grant pursuant to this subsection shall agree not to use any of the loan or grant monies for the purpose of complying with NJPDES permit requirements.

b. The department shall establish guidelines for the development of watershed management plans by watershed management groups. The department shall provide guidance and technical assistance to watershed management groups seeking assistance in the development of a watershed management plan or in the development and implementation of watershed management activities.

C.58:29-7 Use of appropriated funds.

7. a. Any monies appropriated to the department pursuant to Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution, and deposited in the fund, shall be used to support the purposes set forth in section 5 of this act to the extent that those purposes constitute activities in addition to those undertaken by the department in Fiscal Year 1997.

b Monies shall be appropriated to the department pursuant to Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution, deposited in the fund, and allocated for the following purposes:

(1) From the monies appropriated in Fiscal Year 1997 pursuant to section 8 of this act, 100 percent of the monies shall be used by the department to support the purposes established in subsections a. through j. of section 5 of this act;

(2) From the monies appropriated in Fiscal Year 1998, not more than 35 percent of the monies may be used to support the purposes identified in subsection k. of section 5 of this act and the remainder of the monies shall be used by the department to support the purposes established in subsections a. through j. of section 5 of this act; and

(3) From the monies appropriated in Fiscal Year 1999 and every year thereafter, not more than 50 percent of the monies may be used to support the purposes identified in subsection k. of section 5 of this act and the remainder of the monies shall be used by the department to support the purposes established in subsections a. through j. of section 5 of this act.

c. The department may not expend any monies that are or may be appropriated by the Legislature for the purposes identified in subsection k. of section 5 of this act until the department submits a list of proposed loan or grant recipients to the Legislature, and the Legislature, by the passage of a concurrent resolution, approves that list. The Legislature may approve all or part of that list and only those persons listed in the approved concurrent resolution may receive a watershed protection loan or grant from the department. The concurrent resolution may limit or specify the amount of any loan or grant and may establish any other condition of receiving the loan or grant. The list of proposed recipients submitted to the Legislature by the department shall specify the name of the proposed recipient, the amount of the loan or grant to be awarded, the intended purpose of the loan or grant, the watershed or watersheds involved, and any other information relevant to the award of the loan or grant.

d. The department may not expend any monies in Fiscal Year 1999 and thereafter that are or may be appropriated by the Legislature for the purposes identified in subsection k. of section 5 of this act until the department has adopted rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), concerning the development and implementation of watershed management activities by watershed management groups and the submission and review of loan and grant applications.

e. Any transfer of appropriated funds between purposes authorized by this section shall require the approval of the Joint Budget Oversight Committee or its successor. No such transfer of funds shall be approved by the committee or its successor if the transfer would cause exceedance of the funding percentage allocation limitations set forth in subsection b. of this section. Any transfer of funds from an approved loan or grant recipient to another approved loan or grant recipient shall also require the approval of the committee or its successor.

8. There is appropriated from the General Fund, pursuant to the requirements of Article VIII, Section II, paragraph 6, subparagraph (a) of the New Jersey Constitution, to the Department of Environmental Protection, the sum of $4,900,000 for deposit into the Watershed Management Fund established pursuant to section 4 of this act.

9. This act shall take effect immediately.

Approved October 10, 1997.

CHAPTER 262

AN ACT prohibiting the performance of partial-birth abortions 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:65A-5 Short title.

1. This act shall be known and may be cited as the "Partial-Birth Abortion Ban Act of 1997."

C.2A:65A-6 Partial-birth abortions prohibited; definitions.

2. a. No physician licensed in this State, other licensed health care professional authorized to perform abortions in this State, or ambulatory care facility licensed in this State shall perform a partial-birth abortion and thereby kill a human fetus.

b. The provisions of subsection a. of this section shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury.

c. A physician or other health care professional licensed pursuant to Title 45 of the Revised Statutes who knowingly performs a partial-birth abortion in violation of this act shall be subject to immediate revocation of his professional license by the appropriate licensing board and subject to a penalty of $25,000 for each incident.

d. An ambulatory health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) in which a partial-birth abortion is performed in violation of this act shall be subject to immediate revocation of its license by the Department of Health and Senior Services.

e. As used in this act, "partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

f. As used in subsection e. of this section "vaginally delivers a living human fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion thereof, for the purpose of performing a procedure the physician or other health care professional knows will kill the fetus, and the subsequent killing of the human fetus.

C.2A:65A-7 Patient immune from liability.

3. A woman upon whom a partial-birth abortion is performed shall be immune from civil or criminal liability for a violation of the provisions of this act.

4. This act shall take effect immediately.

Passed December 15, 1997.

CHAPTER 263

AN ACT concerning the provision of health care services to low income persons and revising parts of statutory law.

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

1. Section 2 of P.L.1992, c.160 (C.26:2H-18.52) is amended to read as follows:

C.26:2H-18.52 Definitions relative to provision of health care services to low income persons.

2. As used in sections 1 through 17 of P.L.1992, c.160 (C.26:2H-18.51 through 26:2H-18.67), sections 12 through 15 of P.L.1995, c.133 (C.26:2H-18.59a through C.26:2H-18.59d), sections 7 through 12 of P.L.1996, c.28 (C.26:2H-18.59e et al.) and sections 6, 8, 10 and 11 of P.L.1997, c.263 (C.26:2H-18.58e, C.26:2H-18.58f, C.26:2H-18.58d and C.26:2H-18.59h):

"Administrator" means the administrator of the Health Care Subsidy Fund appointed by the commissioner.

"Charity care" means care provided at disproportionate share hospitals that may be eligible for a charity care subsidy pursuant to this act.

"Charity care subsidy" means the component of the disproportionate share payment that is attributable to care provided at a disproportionate share hospital to persons unable to pay for that care, as provided in this act.

"Commission" means the New Jersey Essential Health Services Commission established pursuant to section 4 of this act.

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the Department of Health and Senior Services.

"Disproportionate share hospital" means a hospital designated by the Commissioner of Human Services pursuant to Pub.L.89-97 (42 U.S.C. s.1396a et seq.) and Pub.L.102-234.

"Disproportionate share payment" means those payments made by the Division of Medical Assistance and Health Services in the Department of Human Services to hospitals defined as disproportionate share hospitals by the Commissioner of Human Services in accordance with federal laws and regulations applicable to hospitals serving a disproportionate number of low income patients.

"Fund" means the Health Care Subsidy Fund established pursuant to section 8 of this act.

"Hospital" means an acute care hospital licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et al.).

"Medicaid" means the New Jersey Medical Assistance and Health Services Program in the Department of Human Services established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Medicare" means the program established pursuant to Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

"Other uncompensated care" means all costs not reimbursed by hospital payers excluding charity care, graduate medical education, discounts, bad debt and reduction in Medicaid payments.

"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," Pub.L. 97-35 (42 U.S.C. s.9902(2)).

"Preliminary cost base" means the preliminary cost base defined in section 2 of P.L.1971, c.136 (C.26:2H-2), as determined by the Hospital Rate Setting Commission.

2. Section 8 of P.L.1992, c.160 (C.26:2H-18.58) is amended to read as follows:

C.26:2H-18.58 Health Care Subsidy Fund.

8. There is established the Health Care Subsidy Fund in the Department of Health and Senior Services.

a. The fund shall be comprised of revenues from employee and employer contributions made pursuant to section 29 of P.L.1992, c.160 (C.43:21-7b), revenues from the hospital assessment made pursuant to section 12 of P.L.1992, c.160 (C.26:2H-18.62), revenues pursuant to section 11 of P.L.1996, c.28 (C.26:2H-18.58c), revenues from interest and penalties

collected pursuant to this act and revenues from such other sources as the Legislature shall determine. Interest earned on the monies in the fund shall be credited to the fund. The fund shall be a nonlapsing fund dedicated for use by the State to: (1) distribute charity care and other uncompensated care disproportionate share payments to hospitals and other eligible providers, provide subsidies for the Health Access New Jersey program established pursuant to section 15 of P.L.1992, c.160 (C.26:2H-18.65), and provide funding for children's health care coverage pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.); and (2) assist hospitals and other health care facilities in the underwriting of innovative and necessary health care services.

b. The fund shall be administered by a person appointed by the commissioner.

The administrator of the fund is responsible for overseeing and coordinating the collection and reimbursement of fund monies. The administrator is responsible for promptly informing the commissioner if monies are not or are not reasonably expected to be collected or disbursed.

c. The commissioner shall adopt rules and regulations to ensure the integrity of the fund, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. The administrator shall establish separate accounts for the charity care component of the disproportionate share hospital subsidy, other uncompensated care component of the disproportionate share hospital subsidy, hospital and other health care initiatives funding and the payments for subsidies for insurance premiums to provide care in disproportionate share hospitals, known as the Health Access New Jersey subsidy account, respectively.

e. In the event that the charity care component of the disproportionate share hospital subsidy account has a surplus in a given year after payments are distributed pursuant to the methodology established in section 13 of P.L.1995, c.133 (C.26:2H-18.59b) and section 7 of P.L.1996, c.28 (C.26:2H-18.59e) and within the limitations provided in subsection e. of section 9 of P.L.1992, c.160 (C.26:2H-18.59), the surplus monies in calendar years 1996 and 1997 shall lapse to the unemployment compensation fund established pursuant to R.S.43:21-9, and each year thereafter shall lapse to the charity care component of the disproportionate share hospital subsidy account for distribution in subsequent years.

3. Section 11 of P.L.1996, c.28 (C.26:2H-18.58c) is amended to read as follows:

C.26:2H-18.58c Funding of Health Care Subsidy Fund.

11. a. The Health Care Subsidy Fund shall be funded with $15 million in General Fund revenues in calendar year 1996 and $41 million in General

Fund revenues in calendar year 1997 and $42.9 million in General Fund revenues for the period January 1, 1998 through June 30, 1998.

b. The Health Care Subsidy Fund shall be supported with revenues derived from efficiencies achieved by State use of an electronic data interchange system for health care claims and related information, in amounts necessary to provide funding for the health care program pursuant to section 8 of P.L.1996, c.28 (C.26:2H-18.59f).

4. Section 9 of P.L.1992, c.160 (C.26:2H-18.59) is amended to read as follows:

C.26:2H-18.59 Allocation of funds.

9. a. The commissioner shall allocate such funds as specified in subsection e. of this section to the charity care component of the disproportionate share hospital subsidy account. In a given year, the department shall transfer from the fund to the Division of Medical Assistance and Health Services in the Department of Human Services such funds as may be necessary for the total approved charity care disproportionate share payments to hospitals for that year.

b. For the period January 1, 1993 to December 31, 1993, the commission shall allocate $500 million to the charity care component of the disproportionate share hospital subsidy account. The Department of Health and Senior Services shall recommend the amount that the Division of Medical Assistance and Health Services shall pay to an eligible hospital on a provisional, monthly basis pursuant to paragraphs (1) and (2) of this subsection. The department shall also advise the commission and each eligible hospital of the amount a hospital is entitled to receive.

(1) The department shall determine if a hospital is eligible to receive a charity care subsidy in 1993 based on the following:

$$\frac{\text{Hospital Specific Approved Uncompensated Care-1991}}{\text{Hospital Specific Preliminary Cost Base-1992}} = \text{Hospital Specific \% Uncompensated Care (\%UC)}$$

A hospital is eligible for a charity care subsidy in 1993 if, upon establishing a rank order of the %UC for all hospitals, the hospital is among the 80% of hospitals with the highest %UC.

(2) The maximum amount of the charity care subsidy an eligible hospital may receive in 1993 shall be based on the following:

Hospital Specific Approved Uncompensated Care-1991

Total approved Uncompensated Care All Eligible Hospitals-1991

X $500 million

= Maximum Amount of Hospital Specific Charity Care Subsidy for 1993

(3) A hospital shall be required to submit all claims for charity care cost reimbursement, as well as demographic information about the persons who qualify for charity care, to the department in a manner and time frame specified by the Commissioner of Health and Senior Services, in order to continue to be eligible for a charity care subsidy in 1993 and in subsequent years.

The demographic information shall include the recipient's age, sex, marital status, employment status, type of health insurance coverage, if any, and if the recipient is a child under 18 years of age who does not have health insurance coverage or a married person who does not have health insurance coverage, whether the child's parent or the married person's spouse, as the case may be, has health insurance.

(4) A hospital shall be reimbursed for the cost of eligible charity care at the same rate paid to that hospital by the Medicaid program; except that charity care services provided to emergency room patients who do not require those services on an emergency basis shall be reimbursed at a rate appropriate for primary care, according to a schedule of payments developed by the commission.

(5) The department shall provide for an audit of a hospital's charity care for 1993 within a time frame established by the department.

c. For the period January 1, 1994 to December 31, 1994, a hospital shall receive disproportionate share payments from the Division of Medical Assistance and Health Services based on the amount of charity care submitted to the commission or its designated agent, in a form and manner specified by the commission. The commission or its designated agent shall review and price all charity care claims and notify the Division of Medical Assistance and Health Services of the amount it shall pay to each hospital on a monthly basis based on actual services rendered.

(1) (Deleted by amendment, P.L.1995, c.133.)

(2) If the commission is not able to fully implement the charity care claims pricing system by January 1, 1994, the commission shall continue to make provisional disproportionate share payments to eligible hospitals,

through the Division of Medical Assistance and Health Services, based on the charity care costs incurred by all hospitals in 1993, until such time as the commission is able to implement the claims pricing system.

If there are additional charity care balances available after the 1994 distribution based on 1993 charity care costs, the department shall transfer these available balances from the fund to the Division of Medical Assistance and Health Services for an approved one-time additional disproportionate share payment to hospitals according to the methodology provided in section 12 of P.L.1995, c.133 (C.26:2H-18.59a). The total payment for all hospitals shall not exceed $75.5 million.

(3) A hospital shall be reimbursed for the cost of eligible charity care at the same rate paid to that hospital by the Medicaid program; except that charity care services provided to emergency room patients who do not require those services on an emergency basis shall be reimbursed at a rate appropriate for primary care, according to a schedule of payments developed by the commission.

(4) (Deleted by amendment, P.L.1995, c.133.)

d. (Deleted by amendment, P.L.1995, c.133.)

e. The total amount allocated for charity care subsidy payments shall be: in 1994, $450 million; in 1995, $400 million; in 1996, $310 million; in 1997, $300 million; for the period January 1, 1998 through June 30, 1998, $160 million; and in fiscal year 1999 and each fiscal year thereafter, $320 million. Total payments to hospitals shall not exceed the amount allocated for each given year.

f. Beginning January 1, 1995:

(1) The charity care subsidy shall be determined pursuant to section 13 of P.L.1995, c.133 (C.26:2H-18.59b).

(2) A charity care claim shall be valued at the same rate paid to that hospital by the Medicaid program, except that charity care services provided to emergency room patients who do not require those services on an emergency basis shall be valued at a rate appropriate for primary care according to a schedule of payments adopted by the commissioner.

(3) The department shall provide for an audit of a hospital's charity care within a time frame established by the commissioner.

5. Section 7 of P.L.1996, c.28 (C.26:2H-18.59e) is amended to read as follows:

C.26:2H-18.59e Determination of charity care subsidy.

7. a. Beginning January 1, 1996, and except as provided in section 8 of P.L.1996, c.28 (C.26:2H-18.59f), the charity care subsidy shall be determined according to the following methodology.

If the Statewide total of adjusted charity care is less than available charity care funding, a hospital's charity care subsidy shall equal its adjusted charity care.

If the Statewide total of adjusted charity care is greater than available charity care funding, then the hospital-specific charity care subsidy shall be determined by allocating available charity care funds so as to equalize hospital-specific payer mix factors to the Statewide target payer mix factor. Those hospitals with a payer mix factor greater than the Statewide target payer mix factor shall be eligible to receive a subsidy sufficient to reduce their factor to that Statewide level; those hospitals with a payer mix factor that is equal to or less than the Statewide target payer mix factor shall not be eligible to receive a subsidy.

Charity care subsidy payments shall be based upon actual documented hospital charity care.

As used in this section:

(1) The hospital-specific "documented charity care" shall be equal to the dollar amount of charity care provided by the hospital that is verified in the department's most recent charity care audit conducted under the most recent charity care eligibility rules adopted by the department and valued at the same rate paid to that hospital by the Medicaid program.

For 1996, documented charity care shall equal the audited, Medicaid-priced amounts reported for the first three quarters of 1995. This amount shall be multiplied by 1.33 to determine the annualized 1995 charity care amount. For 1997 and the period from January 1, 1998 through June 30, 1998, documented charity care shall be equal to the audited Medicaid-priced amounts for the last quarter two years prior to the payment period and the first three quarters of the year prior to the payment period. For fiscal year 1999 and each fiscal year thereafter, documented charity care shall be equal to the audited Medicaid-priced amounts for the most recent calendar year;

(2) In 1996, the hospital-specific "operating margin" shall be equal to: the hospital's 1993 and 1994 income from operations minus its 1993 and 1994 charity care subsidies divided by its 1993 and 1994 total operating revenue minus its 1993 and 1994 charity care subsidies. After calculating each hospital's operating margin, the department shall determine the Statewide median operating margin.

In 1997 and each year thereafter, the hospital-specific "operating margin" shall be calculated in the same manner as for 1996, but on the basis of income from operations, total operating revenue and charity care subsidies data from the three most current years;

(3) The hospital-specific "profitability factor" shall be determined annually as follows. Those hospitals that are equal to or below the

Statewide median operating margin shall be assigned a profitability factor of "1." For those hospitals that are above the Statewide median operating margin, the profitability factor shall be equal to:

$$1 - \frac{.75 \times (\text{hospital specific operating margin} - \text{Statewide median operating margin})}{\text{highest hospital specific operating margin} - \text{Statewide median operating margin}}$$

(4) The hospital-specific "adjusted charity care" shall be equal to a hospital's documented charity care times its profitability factor;

(5) The hospital-specific "revenue from private payers" shall be equal to the sum of the gross revenues, as reported to the department in the hospital's most recently available New Jersey Hospital Cost Reports for all non-governmental third party payers including, but not limited to, Blue Cross and Blue Shield plans, commercial insurers and health maintenance organizations;

(6) The hospital-specific "payer mix factor" shall be equal to a hospital's adjusted charity care divided by its revenue from private payers; and

(7) The "Statewide target payer mix factor" is the lowest payer mix factor to which all hospitals receiving charity care subsidies can be reduced by spending all available charity care subsidy funding for that year.

b. For the purposes of this section, "income from operations" and "total operating revenue" shall be defined by the department in accordance with financial reporting requirements established pursuant to N.J.A.C.8:31B-3.3.

c. Charity care subsidy payments shall commence on or after the date of enactment of P.L.1996, c.28 and the full calendar year 1996 allocation shall be disbursed by January 31, 1997.

C.26:2H-18.58e Transfer of funds to Hospital Relief Fund.

6. a. The Commissioner of Health and Senior Services shall transfer to the Hospital Health Care Subsidy account, known as the Hospital Relief Fund, in the Division of Medical Assistance and Health Services in the Department of Human Services from the Health Care Subsidy Fund, $50.75 million in fiscal year 1998 and $101.5 million each fiscal year thereafter, according to a schedule to be determined by the Commissioner of Health and Senior Services in consultation with the Commissioner of Human Services. These funds shall be distributed to eligible disproportionate share hospitals according to a methodology adopted by the Commissioner of Human Services pursuant to N.J.A.C.10:52-8.2, using hospital expenditure

data for the most recent calendar year available for reimbursements from these funds.

b. In fiscal year 1998 and each fiscal year thereafter, the Governor shall recommend and the Legislature shall appropriate to the Hospital Health Care Subsidy account for distribution to disproportionate share hospitals which are eligible for reimbursement pursuant to subsection a. of this section, those federal funds received in connection with the provision of hospital reimbursements from that account.

7. Section 16 of P.L.1992, c.160 (C.26:2H-18.66) is amended to read as follows:

C.26:2H-18.66 Allocation to Health Access New Jersey subsidy account.

16. The Health Access New Jersey subsidy account shall be allocated $50 million in 1995, $10 million in 1996, $25 million in 1997, $10 million for the period from January 1, 1998 through June 30, 1998 and $20 million in fiscal year 1999 and each fiscal year thereafter.

C.26:2H-18.58f Transfer of funds to Division of Medical Assistance and Health Services.

8. a. The Commissioner of Health and Senior Services shall transfer to the Division of Medical Assistance and Health Services in the Department of Human Services from the Health Care Subsidy Fund, $23.8 million in fiscal year 1998, $47.6 million in fiscal year 1999, and an amount in each succeeding fiscal year that is necessary to obtain the maximum amount of federal funds to which the State is entitled in order to provide children's health care coverage pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.), according to a schedule to be determined by the Commissioner of Health and Senior Services in consultation with the Commissioner of Human Services. These funds shall be expended to provide children's health care coverage pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.).

b. In fiscal year 1999 and each fiscal year thereafter, the Governor shall recommend and the Legislature shall appropriate to the Division of Medical Assistance and Health Services for the purposes of subsection a. of this section, those federal funds received in connection with the provision of children's health care coverage pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.).

9. a. There is appropriated $42.9 million from the General Fund to the Department of Health and Senior Services for deposit in the Health Care Subsidy Fund to carry out the purposes of P.L.1997, c.263 (C.26:2H-58e et al.).

b. There is appropriated to the Department of Human Services $15.25 million in federal Title XIX funds for the Hospital Health Care Subsidy

account to carry out the purposes of section 6 of P.L.1997, c.263 (C.26:2H-18.58e) for the period January 1, 1998 to June 30, 1998.

c. There is appropriated to the Department of Human Services $44.2 million in federal Title XXI funds for the children's health care coverage program established pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.) for the period January 1, 1998 to June 30, 1998.

d. Any premiums received from families enrolled in the children's health care coverage program established pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.), are appropriated to the program.

e. An amount not to exceed 10% of the total appropriated for the children's health care coverage program established pursuant to P.L.1997, c.272 (C.30:4I-1 et seq.), may be used for administration of the program.

C.26:2H-18.58d Appropriations to Health Care Subsidy Fund.

10. In fiscal year 1999 and each year thereafter, the Governor shall recommend and the Legislature shall appropriate to the Health Care Subsidy Fund to carry out the purposes of P.L.1992, c.160 (C.26:2H-18.51 et al.), such funds from the General Fund which, when combined with other resources deposited in the Health Care Subsidy Fund, shall be sufficient to carry out the purposes of that act.

C.26:2H-18.59h Transferred employees guaranteed equivalent health insurance coverage.

11. In the event that a hospital or other health care institution that receives a charity care subsidy pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.) or funds from the Hospital Health Care Subsidy account in the Department of Human Services, sells, leases, assigns, subcontracts or otherwise transfers ownership, control or management of any of its services to another entity, the hospital or other health care institution shall provide that the new entity guarantee to offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer.

12. 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 compensa-

tion 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. s.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, except that, with respect to benefit years commencing after January 4, 1998, an employer's account shall not be charged for benefits paid to a claimant if the claimant's employment by that employer was ended in any way which, pursuant to subsection (a), (b), (c), (f), (g) or (h) of R.S.43:21-5, would have disqualified the claimant for benefits if the claimant had applied for benefits at the time when that employment ended. 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. s.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. s.1103), during any period in which such moneys are appropri-

ated 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) (Deleted by amendment, P.L. 1997, c.263).

(ii) With respect to experience rating years beginning on or after July 1, 1997, 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]	6.00% and Over A	4.00% to 5.99% B	3.00% to 3.99% C	2.50% to 2.99% 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).

(iii) With respect to experience rating years beginning on or after July 1, 1998, 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]	4.50% and Over A	3.50% to 4.49% B	3.00% to 3.49% C	2.50% to 2.99% 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)(i) (Deleted by amendment, P.L.1997, c.263).

(ii) With respect to experience rating years beginning on or after July 1, 1997, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 1.00%, 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 starting before January 1, 1998 in which the fund reserve ratio is equal to or greater than 7.00% or during any experience rating year starting on or after January 1, 1998, in which the fund reserve ratio is equal to or greater than 3.5%, 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%.

On or after April 1, 1996 until December 31, 1996, 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 25.0% 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, 1997 until December 31, 1997, 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 10.0% 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 and after January 1, 1998 until December 31, 2000, the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased each calendar year by a factor, as set out below, 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%:

From January 1, 1998 until December 31, 1998, a factor of 12%;

From January 1, 1999 until December 31, 1999, a factor of 10%;

From January 1, 2000 until December 31, 2000, a factor of 7%.

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.

If, upon calculating the unemployment compensation fund reserve ratio pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 1997, March 31, 1998 or March 31, 1999, the controller finds that the fund reserve ratio has decreased to a level of less than 3.00%, the Commissioner of Labor shall notify the State Treasurer of this fact and of the dollar amount necessary to bring the fund reserve ratio up to a level of 3.00%. The State Treasurer shall, prior to March 31, 1997, March 31, 1998 or March 31, 1999, as applicable, transfer from the General

Fund to the unemployment compensation fund, revenues in the amount specified by the commissioner and which, upon deposit in the unemployment compensation fund, shall result, upon recalculation, in a fund reserve ratio used to determine employer contributions beginning July 1, 1997, July 1, 1998, July 1, 1999, as applicable, of at least 3.00%.

If, upon calculating the unemployment compensation fund reserve ratio pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 2000, the controller finds that the fund reserve ratio has decreased to a level of less than 3.00%, the Commissioner of Labor shall notify the State Treasurer of this fact and of the dollar amount necessary to bring the fund reserve ratio up to a level of 3.00%. The State Treasurer shall, prior to March 31, 2000, transfer from the General Fund to the unemployment compensation fund, revenues in the amount specified by the commissioner and which, upon deposit in the unemployment compensation fund, shall result, upon recalculation, in a fund reserve ratio used to determine employer contributions beginning July 1, 2000 of at least 3.00%.

(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 and ending March 31, 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.

Each worker shall, starting on January 1, 1998 and ending December 31, 1998, contribute to the unemployment compensation fund 0.10% 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.

Each worker shall, starting on January 1, 1999 until December 31, 1999, contribute to the unemployment compensation fund 0.15% 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.

Each worker shall, starting on January 1, 2000 until December 31, 2002, contribute to the unemployment compensation fund 0.20% 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.

Each worker shall, starting on and after January 1, 2003, contribute to the unemployment compensation fund 0.40% 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) (Deleted by amendment, P.L.1996, c.28.)

(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 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 (G) of paragraph (1) 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.

13. Section 4 of P.L.1971, c.346 (C.43:21-7.3) is amended to read as follows:

C.43:21-7.3 Governmental entities.

4. (a) Notwithstanding any other provisions of the "unemployment compensation law" for the payment of contributions, benefits paid to individuals based upon wages earned in the employ of any governmental entity or instrumentality which is an employer defined under R.S.43:21-19(h)(5) shall, to the extent that such benefits are chargeable to the account of such governmental entity or

instrumentality in accordance with the provisions of R.S.43:21-1 et seq., be financed by payments in lieu of contributions.

(b) Any governmental entity or instrumentality may, as an alternative to financing benefits by payments in lieu of contributions, elect to pay contributions beginning with the date on which its subjectivity begins by filing written notice of its election with the department no later than 120 days after such subjectivity begins, provided that such election shall be effective for at least two full calendar years; or it may elect to pay contributions for a period of not less than two calendar years beginning January 1 of any year if written notice of such election is filed with the department not later than February 1 of such year; provided, further, that such governmental entity or instrumentality shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned in the employ of such entity or instrumentality in the period during which it financed its benefits by payments in lieu of contributions.

(c) Any governmental entity or instrumentality may terminate its election to pay contributions as of January 1 of any year by filing written notice not later than February 1 of any year with respect to which termination is to become effective. It may not revert to a contributions method of financing for at least two full calendar years after such termination.

(d) Any governmental entity or instrumentality electing the option for contributions financing shall report and pay contributions in accordance with the provisions of R.S.43:21-7 except that, notwithstanding the provisions of that section, the contribution rate for such governmental entity or instrumentality shall be 1% for the entire calendar year 1978 and the contribution rate for any subsequent calendar years shall be the rate established for governmental entities or instrumentalities under subsection (e) of this section.

(e) On or before September 1 of each year, the Commissioner of Labor shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and, on the basis of that experience, establish the contribution rate for the next following calendar year which can be expected to yield sufficient revenue in combination with worker contributions to equal or exceed the projected costs for that calendar year.

(f) Any covered governmental entity or instrumentality electing to pay contributions shall each year appropriate, out of its general funds, moneys to pay the projected costs of benefits at the rate determined under subsection (e) of this section. These funds shall be held in a trust fund maintained by the governmental entity for this purpose. Any surplus remaining in this trust fund may be retained in reserve for payment of benefit costs for subsequent years either by contributions or payments in lieu of contributions.

(g) Any governmental entity or instrumentality electing to finance benefit costs with payments in lieu of contributions shall pay into the fund an amount equal to all benefit costs for which it is liable pursuant to the provisions of the "unemployment compensation law." Each subject governmental entity or instrumentality shall require payments from its workers in the same manner and amount as prescribed under R.S.43:21-7(d) for governmental entities and instrumentalities financing their benefit costs with contributions. No such payment shall be used for a purpose other than to meet the benefits liability of such governmental entity or instrumentality. In addition, each subject governmental entity or instrumentality shall appropriate out of its general funds sufficient moneys which, in addition to any worker payments it requires, are necessary to pay its annual benefit costs estimated on the basis of its past benefit cost experience; provided that for its first year of coverage, its benefit costs shall be deemed to require an appropriation equal to 1% of the projected total of its taxable wages for the year. These appropriated moneys and worker payments shall be held in a trust fund maintained by the governmental entity or instrumentality for this purpose. Any surplus remaining in this trust fund shall be retained in reserve for payment of benefit costs in subsequent years. If a governmental entity or instrumentality requires its workers to make payments as authorized herein, such workers shall not be subject to the contributions required in R.S.43:21-7(d).

(h) Notwithstanding the provisions of the above subsection (g), commencing July 1, 1986 worker contributions to the unemployment trust fund with respect to wages paid by any governmental entity or instrumentality electing or required to make payments in lieu of contributions, including the State of New Jersey, shall be made in accordance with the provisions of R.S.43:21-7(d)(1)(C) or R.S.43:21-7(d)(1)(D), as applicable, and, in addition, each governmental entity or instrumentality electing or required to make payments in lieu of contributions shall, except during the period starting January 1, 1993 and ending December 31, 1995 and the period starting April 1, 1996 and ending December 31, 1998, require payments from its workers at the following rates of wages paid, which amounts are to be held in the trust fund maintained by the governmental entity or instrumentality for payment of benefit costs: for the calendar year 1999, 0.05%; for each calendar year 2000 to 2002, 0.10%; and each calendar year thereafter, 0.30%.

14. Section 29 of P.L.1992, c.160 (C.43:21-7b) is amended to read as follows:

C.43:21-7b Contributions to Health Care Subsidy Fund.

29. a. Beginning January 1, 1993 until December 31, 1995, except as provided pursuant to subsection b. of this section, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.6% of the employee's taxable wages.

Beginning April 1, 1996 through December 31, 1996, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.6% of the employee's taxable wages, except that the total amount contributed to the fund when combined with the employee's contribution made pursuant to R.S.43:31-7(d)(1)(D) for the period January 1, 1996 through March 31, 1996, shall not exceed 0.6% of the employee's taxable wages for the 1996 calendar year.

Beginning January 1, 1997 through December 31, 1997, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.5% of the employee's taxable wages.

Beginning on January 1, 1998 until December 31, 1998, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.30% of the employee's taxable wages.

Beginning on January 1, 1999 until December 31, 1999, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.25% of the employee's taxable wages.

Beginning on January 1, 2000 until December 31, 2002, each employee shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to 0.20% of the employee's taxable wages.

Also beginning on January 1, 1993 until December 31, 1995 and beginning April 1, 1996 until December 31, 1997, each employer shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to the amount that the employer's contribution to the unemployment compensation fund is decreased pursuant to subparagraph (H) of paragraph (5) of subsection (c) of R.S.43:21-7.

Also beginning on January 1, 1998 until December 31, 2000, each employer shall, in such a manner and at such times as determined by the commissioner, contribute to the fund an amount equal to the amount that the employer's contribution to the unemployment compensation fund is decreased pursuant to subparagraph (H) of paragraph (5) of subsection (c) of R.S.43:21-7.

b. If the unemployment compensation fund reserve ratio, as determined pursuant to paragraph (5) of subsection (c) of R.S.43:21-7, decreases to a level of less than 4.00% on March 31 of calendar year 1994 or calendar

year 1995, the provisions of subsection a. of this section shall cease to be in effect as of July 1 of that calendar year and each employer who would be subject to making the contributions pursuant to subsection a. of this section if that subsection were in effect shall, beginning on July 1 of that calendar year, contribute to the fund an amount equal to 0.62% of the total wages paid by the employer and shall continue to contribute that amount until December 31, 1995.

c. If the total amount of contributions to the fund pursuant to this section during the calendar year 1993 exceeds $600 million, all contributions which exceed $600 million shall be deposited in the unemployment compensation fund. If the total amount of contributions to the fund pursuant to this section during calendar year 1994 or calendar year 1995 exceeds $500 million, all contributions which exceed $500 million shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1996 or 1997 exceeds $330 million, all contributions which exceed $330 million in calendar year 1996 or 1997 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1998 exceeds $288 million, all contributions which exceed $288 million in the calendar year 1998 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 1999 exceeds $233.9 million, all contributions which exceed $233.9 million in the calendar year 1999 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 2000 exceeds $178.6 million, all contributions which exceed $178.6 million in the calendar year 2000 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 2001 exceeds $94.9 million, all contributions which exceed $94.9 million in the calendar year 2001 shall be deposited in the unemployment compensation fund. If the total amount of contributions made to the fund pursuant to this section for the calendar year 2002 exceeds $66.5 million, all contributions which exceed $66.5 million in the calendar year 2002 shall be deposited in the unemployment compensation fund.

d. All necessary administrative costs related to the collection of contributions pursuant to this section shall be paid from the contributions.

15. Section 32 of P.L.1992, c.160 (C.43:21-7e) is amended to read as follows:

C.43:21-7e Entitlement to refund or tax credit.

32. 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 fund exceeds an amount equal to 0.6% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of R.S.43:21-7 during calendar year 1993, calendar year 1994 or calendar year 1995, 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.

If an employee receives wages from more than one employer during the calendar year 1996 and the sum of the employee's contributions deposited in the unemployment compensation fund during the period January 1, 1996 through March 31, 1996 and the employee's contributions deposited in the health care subsidy fund during the period April 1, 1996 through December 31, 1996 exceeds an amount equal to 0.6% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of R.S.43:21-7 which wages are received during the period January 1, 1996 through December 31, 1996, 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 without interest from the unemployment compensation fund or the health care subsidy fund, or both, as appropriate.

If an employee receives wages from more than one employer during the calendar year 1997, and the sum of the employee's contributions deposited in the fund exceeds an amount equal to 0.5% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of R.S.43:21-7 during calendar year 1997, 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.

If an employee receives wages from more than one employer during the calendar year 1998, 1999, 2000, 2001 or 2002 and the sum of the employee's contributions deposited in the unemployment compensation fund and the employee's contributions deposited in the health care subsidy fund during the calendar year 1998, 1999, 2000, 2001 or 2002 exceeds an amount equal to 0.4% of the wages determined in accordance with the provisions of paragraph (3) of subsection (b) of R.S.43:21-7 which wages are received during the respective 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 without interest from the unemployment compensation fund or the health care subsidy fund, or both, as appropriate.

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.

16. This act shall take effect on January 1, 1998 and, if enacted after that date, shall be retroactive to January 1, 1998.

Approved December 19, 1997.

CHAPTER 264

AN ACT increasing the cigarette tax and tobacco products tax rates to provide funds for the Health Care Subsidy Fund and increased funding for public school districts facilities, amending and supplementing P.L.1948, c.65, amending P.L.1990, c.39 and supplementing P.L.1992, c.160 (C.26:2H-18.51 et seq.).

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

1. Section 301 of P.L.1948, c.65 (C.54:40A-8) is amended to read as follows:

C.54:40A-8 Tax imposed; rate.

301. Tax imposed; rate. A tax is hereby imposed on the sale, use or possession for sale or use within this State of all cigarettes at the rate of $0.04 for each cigarette.

2. a. Each retail licensee under P.L.1948, c.65 (C.54:40A-1 et seq.), shall, on or before the first day of the second month after the effective date of P.L.1997, c.264, file a return under oath or certified under the penalties of perjury with the director on forms furnished by the director, showing the amount of cigarettes in the retail licensee's possession in the State at 12:01 a.m. on the effective date of P.L.1997, c.264, and shall at the time of filing that return pay the tax to the director. Failure to obtain such forms shall not be an excuse for the failure to make a return containing the information required by the director.

b. Notwithstanding the provisions of section 401 of P.L.1948, c.65 (C.54:40A-11) to the contrary, each licensed distributor and wholesale dealer under P.L.1948, c.65 (C.54:40A-1 et seq.), shall, on or before the first day of the second month after the effective date of P.L.1997, c.264, file a return under oath or certified under the penalties of perjury with the director on forms furnished by the director, showing the amount of cigarettes in the dealer's or wholesaler's possession in the State at the close of business prior to the effective date of P.L.1997, c.264. An amount of tax shall be due equal to the additional tax on the number of cigarettes bearing stamps, and unaffixed stamps on hand, that exceeds four weeks' average purchases of stamps. No additional tax shall be due on the number of stamps equal to or less than the four weeks' average purchases. Each retail licensee shall at the time of filing that return pay the tax to the director. Failure to obtain such forms shall not be an excuse for the failure to make a return containing the information required by the director.

3. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read as follows:

C.54:40B-3 Tax of 48% imposed on wholesale sale of tobacco product.

3. a. There is imposed a tax of 48% upon the receipts from every sale of a tobacco product by a distributor or a wholesaler to a retail dealer or consumer.

b. Unless a tobacco product has already been or will be subject to the wholesale sales tax imposed in subsection a. of this section, if a distributor or wholesaler uses a tobacco product within this State, there is imposed upon the distributor or wholesaler a compensating use tax of 48% measured by the sales price of a similar tobacco product to a retail dealer.

c. Unless a wholesale use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not collected the wholesale sales tax imposed in subsection a. of this section upon a sale that is subject to the wholesale sales tax imposed in that subsection a., there is imposed upon the retail dealer or consumer chargeable for the sale a compensating use tax of

48% of the price paid or charged for the tobacco product, which shall be collected in the manner provided in subsection b. of section 5 of this act.

C.26:2H-18.58g Disposition of revenue collected from cigarette tax.

4. Notwithstanding the provisions of any other law to the contrary, commencing July 1, 1998: after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first $150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first $5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited in to the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next $50,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be deposited in the School Construction and Renovation Fund as shall be established by law.

5. This act shall take effect on January 1, 1998 and section 3 shall apply to tobacco products delivered on or after that date.

Approved December 19, 1997.

CHAPTER 265

AN ACT concerning criminal history record background checks for prospective employees of certain housing authorities, and supplementing Chapter 12A 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:12A-22.1 Definitions relative to criminal history background checks for local housing authority employees.

1. As used in this act:

"Applicant" means a person 18 years of age or older who is being considered for employment for at least seven hours a week by an authority.

"Authority" means a local housing authority created pursuant to the Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.).

"Superintendent" means the Superintendent of State Police.

C.40A:12A-22.2 Criminal history background checks on applicants for employment with local housing authorities.

2. a. An authority may perform criminal history background checks on applicants for employment, according to the provisions of this act. An authority which elects to comply with this act shall not hire an applicant unless it determines that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed pursuant to the provisions of this act. An applicant shall be disqualified from employment if the criminal history record check reveals his conviction:

(1) In New Jersey, of any crime or disorderly persons offense:

(a) Involving danger to the person pursuant to N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or

(b) Against the family, children or incompetents, pursuant to N.J.S.2C:24-1 et seq.; or

(2) In any other state or jurisdiction, for conduct which, if committed in New Jersey, would constitute any of the crimes or offenses included in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, an applicant shall not be disqualified from consideration for employment under this act on the basis of any conviction disclosed by a criminal history record check if the individual has affirmatively demonstrated to the authority clear and convincing evidence of his rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, an authority shall consider:

(1) The nature and responsibility of the applicant's prospective position;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the applicant when the offense was committed;

(6) Whether the offense was repeated;

(7) Social conditions which may have contributed to the offense; and

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in correctional work-release programs, or the recommendation of persons who have supervised the applicant.

C.40A:12A-22.3 Information submitted by applicant; consent; cost.

3. An applicant shall submit to the authority his or her name, address, and fingerprints taken on standard fingerprint cards by a State or municipal

law enforcement agency. An applicant who refuses to consent to, or cooperate in, the securing of a criminal history record background check shall not be considered for employment by the authority. The authority is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation, Identification Section and the Division of State Police, Bureau of Identification for use in making the determinations provided for in section 2 of P.L.1997, c.265 (C.40A:12A-22.2). No criminal history record check shall be performed pursuant to this act unless the applicant shall have furnished his or her written consent to such check. The applicant shall bear the cost for the criminal history record check.

C.40A:12A-22.4 Notification to applicant; appeal; maintenance of information.

4. a. Upon receipt of an applicant's criminal history record information, an authority shall notify the applicant, in writing, as to whether he is qualified or disqualified for employment pursuant to this act. If the applicant is disqualified for employment, the conviction or convictions which constitute the basis for the disqualification shall be identified in the written notice.

b. An applicant to a housing authority which is subject to the provisions of Title 11A of the New Jersey Statutes shall have 20 days from the date of written notice of disqualification to file an appeal with the Department of Personnel for a review on the accuracy of the criminal history record information or to establish his or her rehabilitation under subsection b. of section 2 of P.L.1997, c.265 (C.40A:12A-22.2) pursuant to regulations promulgated by the Merit System Board.

c. The Department of Personnel or an authority shall not maintain an applicant's criminal history record information or evidence of rehabilitation submitted under this section for more than six months from the date the applicant is hired or the date of the final disposition of the applicant's disqualification, as the case may be.

This section shall not prohibit the Department of Personnel from maintaining a copy of the decision on the applicant's appeal, or the entire record in the case of a judicial appeal.

5. This act shall take effect on the first day of the seventh month after enactment.

Approved December 22, 1997.

CHAPTER 266

AN ACT concerning the recidivism of sex offenders and supplementing N.J.S.2C:47-1 et seq.

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

C.2C:47-9 Establishment of program to record, analyze recidivism of convicted sex offenders.

1. a. The Commissioner of Corrections shall establish a program to record and analyze the recidivism of all inmates who are released from the Adult Diagnostic and Treatment Center, whether on parole or upon the completion of their maximum sentences. The purpose of this program shall be to assist in measuring the effectiveness of the center in providing specialized treatment to repetitive and compulsive sex offenders pursuant to N.J.S.2C:47-3.

b. The program shall record the arrests for all offenses committed by releasees for a period of five years following their release and any convictions resulting from these arrests. These data shall be analyzed to determine whether the rates and nature of rearrests and convictions differ according to the criminal histories and personal characteristics of releasees, the treatment they received at the Adult Diagnostic and Treatment Center, length of sentence, conditions of parole, and such other factors as may be relevant to the purposes of this act.

c. The program shall also perform a comparative analysis of the recidivism rates and patterns of releasees from the Adult Diagnostic and Treatment Center with those of persons released from this State's general prison population and with sex offenders released in other jurisdictions with specialized programs for the treatment of sex offenders.

d. The department shall prepare and disseminate to the Governor and the Legislature reports documenting the program's findings, along with any recommendations it may have for legislation to improve the effectiveness of treatment offered by the Adult Diagnostic and Treatment Center.

2. This act shall take effect immediately.

Approved December 22, 1997.

CHAPTER 267

AN ACT concerning handicapped driver certification and amending P.L.1949, c.280.

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

1. Section 1 of P.L.1949, c.280 (C.39:4-204) is amended to read as follows:

C.39:4-204 Handicapped person defined.

1. The term "handicapped person" as employed herein shall include any person who has lost the use of one or more limbs as a consequence of paralysis, amputation, or other permanent disability or who is permanently disabled as to be unable to ambulate without the aid of an assisting device or whose mobility is otherwise limited as certified by a physician with a plenary license to practice medicine and surgery or a podiatrist licensed to practice in this State or a bordering state or a physician stationed at a military or naval installation located in this State who is licensed to practice in any state.

2. Section 3 of P.L.1949, c.280 (C.39:4-206) is amended to read as follows:

C.39:4-206 Vehicle identification card.

3. The director shall issue to such applicant, also, a placard of such size and design as shall be determined by the director in consultation with the Division of Vocational Rehabilitation Services in the Department of Labor, indicating that a handicapped person identification card has been issued to the person designated therein, which shall be displayed in such manner as the director shall determine on the motor vehicle used to transport the handicapped person, when the vehicle is parked overtime or in special parking places established for use by handicapped persons.

Notwithstanding any provision of this act to the contrary, the chief of police of each municipality in this State shall issue to any person who has temporarily lost the use of one or more limbs or is temporarily disabled as to be unable to ambulate without the aid of an assisting device or whose mobility is otherwise temporarily limited, as certified by a physician with a plenary license to practice medicine and surgery or a podiatrist licensed to practice in this State or a bordering state, or a physician stationed at a military or naval installation located in this State who is licensed to practice in any state, a temporary placard of not more than six months' duration.

Each temporary handicapped placard issued under the provisions of this section shall set forth the date on which it shall become invalid.

The temporary placard shall be granted upon written certification by a physician with a plenary license to practice medicine and surgery or a podiatrist licensed to practice in this State or a bordering state or a physician stationed at a military or naval installation located in this State who is licensed to practice in any state that the person meets the conditions constituting temporary disability as provided in this section. This certification shall be provided on a standard form to be developed by the director in consultation with local chiefs of police and representatives of the handicapped. The form shall contain only those conditions constituting temporary disability as are provided in this section. The physical presence of the handicapped person shall not be required for the issuance of a temporary handicapped placard.

The placard may be renewed one time at the discretion of the issuing authority for a period of not more than six months' duration. The placard shall be displayed on the motor vehicle used by the temporarily handicapped person and shall give the person the right to park overtime or to use special parking places established for use by handicapped persons in any municipality of this State.

The fee for the issuance of such temporary or permanent placard issued pursuant to this section shall be $4.00 and payable to the Director of the Division of Motor Vehicles.

The director may, in addition, issue license plates bearing the national wheelchair symbol for:

a. Not more than two motor vehicles owned, operated or leased by a handicapped person or by any person furnishing transportation on his behalf; or

b. Any two motorcycles owned, operated or leased by a handicapped person.

The fee for the issuance of such plates shall be $10.00 for each vehicle.

3. This act shall take effect on the first day of the third month after enactment.

Approved December 22, 1997.

CHAPTER 268

AN ACT establishing a venison donation demonstration program.

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

1. a. The Commissioner of Health and Senior Services, in consultation with the Commissioner of Environmental Protection, the Secretary of Agriculture and the chairman of the Fish and Game Council, shall establish a venison donation demonstration program. The program shall permit, under controlled conditions, the slaughter, processing, distribution, and serving of venison donated by recreational hunters to nonprofit charitable organizations, in accordance with guidelines established by the Commissioner of Health and Senior Services and the State Fish and Game Code established pursuant to section 32 of P.L.1948, c.448 (C.13:1B-30), in order to protect the health and safety of those persons consuming the donated venison.

b. The Commissioner of Health and Senior Services, in consultation with the Commissioner of Environmental Protection, the Secretary of Agriculture, the chairman of the Fish and Game Council, and the United Bow Hunters of New Jersey, shall study the feasibility of expanding the program to include venison obtained from hunters licensed by the Department of Environmental Protection to participate in crop depredation control activities, and shall expand the program accordingly if the commissioner deems it appropriate.

2. The Commissioner of Health and Senior Services, in consultation with the Commissioner of Environmental Protection, the Secretary of Agriculture and the chairman of the Fish and Game Council, shall report to the Governor and the Legislature no later than three years after the effective date of this act on the results of the program, accompanying that report with any recommendations concerning the feasibility of establishing a permanent venison donation program and including recommendations concerning the need for legislation to control, restrict, or promote venison donation activities.

3. The Commissioner of Health and Senior Services shall develop guidelines, in consultation with the Commissioner of Environmental Protection, the Secretary of Agriculture and the chairman of the Fish and Game Council, to effectuate the purposes of this act.

Repealer.

4. P.L.1993, c.355 (C.24:16B-61.1) is repealed.

5. This act shall take effect immediately and shall expire three years after the effective date.

Approved December 22, 1997.

CHAPTER 269

AN ACT concerning exemptions from the licensing provisions for commercial drivers licenses and amending P.L.1989, c.164.

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

1. Section 1 of P.L.1989, c.164 (C.39:3-10j) is amended to read as follows:

C.39:3-10j Findings, declaration concerning commercial driver's licenses.

1. The Legislature finds that:

a. On September 20, 1988, the Secretary of the United States Department of Transportation granted the states of this nation the authority to exempt certain drivers from the licensing provisions of the "Commercial Motor Vehicle Safety Act of 1986," Pub.L.99-570 (49 U.S.C. s.2701 et seq.).

b. The "Commercial Motor Vehicle Safety Act of 1986" requires a commercial driver's license for anyone who operates a vehicle that has a gross weight rating in excess of 26,000 pounds, carries 15 or more passengers or transports hazardous materials.

c. While that act's objectives to regulate and improve the traffic safety of the commercial trucking industry are laudable, it could have an unintended, and largely adverse, impact upon certain non-commercial drivers.

d. Unless the State of New Jersey, in accordance with the Secretary of the United States Department of Transportation's directive, exercises its exemption authority, certain operators of firefighting apparatus, operators of emergency or rescue equipment operated for the purposes of a first aid, ambulance or rescue squad or for disaster control, non-civilian operators of military vehicles owned or operated by the United States Department of Defense or the National Guard, and farmers operating farm vehicles will be obligated to secure commercial driver's licenses under that act.

e. There appears to be no significant evidence that the operators of firefighting apparatus, operators of emergency or rescue equipment operated for the purposes of a first aid, ambulance or rescue squad or for disaster control, non-civilian operators of military vehicles owned or operated by the

United States Department of Defense or the National Guard, or farmers operating farm vehicles in and about their regular agricultural activities pose or have created any safety hazards on the public highways which would warrant their being licensed under the provisions of the "Commercial Motor Vehicle Safety Act of 1986."

The Legislature, therefore, declares that it is altogether fitting and proper to authorize, in accordance with the directives issued by the Secretary of the United States Department of Transportation, that the designated operators of firefighting apparatus, operators of emergency or rescue equipment operated for the purposes of a first aid, ambulance or rescue squad or for disaster control, non-civilian operators of military vehicles owned and operated by the United States Department of Defense or the National Guard, and operators of farm vehicles under certain circumstances be exempted from the licensing requirements set forth in the "Commercial Motor Vehicle Safety Act of 1986."

2. Section 2 of P.L.1989, c.164 (C.39:3-10k) is amended to read as follows:

C.39:3-10k Exemption for operators of certain emergency, other equipment or vehicles.

2. Unless otherwise required by federal law or regulation, and subject to any rules and regulations promulgated pursuant to the provisions of this act, no (1) designated operator of firefighting apparatus, (2) non-civilian operator of a military vehicle owned or operated by the United States Department of Defense or the National Guard, (3) operator of a farm vehicle controlled and operated by a farmer, used to transport agricultural products, farm machinery or farm supplies to or from a farm, operated within 150 miles of a person's farm, and not used in the operation of a common or contract motor carrier, or (4) operator of emergency or rescue equipment operated for the purposes of a first aid, ambulance or rescue squad or for disaster control, shall be subject to the licensing provisions of the "Commercial Motor Vehicle Safety Act of 1986," Pub.L.99-570 (49 U.S.C. s.2701 et seq.).

Notwithstanding the provisions of this section, a waiver shall not be granted if the granting of the waiver would place the State in a position of not being in substantial compliance with the requirements of the federal act.

3. This act shall take effect immediately.

Approved December 22, 1997.

CHAPTER 270

AN ACT concerning automobile insurance coverage for certain persons and amending P.L.1972, c.70.

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

1. Section 7 of P.L.1972, c.70 (C.39:6A-7) is amended to read as follows:

C.39:6A-7 Exclusion from certain insurance benefits.

7. a. Insurers may exclude a person from benefits under section 4 and section 10 of P.L.1972, c.70 (C.39:6A-4 and 39:6A-10) where such person's conduct contributed to his personal injuries or death occurred in any of the following ways:

(1) while committing a high misdemeanor or felony or seeking to avoid lawful apprehension or arrest by a police officer; or

(2) while acting with specific intent of causing injury or damage to himself or others.

b. An insurer may also exclude from section 4 and section 10 benefits any person having incurred injuries or death, who, at the time of the accident:

(1) was the owner or registrant of an automobile registered or principally garaged in this State that was being operated without personal injury protection coverage;

(2) was occupying or operating an automobile without the permission of the owner or other named insured;

(3) was a person other than the named insured or a member of the named insured's family residing in his household, if that person is entitled to coverage under section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or both, as a named insured or member of the named insured's family residing in his household under the terms of another policy; or

(4) was a member of the named insured's family residing in the named insured's household, if that person is entitled to coverage under section 4 or section 10 of P.L.1972, c.70 (C.39:6A-4 or 39:6A-10), or both, as a named insured under the terms of another policy.

2. This act shall take effect immediately.

Approved December 22, 1997.

CHAPTER 271

AN ACT concerning individual health care coverage and supplementing P.L.1992, c.161 (C.17B:27A-2 et seq.).

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

1. a. Notwithstanding the provisions of section 6 of P.L.1992, c.161 (C.17B:27A-7) to the contrary, a carrier shall waive any preexisting condition limitation in the case of an eligible person who applies to purchase a health benefits plan on or before May 1, 1997, and who, as of February 1, 1997, was an employee of a nonprofit corporation that filed for bankruptcy during the month of February 1997 and that failed to pay required premiums on the employee's health benefits plan so that the employee's health benefits coverage lapsed more than 30 days before the employee was able to purchase an individual health benefits plan pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.).

b. The waiver of a preexisting condition limitation pursuant to this section shall apply retroactively to an individual health benefits plan purchased between February 1, 1997 and May 1, 1997.

2. This act shall take effect immediately.

Approved December 22, 1997.

CHAPTER 272

AN ACT establishing the Children's Health Care Coverage Program, amending P.L.1968, c.413 and supplementing Title 30 of the Revised Statutes.

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

C.30:4I-1 Short title.

1. This act shall be known and may be cited as the "Children's Health Care Coverage Act."

C.30:4I-2 Findings, declarations relative to Children's Health Care Coverage Program.

2. The Legislature finds and declares that:

a. Title XXI of the federal Social Security Act, which was created by Subtitle J of Title IV of the federal "Balanced Budget Act of 1997," Pub.L.105-33, established the State Children's Health Insurance Program, which allows a state, subject to certain conditions, to establish a health insurance program for low-income children.

b. A substantial number of New Jersey's children who reside in low-income families lack health care coverage, and this lack of coverage prevents these children from obtaining needed preventive and other care on a consistent and managed basis.

c. Because of a lack of health insurance coverage, children forgo care until conditions which were either preventable or treatable at the outset require more extensive and expensive interventions or treatment, and providing health care coverage will prevent these conditions from occurring or deteriorating in these children.

d. Children with health care coverage have a significantly greater opportunity to stay healthy and to realize their full educational and developmental potential and become productive citizens.

e. The Children's Health Care Coverage Program established pursuant to this act builds on New Jersey's longstanding commitment to assure access to quality health care provided in an efficient and effective manner and at a reasonable cost through the Medicaid program, services provided in certain health care facilities, and limited subsidized health insurance coverage.

f. In addition, the Children's Health Care Coverage Program will utilize the new options permitted under federal law and State and other resources to establish the foundation for assuring health care coverage for all of New Jersey's children.

C.30:4I-3 Definitions relative to Children's Health Care Coverage Program.

3. As used in this act:

"Commissioner" means the Commissioner of Human Services.

"Program" means the Children's Health Care Coverage Program established pursuant to this act.

C.30:4I-4 Children's Health Care Coverage Program established.

4. a. The Children's Health Care Coverage Program is established in the Department of Human Services. The purpose of the program shall be to provide subsidized private health insurance coverage, and other health care benefits as determined by the commissioner, to children from birth through 18 years of age within the limits of funds appropriated or otherwise made available for the program. The program shall require copayments and a premium contribution from families with incomes which exceed 150% of the official poverty level, which shall be based upon a sliding income scale. The program shall include the provision of well-child and other preventive

services, hospitalization, physician care, laboratory and x-ray services, prescription drugs, mental health services, and other services as determined by the commissioner.

b. The commissioner, in consultation with the Commissioner of Health and Senior Services, shall take such actions as are necessary to implement and operate the program in accordance with the provisions governing the State Children's Health Insurance Program in Title XXI of the federal Social Security Act, as provided in Subtitle J of Title IV of the federal "Balanced Budget Act of 1997," Pub.L.105-33.

c. The commissioner shall by regulation establish standards for determining eligibility and other requirements for the program, including, but not limited to, premium payments and copayments, and may contract with one or more appropriate entities to assist in administering the program. The commissioner shall take, or cause to be taken, any action necessary to secure for the State the maximum amount of federal financial participation available with respect to the program, subject to the constraints of fiscal responsibility and within the limits of available funding in any fiscal year.

5. 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 dependent child or parent or caretaker relative of a dependent child and a recipient of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.) who would be, except for resources, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996;

(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 Supplemental Security Income under Title XVI of the federal Social Security Act or would be, except for resources, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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, except for resources, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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 would be, except for resources or dependent child requirements, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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 developmental centers for the developmentally disabled, or in psychiatric hospitals;

(7) Except for resources, would be eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996 or the 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 under the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996; 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 under the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996.

(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. s.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. s.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 and other entities designated by the commissioner 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 19 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. s.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. s.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. s.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. s.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. s.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) (Deleted by amendment, P.L.1997, c.272); or

(15) (a) Is a specified low-income Medicare beneficiary pursuant to 42 U.S.C. s.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. s.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. s.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. s.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. s.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. s.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. s.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. s.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. s.9902(2)).

C.30:4I-5 Rules, regulations relative to Children's Health Care Coverage Program.

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.) to effectuate the purposes of this act; except that, notwithstanding any provision of P.L.1968, c.410 to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this act, which shall be effective for a period not to exceed six months and may thereafter be amended, adopted or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410.

7. This act shall take effect immediately.

Approved December 23, 1997.

CHAPTER 273

AN ACT concerning the funding, construction and operation of the projects of certain tourism improvement and development authorities and the powers of those authorities and the powers and projects of the New Jersey Sports and Exposition Authority, amending and supplementing P.L.1992, c.165, amending P.L.1971, c.137, amending P.L.1991, c.375 and supplementing P.L.1966, c.30.

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

1. Section 3 of P.L. 1992, c. 165 (C.40:54D-3) is amended to read as follows:

C.40:54D-3 Definitions.

3. As used in this act:

"Authority" means a tourism improvement and development authority created pursuant to section 18 of this act, P.L.1992, c.165 (C.40:54D-18).

"Bond" means any bond or note issued by an authority pursuant to the provisions of this act.

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

"Construction" means the planning, designing, construction, reconstruction, rehabilitation, replacement, repair, extension, enlargement, improvement and betterment of a project, and includes the demolition, clearance and removal of buildings or structures on land acquired, held, leased or used for a project.

"Convention center facility" means any convention hall or center or like structure or building, and shall include all facilities, including commercial, office, community service, parking facilities and all property rights, easements and interests, and other facilities constructed for the accommodation and entertainment of tourists and visitors, constructed in conjunction with a convention center facility and forming reasonable appurtenances thereto but does not mean the Wildwood convention center facility as defined in this section.

"Tourism project" means the convention center facility or outdoor special events arena, or both, located in the territorial limits of the district, and any costs associated therewith but does not mean the Wildwood convention center facility as defined in this section.

"Cost" means all or any part of the expenses incurred in connection with the acquisition, construction and maintenance of any real property, lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for a project; any financing charges and reserves for the payment of principal and interest on bonds or notes; the expenses of engineering, appraisal, architectural, accounting, financial and legal services; and other expenses as may be necessary or incident to the acquisition, construction and maintenance of a project, the financing thereof and the placing of the project into operation.

"County" means a county of the sixth class.

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

"Fund" means a Reserve Fund created pursuant to section 13 of P.L.1992, c.165 (C.40:54D-13).

"Outdoor special events arena" means a facility or structure for the holding outdoors of public events, entertainments, sporting events, concerts or similar activities, and shall include all facilities, property rights and interests, and all appurtenances reasonably related thereto, constructed for the accommodation and entertainment of tourists and visitors.

"Participant amusement" means a sporting activity or amusement the charge for which is exempt from taxation under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) by virtue of the participation of the patron in the activity or amusement, such as bowling alleys, swimming pools, water slides, miniature golf, boardwalk or carnival games and amusements, baseball batting cages, tennis courts, and fishing and sightseeing boats.

"Predominantly tourism related retail receipts" means:

a. The rent for every occupancy of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3);

b. Receipts from the sale of food and drink in or by restaurants, taverns, or other establishments in the district, or by caterers, including in the amount of such receipt any cover, minimum, entertainment or other charge made to patrons or customers, subject to taxation pursuant to subsection (c) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3) but excluding receipts from sales of food and beverages sold through coin operated vending machines; and

c. Admissions charges to or the use of any place of amusement or of any roof garden, cabaret or similar place, subject to taxation pursuant to subsection (e) of section 3 of the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-3).

"Purchaser" means any person purchasing or hiring property or services from another person, the receipts or charges from which are taxable by an ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

"Sports authority" means the New Jersey Sports and Exposition Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.).

"Tourism" means activities involved in providing and marketing services and products, including accommodations, for nonresidents and residents who travel to and in New Jersey for recreation and pleasure.

"Tourism development fee" means a fee imposed by ordinance pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15), within a tourism improvement and development district on:

a. Persons making sales of tangible personal property or services, the receipts from which are subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), but which are not predominately tourism related retail receipts as defined in this section;

b. Persons making charges for participant amusements as defined in this section;

c. Persons operating businesses that charge for parking, garaging or storing of motor vehicles;

d. Persons maintaining or operating coin-operated vending machines within the district, for the machines within the district, regardless of the types of commodities sold through the machines; and

e. Persons making sales of tangible personal property or services, the receipts from which are subject to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), and which are predominately tourism related retail receipts as defined in this section, but only to the extent that the amount of tax on those receipts collected in a year by the person is less than the amount of the tourism development fee for that year.

"Tourism improvement and development district" or "district" means an area within two or more contiguous municipalities within a county of the sixth class established pursuant to ordinance enacted by those municipalities, for the purposes of promoting the acquisition, construction, maintenance, operation and support of a tourism project, and to devote the revenue and the proceeds from taxes upon predominantly tourism related retail receipts and from tourism development fees to the purposes as herein defined.

"Tourist industry" means the industry consisting of private and public organizations which directly or indirectly provide services and products to nonresidents and residents who travel to and in New Jersey for recreation and pleasure.

"Vendor" means a person selling or hiring property or services to another person, the receipts or charges from which are taxable by an ordinance authorized under P.L.1992, c.165 (C.40:54D-1 et seq.).

"Wildwood convention center facility" means the project authorized by paragraph (12) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

2. Section 4 of P.L.1992, c.165 (C.40:54D-4) is amended to read as follows:

C.40:54D-4 Tourism improvement and development districts.

4. a. Two or more contiguous municipalities located in a county of the sixth class may, by ordinances of a substantially similar nature, create a tourism improvement and development district for the purpose of increasing public revenue and to levy taxes upon predominantly tourism related retail

receipts at a rate not to exceed 2 percent, and to devote the proceeds therefrom for the purposes herein described. Municipal ordinances so adopted shall not affect which retail receipts are subject to the "Sales and Use Tax Act."

For the same purposes, the ordinances establishing the district shall also provide for the imposition of tourism development fees authorized pursuant to section 15 of P.L.1992, c.165 (C.40:54D-15). The taxes on predominantly tourism related retail receipts and tourism development fees so imposed shall be uniform throughout the district.

b. Notwithstanding any other law to the contrary, ordinances so adopted shall not be subject to referenda, and shall not be altered or repealed, except by mutual action of all such municipalities and then only upon the written approval of the State Treasurer and, so long as the sports authority shall own and be responsible for the construction and operation of the Wildwood convention center facility, upon the written approval of the sports authority. Each municipality which enters into the creation of the district shall covenant that the ordinance, or a condition imposed by statute that each municipality is required to meet, shall not be altered or repealed in such manner as to affect any bonds or other obligations pertaining to projects within the district which are outstanding. Any alteration or repeal, or attempted alteration or repeal, in violation of this subsection, whether before or after the effective date of P.L.1997, c.273 (C.40:54D-25.1 et al.) shall be null and void.

c. The district shall comprise all territory within the boundaries of the municipalities which create or enter into the district.

d. A contiguous municipality located in a county of the sixth class may, by such an ordinance, and with the mutual consent of the governing bodies of the municipalities which created the district, enter into the district so created after the date of the district's creation.

e. A copy of an ordinance adopted pursuant to this section shall be transmitted upon adoption or amendment to the State Treasurer. An ordinance so adopted or any amendment thereto shall provide that the retail receipts tax provisions of the ordinance or any amendment to the retail receipts tax provisions shall take effect on the first day of the first full month occurring 90 days after the date of transmittal to the State Treasurer.

3. Section 6 of P.L.1992, c.165 (C.40:54D-6) is amended to read as follows:

C.40:54D-6 Collection, administration of tax, determination, certification of revenues.

6. a. The director shall collect and administer any tax imposed pursuant to the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.) notwithstanding

the provisions of any other law or ordinance to the contrary. In carrying out the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.) the director shall have all the powers granted in P.L.1996. c.30 (C.54:32B-1 et seq.).

b. The director shall determine and certify to the State Treasurer on a monthly basis the amount of revenues collected in a district on predominantly tourism related retail receipts pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.). The State Treasurer, upon the certification of the director and upon the warrant of the State Comptroller, shall pay and distribute on a monthly basis to the fund established pursuant to section 13 of P.L.1992, c.165 (C.40:54D-13) the amount so determined and certified.

4. Section 13 of P.L.1992, c.165 (C.40:54D-13) is amended to read as follows:

C.40:54D-13 Reserve fund created.

13. There is created for a tourism improvement and development district established pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.), a reserve fund to be held by the State Treasurer, but not to exist in the State Treasury, to be the repository for monies paid to the State Treasurer pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.), and disbursed as provided herein.

5. Section 14 of P.L.1992, c.165 (C.40:54D-14) is amended to read as follows:

C.40:54D-14 Application of fund.

14. a. Until such time as the conditions set forth in subsection b. of this section are met, the revenues deposited by the State Treasurer in the fund shall be applied for the purposes of financing the provision, advertising, promotion, improvement and operation of the tourism project within the district, and the acquisition, maintenance, operation and support of the tourism project designated by the authority authorized to undertake those activities pursuant to section 18 of P.L.1992, c.165 (C.40:54D-18).

b. Commencing on that date which is the later of (1) July 1, 1993, or (2) six months prior to the first date on which any payment of principal or interest on any bonds or notes issued for, or any payment of rent under any lease entered into in connection with the acquisition, construction, reconstruction, maintenance, operation or support of a convention center facility or other tourism project to accomplish the purposes set forth in section 21 of P.L.1992, c.165 (C.40:54D-21), are required to be made from the revenues collected pursuant to section 4 of P.L.1992, c.165 (C.40:54D-4), the revenues thereafter retained by the State Treasurer pursuant to section 12 of P.L.1992, c.165 (C.40:54D-12), shall be applied

exclusively in accordance with the provisions of the resolution or resolutions authorizing the issuance of bonds for that tourism project, to the payment of principal of and interest on bonds so issued, the maintenance of necessary reserves and the allocation of monies for future debt service payments. On that date which is the later date determined pursuant to paragraph 1 or 2 of this subsection, all monies then accumulated in the fund shall be removed by the State Treasurer and the proceeds, with the interest thereon, shall be used for any of the purposes set forth in subsection a. of this section.

c. At the end of any full calendar year occurring after the date which is the later date determined pursuant to paragraph 1 or 2 of subsection b. of this section and after all payments coming due during that calendar year of principal and interest on authority bonds or notes issued for a tourism project have been made, and all obligations to the holders of those bonds have been met, including the maintenance of necessary reserves and the allocation of monies for future debt service payments, any balance remaining in the fund in that calendar year shall be applied to any deficiency between the operating expense budget and the anticipated operating revenues available for the following fiscal year to the entity operating the tourism project.

d. At the end of each full calendar year occurring after the date which is the later date determined pursuant to paragraph 1 or 2 of subsection b. of this section and after all payments for that year have been made from the fund pursuant to subsections b. and c. of this section, any monies remaining in the fund in that calendar year shall be used for the purposes set forth in subsection a. of this section.

e. Pending application to the purposes for which monies deposited in the fund may be used, the monies in the fund shall be invested by the State Treasurer pursuant to applicable regulations prescribed for the investment of State monies. Any income received from these investments shall be added to the fund from which earned, and used only for the purposes of the fund.

f. Notwithstanding any other law to the contrary, subsections a. through d. of this section shall not apply to any authority in existence on July 1, 1997 for the period of time beginning on the effective date of P.L.1997, c.273 (C.40:54D-25.1 et al.) and continuing thereafter until the 60th day following the date on which the State Treasurer certifies that all bonds or notes issued by the sports authority pursuant to section 12 of P.L.1991, c.375 (C.5:10-14.3) and section 18 of P.L.1997, c.273 (C.5:10-6.3) to finance the Wildwood convention center facility, together with interest thereon, have been fully met and discharged or provided for. During such period of time all revenues from a district with an authority in existence on July 1, 1997 shall be deposited by the State Treasurer in the

fund created pursuant to section 13 of P.L.1992, c.165 (C.40:54D-13) and shall be allocated as follows: 90 percent of the revenues shall be transferred by the State Treasurer to the sports authority for purposes in connection with the Wildwood convention center facility to be applied as set forth in subsection g. of section 6 of P.L.1971, c.137 (C.5:10-6) and the remaining 10 percent of the revenues shall be transferred by the State Treasurer to the Greater Wildwood Tourism Improvement Development Authority to be applied set forth in section 21 of P.L.1992, c.165 (C.40:54D-21).

6. Section 18 of P.L.1992, c.165 (C.40:54D-18) is amended to read as follows:

C.40:54D-18 "The Tourism Improvement and Development Authority."

18. a. Ordinances adopted to create a tourism improvement and development district pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) shall provide for the creation of a public body corporate and politic for the district, under the name and style of "the Tourism Improvement and Development Authority."

b. Copies of the ordinances for the creation of the authority or amendments thereof shall be filed in the office of the Secretary of State and in the office of the Division of Local Government Services in the Department of Community Affairs. A copy of the certified ordinance or amendment shall be admissible in evidence in any action or proceeding and shall be conclusive evidence of due and proper adoption and filing thereof. After filing in the office of the Secretary of State, a copy of the ordinance or amendment shall be published at least once in a newspaper published or circulating in the adopting municipalities, together with a notice stating the fact and date of its adoption and the date of first publication of the notice. If no action questioning the validity of the creation of the authority is commenced within 45 days after the first publication of the notice, then the authority shall be conclusively deemed to have been validly created and authorized to transact business and exercise powers pursuant to this act, P.L.1992, c.165 (C.40:54D-1 et seq.).

c. An authority so established shall be subject to the provisions of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), except that the creation of the authority shall not be subject to approval of the Local Finance Board in the Department of Community Affairs.

7. Section 19 of P.L.1992, c.165 (C.40:54D-19) is amended to read as follows:

C.40:54D-19 Dissolution of authority.

19. The governing bodies of the municipalities which created an authority pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) may by ordinance, dissolve the authority pursuant to the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), except that any authority in existence on July 1, 1997, shall not be dissolved prior to the date certified by the State Treasurer that all bonds or notes issued by the sports authority pursuant to section 12 of P.L.1991, c.375 (C.5:10-14.3) and section 18 of P.L.1997, c.273 (C.5:10-6.3) to finance the Wildwood convention center facility, together with interest thereon, have been full met and discharged or provided for. Any dissolution, or attempted dissolution, of any such authority in violation of this section, whether before or after the effective date of P.L.1997, c.273 (C.40:54D-25.1 et al.) shall be null and void.

8. Section 20 of P.L.1992, c.165 (C.40:54D-20) is amended to read as follows:

C.40:54D-20 Appointment of members.

20. a. After the expiration of the period of 45 days following the first publication of the creating ordinances, the governing body of each municipality joining in the creation of the tourism improvement and development district shall appoint the first members to the authority. Each municipality shall be entitled to appoint three members to the authority. Two of the three members so appointed shall be owners, or employees of vendors, for whom a regular part of a dominant line of their business generates retail receipts subject to taxation or who are subject to payment of municipal fees pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.). The remaining member appointed by each municipality shall be a resident of the municipality who is not such an owner or employee of a vendor. No member shall hold any elective public office.

b. The Commissioner of the Department of Commerce and Economic Development shall be an ex officio member of the authority.

c. Each member of the authority shall serve for a term of four years, except of the members initially appointed, two shall be appointed for a term of two years and one shall be appointed for a term of two years and one shall be appointed for a term of four years. Each member shall hold office for the term of the member's appointment and until the member's successor is appointed and qualified. A member shall be eligible for reappointment.

A 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. The commissioner may designate an employee of the department to represent the member at meetings of the authority. The designee of the member may lawfully vote and otherwise act on behalf of the member.

The designation shall be made annually in writing and delivered to the authority and shall be effective until revoked or amended by written notice delivered to the authority.

e. The authority, upon the first appointment of its members and thereafter at the same time in each year, shall annually elect from among its members, a chairman and a vice-chairman who shall hold office until a successor is elected. The authority may also appoint and employ, without regard to the provisions of Title 11A of the New Jersey Statutes, an executive director and other agents and employees as the authority may require, and shall determine their qualifications, terms of office, duties and compensation thereof.

f. The powers of he authority shall be vested in the voting members thereof in office from time to time; a majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of the full membership shall be necessary for any action taken by the authority unless the bylaws of the authority shall require a larger number. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

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

h. Each appointed member of the authority may be removed by the appointing authority for cause after a public hearing and may be suspended by the authority pending the completion of the hearing. Each member of the authority before entering upon the duties of office shall take and subscribe an oath to perform the duties of the office faithfully, impartially, prudently and justly to the best of the member's ability. A record of these oaths shall be filed in the office of the Secretary of State.

9. Section 21 of P.L.1992, c.165 (C.40:54D-21) is amended to read as follows:

C.40:54D-21 Public purpose of authority.

21. The public purpose of an authority shall be to undertake a tourism project if it is necessary or useful to the economic development and public welfare of the residents and tourist industry of the creating municipalities, and to promote, advertise and enhance the attractiveness of the district to visitors and tourists; provided however, that such promotion, advertisement and enhancement shall not be undertaken by any authority with respect to

the Wildwood convention center facility unless any such authority is expressly authorized by the sports authority to undertake such activities. Except as otherwise provided in, and subject to any limitations in P.L.1997, c.273 (C.40:54D-25.1 et al.), an authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt an official common seal and alter it at its pleasure;

c. To maintain an office at a place or places within the district as it may designate;

d. To sue and be sued in its own name;

e. To acquire from any predecessor owner or operator, and to construct, reconstruct, maintain, and operate a convention center facility or other tourism project;

f. To issue bonds or notes of the authority for the purposes of this act and to provide for the rights of the holders thereof all as provided in the "Local Bond Law," N.J.S.40A:2-1 et seq.;

g. To set and collect rents, fees, charges or other payments for the lease, use, occupancy or disposition of a convention center facility or other tourism project acquired, constructed or reconstructed by the authority pursuant to the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.). Any revenues collected shall be available to the authority for use in furtherance of any of the purposes of this act;

h. To acquire, lease as lessee or lessor, own, rent, use, hold and dispose of real property and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this act;

i. To acquire in the name of the authority by purchase, gift or otherwise, on terms and conditions and in a manner as the authority may deem proper, or by the exercise of the power of eminent domain except as against the State of New Jersey, any land and other property which the authority may determine is necessary for the construction, reconstruction, maintenance, operation or support of tourism projects pursuant to the provisions of this act, P.L.1992, c.165 (C.40:54D-1 et seq.) or parts thereof or rights therein, and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon abutting property to preserve and protect same;

j. To grant by franchise, lease or otherwise, the use of any property owned and controlled by the authority to any person for the consideration and for the period or periods of time and upon terms and conditions as are agreed upon;

k. To apply for, receive and accept from the United States of America or any agency thereof, or the State and any subdivision thereof, subject to the approval of the State Treasurer, grants for or in aid of the planning,

acquisition or construction of a convention center facility or other tourism project, and to receive and accept aid or contributions from any other public or private source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which those grants and contributions may be made;

l. Subject to the limitations of this act, to determine the location, type and character of its tourism project and all other matters in connection therewith;

m. To enter into contracts or agreements with any entity for the entity to issue bonds or notes on behalf of the authority and to make payments to the entity to secure those bonds or notes;

n. To procure and enter into contracts for any type of insurance and indemnify against loss or damage to property from any cause, including the loss of use and occupancy and business interruption, death or injury of any person, employee liability, any act of any member, officer, employee or servant of the authority, whether part-time, compensated or uncompensated, in the performance of the duties of office or employment or any other insurable risk or any other losses in connection with property, operations, assets or obligations in any amounts and from any insurers as are deemed desirable. In addition, the authority may carry its own liability insurance;

o. To promote and advertise the district and to promote the use of the tourism projects by tourists and visitors to the district; and

p. To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in P.L.1992, c.165 (C.40:54D-1 et seq.).

10. Section 22 of P.L. 1992, c. 165 (C.40:54D-22) is amended to read as follows:

C.40:54D-22 Applicability of "Local Public Contracts Law."

22. All purchases, contracts or agreements made by the authority pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) shall be made or awarded pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.).

11. Section 23 of P.L. 1992, c. 165 (C.40:54D-23) is amended to read as follows:

C.40:54D-23 Maintenance of projects.

23. Any convention center facility or other tourism project of the authority shall be maintained and kept in the condition and repair as the authority determines, or the bond covenants require. A project or any part

thereof may be policed and operated by employees and other persons as the authority may employ or authorize.

12. Section 25 of P.L.1992, c.165 (C.40:54D-25) is amended to read as follows:

C.40:54D-25 Issuance of bonds, notes.

25. a. Except as otherwise provided in section 18 of P.L.1997, c.273 (C.5:10-6.3), the authority may from time to time issue its bonds or notes for any of its purposes under this act, including the payment, funding, or refunding of principal or interest or redemption premiums on any bonds or notes issued by it whether the bonds or notes or interest to be funded or refunded have or have not become due. Bonds and notes so issued shall be subject to the "Local Bond Law," N.J.S.40A:2-1 et seq. and the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

b. Except as otherwise provided in section 18 of P.L.1997, c.273 (C.5:10-6.3) and except as may be otherwise expressly provided by the authority, every issue of bonds or notes shall be general obligations payable out of any monies or revenues of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. The authority may issue the types of bonds or notes as it may determine, including, without limiting the generality of the foregoing, bonds or notes on which the principal and interest are payable: (1) exclusively from the income and revenues derived from a tax upon retail receipts of any vendor located within the tourism improvement and development district created pursuant to the provisions of section 4 of P.L.1992, c.165 (C.40:54D-4); (2) exclusively from the income and revenues from rates, charges and fees of a convention center facility or other tourism project operated by the authority, whether or not the project is financed in whole or in part with the proceeds of the bonds or notes; or (3) from its revenues generally. Any bonds or notes may be additionally secured by a pledge of any grant or contribution from the federal government or any State or any agency or public subdivision thereof or any person or a pledge of any monies, income or revenues of the authority from any source whatsoever. In addition, the authority may, in anticipation of the issuance of the bonds or the receipt of appropriations, grants, reimbursements or other funds, including without limitation grants from the federal government, issue notes, the principal of or interest on which, or both, shall be payable out of the proceeds of notes, bonds or other obligations of the authority or appropriations, grants reimbursements or other funds or revenues of the authority.

13. Section 27 of P.L.1992, c.165 (C.40:54D-27) is amended to read as follows:

C.40:54D-27 Report filed with Local Finance Board.

27. a. Within 30 days after the issuance of any bonds or notes by the authority pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.), the authority shall file a report with the Local Finance Board setting forth, if applicable, the principal amount of bonds or notes issued and the annual payments of principal and interest to be made on the bonds or notes.

b. At least 90 days prior to the date which is the later date determined pursuant to paragraph 1 or 2 of subsection b. of section 14 of P.L.1992, c.165 (C.40:54D-14), and subject to subsection f. of that section an authorized officer of the authority issuing bonds or notes for, or entering into a lease in connection with, the acquisition, construction, reconstruction or improvement of the convention center facility or other tourism project shall notify the Director of the Division of Local Government Services in the Department of Community Affairs of the precise date determined pursuant to subsection b. of section 14 of P.L.1992, c.165, the amounts payable thereafter: (1) on account of the principal and interest on, or reserve funding requirements on, those bonds or notes; or (2) as rent under the lease, and the name and address of the paying agent or agents for the bonds or notes, or of the lessor under the lease. The director shall, upon the receipt of that notice, verify the facts contained therein, and certify the same to the State Treasurer.

c. Following the certification in subsection b. of this section and upon the date set forth therein, the State Treasurer shall thereafter pay prior to each payment date from the fund the amounts certified to be paid: (1) to the appropriate paying agent or agents for the principal and interest on, or reserve funding requirements on, the bonds or notes; or (2) to the lessor as rent under the lease.

14. Section 29 of P.L.1992, c.165 (C.40:54D-29) is amended to read as follows:

C.40:54D-29 Pledge of State to bondholders.

29. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued by an authority pursuant to the provisions of P.L.1992, c.165 (C.40:54D-1 et seq.) that the State will not limit or alter the rights or powers vested in an authority to acquire, construct, maintain and operate any project, or to perform and fulfill the terms of any agreement made with the holders of the bonds or notes, or to fix, establish, charge and collect rates, fees or other charges as may be

convenient or necessary to produce sufficient revenues to meet all expenses of that authority and fulfill the terms of any contract with another entity or any agreement made with the holders of the bonds or notes, and that the State will not in any way impair the rights or remedies of the holders or modify in any way the exemptions from taxation provided for in this act, until the bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged or provided for.

15. Section 30 of P.L.1992, c.165 (C.40:54D-30) is amended to read as follows:

C.40:54D-30 Immunity from personal liability on bonds.

30. Neither the members of an authority nor any person executing bonds or notes issued pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) shall be liable personally on the bonds or notes by reason of the issuance thereof.

16. Section 35 of P.L.1992, c.165 (C.40:54D-35) is amended to read as follows:

C.40:54D-35 Property exempt from levy, sale.

35. Except as otherwise provided in section 17 of P.L.1997, c.273 (C.40:54D-25.1), all property of the authority, except any property which is subjected to a lien to secure any bonds or notes, shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against the same, nor shall any such judgment against the authority be a charge or lien upon its property; provided that nothing herein contained shall apply to or limit the rights of the holders of any bonds or notes to pursue any remedy for the enforcement of any pledge or lien.

C.40:54D-25.1 Transfer of assets, obligations, etc. to the sports authority.

17. a. The authority in existence on July 1, 1997 shall cooperate with the sports authority in the defeasing, refunding or refinancing of any outstanding obligations of such authority as authorized by this section and the authority shall take such steps as are necessary in order to implement such defeasing, refunding or refinancing.

b. On the 60th day following the effective day following the effective date of P.L.1997, c.273 (C.40:54D-25.1 et al.):

(1) All right, title, and interest of the authority in existence on July 1, 1997 in any of its assets, funds and property, both real and personal, as well as those obligations as set forth in paragraph (4) of this subsection, are

hereby transferred to the sports authority to be held, used and applied for the purposes set forth herein.

(2) In addition to the powers vested in the sports authority pursuant to P.L.1971, c.137 (C.5:10-1 et seq.), all powers and duties which hitherto were exercised by the authority in existence on July 1, 1997 with respect to any property transferred pursuant to this section may henceforth be exercised by the sports authority.

(3) All monies transferred pursuant to this act shall be deposited in the fund created by the sports authority pursuant to subsection g. of section 6 of P.L.1971, c.137 (C.5:10-6).

(4) The sports authority shall assume such obligations of the authority as are necessary for the acquisition, construction and operation of the Wildwood convention center facility which obligations shall be as specified in a contract between the authority and the sports authority. Any such obligations of the authority which are assumed by the sports authority shall be payable from the fund created by the sports authority pursuant to subsection g. of section 6 of P.L.1971, c.137 (C.5:10-6) or from the proceeds of bonds or notes issued pursuant to section 12 of P.L.1991, c.375 (C.5:10-14.3) and section 18 of P.L.1997, c.273 (C.5:10-6.3).

C.5:10-6.3 Sports authority's operation of Wildwood convention center facility.

18. The sports authority is hereby authorized to acquire, finance through the issuance of bonds or notes, construct, operate and perform such other functions as provided in P.L.1971, c.167 (C.5:10-1 et seq.) regarding the Wildwood convention center facility authorized herein. The sports authority shall have sole responsibility to provide for the acquisition, financing through the issuance of bonds or notes and construction and operation of the Wildwood convention center facility within the district. Further, the authority in existence on July 1, 1997 may advise the sports authority with regard to the Wildwood convention center facility.

19. Section 3 of P.L.1971, c.137 (C.5:10-3) is amended to read as follows:

C.5:10-3 Definitions.

3. The following words or terms as used in this act shall have the following meaning unless a different meaning clearly appears from the context:

a. "Act" means this New Jersey Sports and Exposition Authority Law.

b. "Authority" means the New Jersey Sports and Exposition Authority created by section 4 of the act.

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

d. "Meadowlands complex" means the sports and exposition project authorized by paragraph (1) of subsection a. of section 6 of the act.

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

f. "Projects" means and includes any project which the authority is authorized to undertake pursuant to subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

g. "State" means the State of New Jersey.

h. "Hackensack meadowlands" means the Hackensack Meadowlands District as delineated in P.L.1968, c.404, s.4 (C.13:17-4).

i. "Meadowlands Commission" means the Hackensack Meadowlands Development Commission created by P.L.1968, c.404.

j. "Racing Commission" means the New Jersey Racing Commission created by P.L.1940, c.17.

k. "Credit agreement" as used herein includes loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, interest exchange agreement, insurance contract, surety bond, commitment to purchase bonds, purchase or sale agreements, or commitments or other contracts or agreements authorized and approved by the authority in connection with the authorization, issuance, security, or payment of bonds.

l. "Luxury tax" means the tax levied and collected by the city of Atlantic City, county of Atlantic, pursuant to P.L.1947, c.71 (C.40:48-8.15 et seq.).

m. "Atlantic City convention center project" means the project authorized by paragraph 9 of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

n. "Wildwood convention center facility" means the project authorized by paragraph (12) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

o. "Tourism related tax" means the tax levied and collected pursuant to P.L.1992, c.165 (C.40:54D-1 et seq.) for the tourism improvement and development district which includes the Wildwood convention center facility.

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

C.5:10-6 Authority projects.

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

to carry out the public purposes set forth in P.L.1971, c.137 (C.5:10-1 et seq.):

(1) To establish, develop, construct, operate, acquire, own, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, a project to be located in the Hackensack meadowlands upon a site not to exceed 750 acres and upon a site or sites outside of that acreage, but either immediately contiguous thereto or immediately across any public road which borders that acreage, consisting of one or more stadiums, coliseums, arenas, pavilions, stands, field houses, playing fields, recreation centers, courts, gymnasiums, clubhouses, a racetrack for the holding of horse race meetings, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to a complex suitable for the holding of athletic contests or other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings, and all other structures and appurtenant facilities, related to, incidental to, necessary for, or complementary to the purposes of that project or any facility thereof.

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

(3) To establish, develop, construct, acquire, lease or own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects located within the State of New Jersey, but outside of the meadowlands complex, consisting of aquariums and the buildings, structures, facilities, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to those aquariums, such

project to include driveways, roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and facilities, and equipment, furnishings and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of that project or any facility thereof. To provide for a project authorized under this paragraph:

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

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

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

(5) To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects consisting of (a) racetrack facilities located within the State of New Jersey, but outside of the meadowlands complex, (b) their contiguous properties, and (c) their auxiliary facilities, including, without limitation, pavilions, stands, field houses, clubhouses, training tracks for horses, racetracks for the holding of horse race meetings, fairgrounds, other exposition facilities, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to

a complex suitable for the holding of horse race meetings, other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, equipment, furnishings, and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of any of those projects or any facility thereof.

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

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

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

(8) To establish, develop, acquire, construct, reconstruct, improve and otherwise effectuate for transfer to, and for use and operation by, Rutgers, the State University, either directly or indirectly through lessees, licensees

or agents, facilities located or to be located on property owned, leased, or otherwise used by Rutgers, the State University, consisting of an upgraded and expanded football stadium and a new track and field, soccer and lacrosse facility and the buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to the football stadium and track and field, soccer and lacrosse facility, such facilities to include driveways, access roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities; provided however that construction shall not begin on the expansion of the seating capacity of Rutgers Stadium until the Commissioner of Transportation certifies that all funding necessary to complete the Route 18 project in Piscataway Township has been appropriated and construction has begun on the Route 18 project in Piscataway Township under the Department of Transportation's capital program.

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

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

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

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

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

(11) To provide funding to public or private institutions of higher education in the State to establish, develop, acquire, construct, reconstruct or improve facilities located or to be located on property owned, leased, or otherwise used by an institution, consisting of sports facilities and the buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to those sports facilities, such facilities to include driveways, access roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities.

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

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

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

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

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

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

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

c. Revenues, moneys or other funds, if any, derived from the operation or ownership of the meadowlands complex, including the conduct of horse race meetings, shall be applied, in accordance with the resolution or resolutions authorizing or relating to the issuance of bonds or notes of the authority, to the following purposes and in the following order:

(1) The costs of operation and maintenance of the meadowlands complex and reserves therefor;

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

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

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

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

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

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

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

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

e. Revenues, moneys or other funds, if any, derived from the operation, ownership, or leasing of a baseball stadium project or an office complex project located on the site of a baseball stadium shall be applied for the purposes, in the manner and subject to the conditions as shall be provided in the resolution authorizing or relating to the issuance of bonds or notes of the authority for the purposes of a baseball stadium project or an office complex project located on the site of a baseball stadium, if any, and

the balance, if any, remaining after such application shall be applied, to the extent not contrary to or inconsistent with the resolution, to the following purposes and in the following order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Section 12 of P.L.1991, c. 375 (C.5:10-14.3) is amended to read as follows:

C.5:10-14.3 Sports Authority Fund.

12. a. The State Treasurer shall establish a special fund to be known as the "Sports Authority Fund" and shall pay into the fund amounts from the

General Fund as shall be necessary to pay the principal and interest on bonds or notes of the authority issued pursuant to this section and to pay any amounts due from the authority under any credit agreement entered into by the authority in connection with the bonds or notes, provided that all payments from the General Fund shall be subject to and dependent upon appropriations made from time to time for those purposes.

b. (1) The State Treasurer and the authority are authorized to enter into agreements as shall be necessary to effectuate the purposes of this section, including without limitation, provisions for securing the payment of bonds or notes issued by the authority pursuant to subsection d. of this section and the interest thereon and providing for the investment of moneys in the fund; provided that the agreements shall be subject to approval by the presiding officers of both houses of the Legislature, and provided further that when the purposes of this section have been satisfied, and upon the earlier of:

(a) the certification by the State Treasurer that the revenues of the authority are sufficient to satisfy the requirements of paragraphs (1), (2), (3), (4), (5) and (6) of subsection c. of section 6 of P.L.1971, c.137 (C.5:10-6) for the term of bonds or notes issued pursuant to subsection d. of this section; or

(b) the satisfaction of the requirements for the payment of bonds or notes issued pursuant to P.L.1991, c.375 (C.5:10-3 et al.) or pursuant to P.L.1997, c.273 (C.40:54D-25.1 et al.); the State Treasurer and the authority shall not, except for the refunding of bonds or notes issued pursuant to subsection d. of this section which produces debt service savings, enter into any further agreements regarding payments by the State Treasurer into the "Sports Authority Fund" for any reason, including but not limited to, the financing or restructuring of the debt of the authority.

(2) The agreements shall indicate the nature and scope of the projects to be financed pursuant to this section.

(3) The agreements shall provide that with respect to the Atlantic City convention center project, the authority shall review all existing expert studies that present options as to the scope and nature of the project and the linkages between the project and the economic development of Atlantic City. Based upon its analysis of the available studies and such other expert studies as the authority may authorize, the authority shall report to the Legislature and include in the minutes of the authority its proposal for the development of the Atlantic City convention center. The report shall include an explanation for the selection of the project option proposed by the authority.

c. Notwithstanding anything to the contrary in P.L.1991, c.375 (C.5:10-3 et al.), if and to the extent provided in any agreement between the State Treasurer and the authority, all or part of the revenues of the authority,

other than luxury tax revenues or revenues of the Atlantic City convention center project and other than tourism related tax revenues or other revenues of the Wildwood convention center facility, in excess of the requirements of the resolutions authorizing or relating to the issuance of any of the authority's bonds or notes, except those issued pursuant to this section, shall be paid into the General Fund in repayment to the State for amounts previously paid by the State pursuant to this section with respect to the payment of principal and interest on bonds or notes issued for any of the purposes set forth in this section, except the purposes set forth in paragraphs (3), (4), (5), and (8) of subsection d. of this section, and any payments on account of any credit agreements with respect to the bonds or notes. Except as otherwise provided in this section, bonds or notes of the authority issued pursuant to this section shall be authorized, sold and issued in the manner and be entitled to the benefits, protection and provisions as apply to bonds and notes of the authority authorized to be issued pursuant to P.L.1971, c.137 (C.5:10-1 et seq.).

d. In addition to its other powers to issue bonds and notes, the authority shall have power to issue from time to time bonds and notes payable from amounts in the Sports Authority Fund established pursuant to subsection a. of this section, as follows:

(1) To provide sufficient funds to refund from time to time outstanding bonds or notes of the authority issued for the meadowlands complex or the Monmouth racetrack project authorized pursuant to paragraph (5) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6), whether or not the bonds or notes or interest thereon have become due, to provide for the establishment of funds or reserves to secure payment of the bonds or notes or any other bonds or notes issued or to be issued for those purposes or interest thereon, and to provide for the payment of all other costs or expenses of the authority incident to or necessary to carry out the refunding; provided that the refunding bonds issued at any time pursuant to this paragraph shall not exceed that amount estimated to be necessary so that subsequent to the refunding, the revenues from the meadowlands complex or the Monmouth racetrack project, as the case may be, shall be sufficient to pay all costs payable from those revenues, as shall be estimated in a determination by the authority made in accordance with the agreement between the authority and the State Treasurer;

(2) To finance or refinance a capital program or programs for the meadowlands complex and the Monmouth racetrack project authorized pursuant to paragraph (5) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6), adopted by the authority to provide for major repairs, reconstruction and improvements which are legally mandated or otherwise needed to meet environmental or safety requirements, to prevent a loss of revenues, to

augment revenues or to continue or enhance the operations of any of the facilities thereof, or to upgrade any of the facilities thereof;

(3) To provide for the financing or refinancing of the facilities for Rutgers, The State University pursuant to paragraph (8) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6);

(4) To provide for the financing or refinancing of the Atlantic City convention center project;

(5) To finance or refinance feasibility studies for public projects consistent with the purposes of the authority;

(6) To provide for the financing or refinancing of any other project of the authority, but only if and to the extent expressly authorized by law enacted subsequent to the enactment of P.L.1991, c.375 (C.5:10-3 et al.);

(7) To provide for the financing of the facilities at institutions of higher education pursuant to paragraph (11) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6), based upon a list of projects recommended by the Commission on Higher Education following a competitive application process, provided that the aggregate financing of the projects undertaken pursuant to this paragraph shall not exceed $5,000,000; and

(8) To provide for the financing or refinancing of a convention center facility in the City of Wildwood pursuant to paragraph (12) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6).

e. Bonds and notes authorized pursuant to this section shall be special obligations of the authority payable as herein provided. Bonds and notes shall not be deemed to constitute a debt or liability of the State or a pledge of the faith and credit of the State but are dependent for repayment upon appropriations as provided by law from time to time. These bonds and notes and the interest thereon may also be payable from the proceeds thereof set aside for that purpose and income accruing therefrom.

22. This act shall take effect immediately.

Approved December 24, 1997.

CHAPTER 274

AN ACT permitting establishment of joint municipal lien pools and supplementing Title 54 of the Revised Statutes.

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

C.54:5-130 Creation of joint municipal lien pool permitted.

1. a. The governing bodies of two or more municipalities, by adoption of parallel resolutions, may create a joint municipal lien pool for the purpose of undertaking bulk sales of municipal liens, the public sale of liens at auction or the issuance of notes and bonds backed solely by municipal liens held by the joint municipal lien pool through the adoption of resolutions for that purpose. A joint municipal lien pool created pursuant to this section shall be known as the "(name of region or other identifying characteristic) Joint Municipal Lien Pool."

b. (1) The powers of a joint municipal lien pool shall be vested in a board of directors which shall consist of one member from each participating municipality, who shall serve without compensation. The member shall be either the municipal tax collector or such other resident of the municipality as the mayor selects. The member shall serve at the pleasure of the mayor.

(2) The board of directors may delegate such authority as it deems appropriate to an executive committee of the board.

c. The members of the joint municipal lien pool shall establish procedures, times and locations for meetings as may be required for the operation of the pool.

d. Following the creation of a joint municipal lien pool, any additional municipality may participate in the pool through the adoption of an authorizing resolution by that municipality, subject to the approval of all of the members of the board of directors of the pool.

e. Prior to the commencement of its operations a joint municipal lien pool shall adopt bylaws to govern the conduct of its affairs. The bylaws shall include provisions regarding the responsibilities and obligations of the members of the pool, the termination of the joint municipal lien pool or the withdrawal of a member from the pool upon satisfaction by the member of all financial obligations to the pool. The bylaws shall be submitted to the Local Finance Board for approval. The contents of the bylaws shall be as determined necessary by the members of the pool and as may be required by the Local Finance Board. The Local Finance Board may approve the bylaws or require the adoption of specific changes for approval. Upon approval, a copy of the bylaws shall be filed in the Office of the Secretary of State and with the Director of the Division of Local Government Services. Upon proof of such filings, the joint municipal lien pool shall, in any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract or obligation or act of the joint municipal lien pool, be conclusively deemed to have been lawfully and properly created, organized and established and authorized to transact business and exercise its powers under this act. Copies of the filing, duly certified by the Secretary

of State, shall be admissible in evidence in any suit, action or proceeding and shall be conclusive evidence of due and proper filing thereof.

C.54:5-131 Powers of joint municipal lien pool.

2. The powers of a joint municipal lien pool created and operating pursuant to section 1 of P.L.1997, c.274 (C.54:5-130) shall be as follows:

a. To accept transfers of municipal liens from member municipalities.

b. To sell municipal liens in bulk and to issue bonds and notes, using municipal liens held by the joint municipal lien pool as collateral,on behalf of its members, upon the approval of the Local Finance Board.

c. To assess initial and continuing membership fees to fund the operations of the joint municipal lien pool, such fees to be refunded from proceeds of sales of liens.

d. To create special purpose pools of certain liens, subject to approval of the Local Finance Board.

e. To employ or contract with professionals, such as administrators, trustees and other service providers, on such terms as the board of directors of the pool deems appropriate, to manage the affairs of the pool and to sell pooled liens and/or arrange for their use as collateral for bonds or notes.

f. To contract for the purchase of supplies and other such needs as the pool may require, including, but not limited to, acquisition of office space and the hiring of clerical and secretarial employees.

g. Notwithstanding any other provisions of law to the contrary, the joint municipal lien pool shall employ or contract with a person holding a tax collector certificate pursuant to P.L.1979, c.384 (C.40A:9-145.1 et seq.), to perform those functions and responsibilities normally performed by a municipal tax collector with regard to municipal liens.

C.54:5-132 Municipal liens defined; exceptions.

3. For the purposes of P.L.1997, c.274 (C.54:5-130 et seq.), municipal liens means municipal liens as defined under the "tax sale law," R.S.54:5-1 et seq., except that no lien for taxes shall be transferred to a joint municipal lien pool unless the taxes that are the basis for that lien continue to be delinquent after the tenth day of the eleventh month of the fiscal year of the municipality for which those taxes were due and payable.

C.54:5-133 Laws applicable to operation of pool.

4. The operations of a joint municipal lien pool shall be subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the Open Public Meetings Act, P.L.1975, c.231 (C.10:4-6 et seq.), and the "Local Fiscal Affairs Law," N.J.S.40A:5-1 et seq.

C.54:5-134 Transfer of municipal lien.

5. a. No municipal lien shall be transferred to a joint municipal lien fund unless the record owner of the property subject to the lien has first been sent notice, by regular and certified mail, of the intended transfer and been given an opportunity to redeem the lien at least 10 days prior to the transfer.

b. A municipal lien transferred to a joint municipal lien pool shall remain the property of the municipality transferring the lien until actually sold by the pool. Joint municipal lien pools shall not own or foreclose upon municipal liens. The sale or arrangement for use as collateral for a bond or note of a municipal lien shall not affect redemption rights or the existing foreclosure process.

C.54:5-135 Execution of lien certificates.

6. A joint municipal lien pool may act on behalf of any member municipal tax collector to execute lien certificates as part of a sale. All interests and penalties otherwise due shall be paid to the municipality in cash or notes up to and until the time the liens are sold or used as collateral for a bond or note.

C.54:5-136 Operating plan filed by joint municipal lien pool.

7. Prior to any initial bulk sale, public sale at auction or arrangement for use as collateral for a bond or note of municipal liens by a joint municipal lien pool, the pool shall file an operating plan for review and approval of the Local Finance Board. The operating plan shall include the procedure by which the sale, auction or issuance of bonds or notes shall be accomplished along with a method of distribution of revenues that exceed the costs of operating the activities of the pool. The Local Finance Board shall ensure that the operating plan is fiscally prudent, that the fees and costs to be incurred, including those for professional contracts, are appropriate and reasonable, and that the plan meets such other criteria as the board deems necessary.

C.54:5-137 Rules, regulations, orders.

8. The Director of the Division of Local Government Services in the Department of Community Affairs may adopt rules and regulations and issue orders, as necessary, to effectuate the purposes of this act.

9. This act shall take effect immediately.

Approved December 24, 1997.

CHAPTER 275

AN ACT establishing the Ticket Brokering Study Commission.

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

1. There is established the Ticket Brokering Study Commission, which shall consist of nine members as follows: two members of the Senate, to be appointed by the President thereof, who shall not be of the same political party; two members of the General Assembly, to be appointed by the Speaker thereof, who shall not be of the same political party; and the Director of the Division of Consumer Affairs or his designee. The following members shall be appointed by the Governor: a representative of ticket brokers or agents; a representative of a group or association representing consumers; and two representatives of the general public.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made. Members of the commission shall serve without compensation, but may be reimbursed for the necessary expenses incurred in the performance of their duties to the extent that funds are made available for this purpose.

2. The commission shall organize as soon as possible after the appointment and qualification of its members. The members of the commission shall elect a chairperson from among the membership and a secretary, who need not be a member of the commission.

3. The commission shall conduct a study comparing the impact of a regulated and deregulated ticket brokering market on the cost and availability of tickets to entertainment events. As part of this assessment, the commission shall determine whether a deregulated market will cause ticket prices and availability to consumers to significantly increase or decrease; whether it is in the best interests of the consumer to establish a permanent deregulated market for the resale of entertainment tickets or to maintain some regulatory oversight; and, whether a deregulated market or regulated market would increase attendance at New Jersey entertainment events. The commission also shall determine how to best ensure the public's equal access to tickets.

4. The commission shall be entitled to request the assistance and services of the employees of any State, county or municipal department, board, bureau, commission or agency which it may require and as may be available to it for its purposes, and to employ such stenographic and clerical assistants and incur traveling and other miscellaneous expenses as necessary to perform its duties and as may be within the limits of funds appropriated or otherwise made available to it for its purposes.

5. The commission may meet and hold hearings at such places as it shall designate and shall report its findings and recommendations to the Governor and the Legislature within four months of the effective date of this act, accompanied by any legislative bills which it may desire to recommend for enactment.

6. This act shall take effect immediately.

Approved December 24, 1997.

CHAPTER 276

AN ACT concerning securities 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 30 of P.L.1967, c.93 (C.49:3-47) is amended to read as follows:

C.49:3-47 Title amended; "act" defined.

30. This act amending and supplementing the "Uniform Securities Law (1967)" shall be known and may be cited as the "Uniform Securities Law (1997)." "Act" as used in this revision means this 1997 act amending and supplementing the "Uniform Securities Law (1967)."

2. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read as follows:

C.49:3-49 Definitions.

2. When used in this act, unless the context requires otherwise:

(a) "Bureau" means the agency designated in subsection (a) of section 19 of P.L.1967, c.93 (C.49:3-66);

(b) "Agent" means any individual other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by paragraph (1), (2), (3), or (11) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50); (2) effecting transactions exempted by subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50); (3) effecting transactions with

existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State; or (4) a broker-dealer in effecting transactions in this State limited to those transactions described in paragraph (2) of subsection (h) of section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o(h)(2); or (5) such other persons not otherwise within the intent of this subsection (b), as the bureau chief may by rule or order designate. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition. The bureau chief may by rule or order, as to any transaction, waive the requirement of agent registration. The bureau chief may by rule define classes of persons as "agents," if those persons are regulated as "agents" by the Securities and Exchange Commission or any self-regulatory organization established pursuant to the laws of the United States;

(c) "Broker-dealer" means any person engaged in the business of effecting or attempting to effect transactions in securities for the accounts of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a person who effects transactions in this State exclusively in securities described in paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50), (4) a bank, savings institution, or trust company, or (5) a person who effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees or (iv) such other persons not otherwise within the intent of this subsection (c), as the bureau chief may by rule or order designate;

(d) "Capital" shall mean net capital, as defined and adjusted under the formula established by the Securities and Exchange Commission in Rule 15c3-1, 17 C.F.R. s.240.15c3-1, made pursuant to the "Securities Exchange Act of 1934," prescribing a minimum permissible ratio of aggregate indebtedness to net capital as such formula presently exists or as it may hereafter be amended;

(e) "Fraud," "deceit," and "defraud" are not limited to common-law fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the usual construction placed on these terms and accepted in courts of law and equity, shall include the following, provided, however, that any promise, representation, misrepresentation or omission be made with knowledge and with intent to deceive or with reckless disregard for the truth and results in a detriment to the purchaser or client of an investment adviser:

(1) Any misrepresentation by word, conduct or in any manner of any material fact, either present or past, and any omission to disclose any such fact;

(2) Any promise or representation as to the future which is beyond reasonable expectation or is unwarranted by existing circumstances;

(3) The gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable, unreasonable or in violation of any law, regulation, rule, order or decision of the Securities and Exchange Commission, or the bureau chief; or to the extent that such law, regulation, rule or order directly applies to the person involved, the gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be in violation of any law, regulation, rule, order or decision of any other state or Canadian securities administrator, or any self-regulatory organization established pursuant to the laws of the United States;

(4) Generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security or investment advisory services as to the nature of any transaction or the value of such security;

(5) Any artifice, agreement, device or scheme to obtain money, profit or property by any of the means herein set forth or otherwise prohibited by this act;

(f) "Guaranteed" means guaranteed as to payment of principal, interest or dividends;

(g) (1) "Investment adviser" means:

(i) any person who, for direct or indirect compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, selling or holding securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; and

(ii) any financial planner and other person who provides investment advisory services to others for compensation and as part of a business or who holds himself out as providing investment advisory services to others for compensation.

(2) "Investment adviser " does not include:

(i) a bank, savings institution, or trust company;

(ii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice or conduct of the profession and who does not hold himself out as providing investment advisory

or financial planning services, and who receives no special compensation for those investment advisory or financial planning services;

(iii) a broker-dealer registered under this act;

(iv) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(v) a person whose advice, analyses, or reports relate only to securities exempted by paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967, c.93 (C.49:3-50);

(vi) a person whose only clients in this State are other investment advisers, any person that is registered as an "investment adviser" under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, or excluded from the definition of an "investment adviser" under paragraph (11) of subsection (a) of section 202 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11), broker-dealers, banks, bank holding companies, savings institutions, trust companies, insurance companies, investment companies as defined in the "Investment Company Act of 1940," pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(vii) any person that is registered as an "investment adviser" under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, or excluded from the definition of an "investment adviser" under paragraph (11) of subsection (a) of section 202 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11);

(viii) an investment adviser representative; or

(ix) such other persons not otherwise within the intent of this subsection (g) as the bureau chief may by rule or order designate.

Subject to applicable federal law, the bureau chief may by rule limit the exclusions set out in this paragraph (2), except for those exclusions provided in subparagraph (i) of paragraph (2).

For purposes of this act, "investment advisory services" means those services rendered by an "investment adviser" as defined in this subsection;

(h) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest in oil, gas, or mining titles or leases, there is not considered to be any "issuer";

(i) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(j) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security or investment advisory services for value;

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of any offer to buy, a security or interest in a security or investment advisory services for value;

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subsection (j) do not include (i) any bona fide pledge or loan; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (iii) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (iv) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;

(k) "Savings institutions" shall mean any savings and loan association or building and loan association operating pursuant to the "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.), and any federal savings and loan association and any association or credit union organized under the laws of the United States or of any state whose accounts are insured by a federal corporation or agency;

(l) "Securities Act of 1933," 15 U.S.C. s.77a et seq.; "Securities Exchange Act of 1934," 15 U.S.C. s.78a et seq.; "Public Utility Holding Company Act of 1935," 15 U.S.C. s.79 et seq.; "Investment Advisers Act

of 1940," 15 U.S.C. s.80b-1 et seq.; "Investment Company Act of 1940," 15 U.S.C. s.80a-1 et seq.; and "Commodity Exchange Act," 7 U.S.C. s.1 et seq. mean the federal statutes of those names;

(m) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement, including, but not limited to, certificates of interest or participation in real or personal property; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest in an oil, gas or mining title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable number of dollars either in a lump sum or periodically for life or some other specified period;

(n) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;

(o) "Nonissuer" means secondary trading not involving the issuer of the securities or any person in a control relationship with the issuer;

(p) "Accredited investor" means any person who is an "accredited investor" as defined by subsection (15) of section 2 of the "Securities Act of 1933," 15 U.S.C. s.77b(15), and 17 C.F.R. s.230.215 and s.230.501 or any successor rule promulgated pursuant to that act.

The bureau chief may rule, or order, waive or modify the conditions in this subsection (p) and shall interpret and apply this subsection (p) so as to effectuate greater uniformity and coordination in federal-state securities registration exemptions;

(q) "Direct participation security" means a security which provides for flow-through tax consequences (tax shelter), regardless of the structure of the legal entity or vehicle for distribution, including, but not limited to, a security representing an interest in gas, oil, real estate, agricultural property, cattle, a condominium, a Subchapter S corporation, a limited liability company and all other securities of a similar nature, regardless of the industry represented by the security, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit-sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code of 1986, 26 U.S.C. s.401 and 403(a), and individual retirement plans under section 408 of the Internal Revenue Code of 1986, 26 U.S.C.s.408, tax sheltered annuities pursuant to the provisions of section 403(b) of the Internal Revenue Code of 1986, 26 U.S.C.s.403(b), and any

company including separate accounts registered pursuant to the "Investment Company Act of 1940;"

(r) "Blind pool"means an offering of securities in which, as to 65% or more of the proceeds of the offering, the prospectus discloses no specific purpose to which the proceeds of the offering will be put, or the prospectus discloses no specific assets to be purchased, projects to be undertaken, or business to be conducted, except for:

(1) an offering of securities to provide working capital for an operating company (as opposed to a development stage company);

(2) an offering of securities by an investment company registered under the "Investment Company Act of 1940," including a business development company; or

(3) an offering of securities by a small business investment company licensed by the Small Business Administration or a business development company within the meaning of the "Investment Advisers Act of 1940;"

(s) "Investment adviser representative" means any person, including, but not limited to, a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser registered under this act, or who has a place of business located in this State and is employed by or associated with a person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3; and who does any of the following:

(1) makes any recommendations or otherwise renders advice regarding securities if the person has direct advisory client contact;

(2) manages accounts or portfolios of clients;

(3) determines recommendations or advice regarding securities;

(4) solicits, offers or negotiates for the sale of or sells investment advisory services; or

(5) directly supervises any investment adviser representative or the supervisors of those investment adviser representatives. "Investment adviser representative" does not include a broker-dealer or an agent;

(t) "Institutional buyer" includes, but is not limited to, a "qualified institutional buyer" as defined in SEC Rule 144A, 17 C.F.R. s.230.144A;

(u) "Willful"or "willfully" means a person who acts intentionally in the sense that the person is aware of what he is doing;

(v) "Federal covered security" means any security described as a covered security in subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C.s.77r(b).

3. Section 3 of P.L.1967, c.93 (C.49:3-50) is amended to read as follows:

C.49:3-50 Exemptions of certain securities.

3. (a) The following securities are exempted from the provisions of sections 13 and 16 of P.L.1967, c.93 (C.49:3-60 and 49:3-63):

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank, savings institution, or trust company organized and supervised under the laws of any state or under the laws of the United States;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any savings institution;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State;

(6) (Deleted by amendment, P.L.1997, c.276.)

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (i) a registered holding company under the "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; (ii) regulated in respect to its rates and charges by a governmental authority of the United States or any state; or (iii) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange, and such other exchanges as the bureau chief may from time to time designate by rule or order; any security designated or approved for designation upon notice of issuance as a Nasdaq National Market security or any other national quotation system as the bureau chief from time to time may designate by rule or order; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription

rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(9) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan and securities issued pursuant to an employee benefit plan;

(12) (a) The bureau chief by rule or order, as to a particular security or class of securities, may adopt a securities exemption (i) that will further the objectives of compatibility with the exemptions from securities registration authorized by the "Securities Act of 1933" and uniformity among the states, or (ii) if the bureau chief determines that the public interest does not require registration.

(b) The following transactions are exempted from the provisions of sections 13 and 16 of P.L.1967, c.93 (C.49:3-60 and 49:3-63):

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) (i) Any nonissuer transaction by a broker-dealer registered under this act of a security, which has been outstanding in the hands of the public for at least 90 days prior to the transaction and which is sold at a price reasonably related to the current market price of such securities, provided:

(A) the securities are of an issuer for which all reports required to be filed by section 13 or 15(d) of the "Securities Exchange Act of 1934," 15 U.S.C. s.78m or s.78o(d) have been filed; or

(B) the following information is published in a recognized securities manual: the names of the issuer's officers and directors; a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale; and profit and loss statements for a period of not less than two years next prior to the date of the balance sheet or for the period of the issuer's existence as of the date of the balance sheet if the period of existence is less than two years;

(ii) The exemption provided in this paragraph (2) does not apply if the sale constitutes a distribution and is made for the direct or indirect benefit of an issuer or controlling persons of that issuer or if those securities

constitute the whole or part of an unsold allotment to, or subscription by, a broker-dealer as an underwriter of those securities. This exemption shall not be available for any securities which have been subject to a bureau stop order pursuant to section 17 of P.L.1967, c.93 (C.49:3-64), or a bureau order of denial of secondary trading pursuant to subsection (c) of this section;

(iii) Notwithstanding the foregoing, resale transactions by a sponsor of a unit investment trust registered pursuant to section 8 of the "Investment Company Act of 1940," 15 U.S.C. s.80a-8, shall be exempt from registration in this State.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the bureau chief may by rule require that the customer acknowledge upon a form prescribed by the bureau chief that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction on a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a single unit;

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the "Investment Company Act of 1940," pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction which results in sales to not more than 10 persons (other than those persons designated in paragraph (8) of subsection (b) of this section in this State during any period of 12 consecutive months, whether or not the seller or any of the buyers is then present in this State, if (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State, and (iii) the securities are not offered or sold by general solicitation or any general advertisement; but the bureau chief may by rule or order, as to any transaction or class of transactions, withdraw or further condition this

exemption, or increase or decrease the number of buyers permitted, or waive the conditions in subparagraph (i), (ii) or (iii) of this paragraph;

(10) Any offer or sale of a preorganization certificate or subscription if (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (ii) the number of subscribers does not exceed 10, and (iii) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State;

(12) Any transaction by or on behalf of an issuer, or other person, if (i) the seller has reasonable grounds to believe and, after making reasonable inquiry, believes, immediately prior to making any sale, that there are no more than 35 purchasers of the issue in this State during any period of 12 consecutive months and that each purchaser, who is not an accredited investor, either alone or with his representative has the knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment; (ii) a written offering statement or prospectus is furnished to each purchaser who is not an accredited investor containing substantially the same information as is required by subsection (b) of section 14 of P.L.1967, c.93 (C.49:3-61) or any applicable form of registration under federal law, and provided that if any purchaser is furnished with a written offering statement or prospectus, then all purchasers shall be furnished therewith; (iii) the securities shall not be offered or sold by general solicitation or any general advertisement; and (iv) a report of the offering is filed with the bureau not later than 15 days after the first sale of those securities in this State, setting forth the name and address of the issuer, the total amount of the securities sold under this paragraph (12), the price at which the securities were sold, the total number of purchasers of the securities, and the names and addresses of the purchasers of the securities who reside in this State, indicating the number and amount of the securities each purchased. Supplemental reports shall be filed promptly after the initial filing with the bureau whenever there are material changes to the information contained in the initial filing until the closing of the offering. A final report shall be filed at the closing of the offering if the information in the final report would be materially different from the last prior filing. The fee for filing the report with the bureau shall be established by regulation of the bureau chief. The information in the report of sale shall be deemed confidential and shall not be disclosed to the

public except by order of the court or in court proceedings. In calculating the number of purchasers permitted under this paragraph, accredited investors shall be excluded;

(13) The bureau chief, by rule or order, as to a particular transaction or class of transactions, may adopt a transactional exemption (i) that will further the objectives of compatibility with the exemptions from securities registration authorized by the "Securities Act of 1933" and uniformity among the states, or (ii) if the bureau chief determines that the public interest does not require registration.

(c) The bureau chief may by order deny or revoke any exemption specified in paragraph (9), (10) or (11) of subsection (a) of this section or in subsection (b) of this section with respect to a specific security or transaction. These exemptions may be denied or revoked for the grounds set forth in subsection (k) of section 9, section 11 and section 17 of P.L.1967, c.93 (C.49:3-56, 49:3-58 or 49:3-64). No such order may be entered without appropriate notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the bureau chief may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the bureau chief shall promptly notify all interested parties that it has been entered and of the reasons therefor.

(1) Upon service of notice of the order issued by the bureau chief, the respondent shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the bureau. Orders issued pursuant to this subsection (c) shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order shall be held in any event within 20 days after it is requested; and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(2) If a respondent fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate an order within the 15-day prescribed period, the respondent shall be deemed to have waived the opportunity to be heard. The order will remain in effect until it is modified or vacated upon notice to all interested parties by the bureau chief. No order under this subsection may operate retroactively.

(d) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

4. Section 4 of P.L.1967, c.93 (C.49:3-51) is amended to read as follows:

C.49:3-51 Applicability of act.

4. (a) Sections 5, 8, subsection (a) of section 9, and sections 13 and 24 of P.L.1967, c.93 (C.49:3-52, 49:3-55, 49:3-56, 49:3-60 and 49:3-71) apply to persons who sell or offer to sell when (1) an offer to sell is made in this State, or (2) an offer to buy is made or accepted in this State;

(b) Sections 5, 8 and subsection (a) of section 9 of P.L.1967, c.93 (C.49:3-52, 49:3-55 and 49:3-56) apply to persons who buy or offer to buy when (1) an offer to buy is made in this State, or (2) an offer to sell is made or accepted in this State;

(c) For the purpose of this section, except to the extent the bureau chief may by rule or order determine, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer (1) originates from this State or (2) is directed by the offeror to this State and received at the place to which it is directed (or at any post office in this State in the case of a mailed offer);

(d) For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance (1) is communicated to the offeror in this State and (2) has not previously been communicated to the offeror, orally or in writing, outside this State; and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed (or at any post office in this State in the case of a mailed acceptance);

(e) (Deleted by amendment, P.L.1997, c.276.)

(f) Sections 6, 8 and subsection (c) of section 9 of P.L.1967, c.93 (C.49:3-53, 49:3-55 and 49:3-56), so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this State, whether or not either party is then present in this State.

C.49:3-52.1 Prohibitions relative to securities.

5. (a) Without limiting the general applicability of section 5 of P.L.1967, c.93 (C.49:3-52), a person may not:

(1) quote a fictitious price with respect to a security;

(2) effect a transaction in a security which involves no change in the beneficial ownership of the security for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

(3) enter an order for the purchase of a security with the knowledge that an order of substantially the same size and at substantially the same time and price for the sale of the security has been, or will be, entered by or for the

same, or affiliated, person for the purpose of creating a false or misleading appearance of active trading in a security or with respect to the market for the security;

(4) enter an order for the sale of a security with knowledge that an order of substantially the same size and at substantially the same time and price for the purchase of the security has been, or will be, entered by or for the same, or affiliated, person for the purposes of creating a false or misleading appearance of active trading in a security or with respect to the market for the security; or

(5) employ any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a security.

(b) A transaction effected in compliance with, or conduct that does not violate, the applicable provisions of the "Securities Exchange Act of 1934" and the rules and regulations of the Securities and Exchange Commission thereunder is not a violation of subsection (a) of this section.

6. Section 6 of P.L.1967, c.93 (C.49:3-53) is amended to read as follows:

C.49:3-53 Prohibited practices relative to investment adviser.

6. (a) It shall be unlawful for any person who receives, directly or indirectly, any compensation from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme or artifice to defraud the other person;

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or

(3) to engage in dishonest or unethical practices as the bureau chief may by rule define in a manner consistent with and compatible with the laws and regulations of the Securities and Exchange Commission, the self-regulatory organizations, and uniformity with the other states, the remedies for which shall be civil or administrative only;

(b) It shall be unlawful for any person acting as an investment adviser, whether required to be registered or not, to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(2) that the investment adviser shall notify the other party to the contract of any change in control of the investment adviser within a reasonable time after the change;

(c) It shall be unlawful for any investment adviser required to be registered or any registered broker-dealer acting as an investment adviser to

enter into, extend, or renew any investment advisory contract, unless it provides in writing that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds, of the client, except as may be authorized by rules issued by the bureau chief;

(d) The bureau chief may by rule or order prohibit any investment adviser, except an investment adviser that is registered or not required to be registered under the "Investment Advisers Act of 1940," from being compensated on the basis of a share of capital gains upon, or capital appreciation of the funds, or any portion of the funds, of the client;

(e) Subsection (c) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in paragraph (1) of subsection (b) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business;

(f) It shall be unlawful for any person soliciting advisory clients to make any untrue statement of a material fact, or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

7. Section 7 of P.L.1967, c.93 (C.49:3-54) is amended to read as follows:

C.49:3-54 False, misleading statements.

7. It is unlawful for any person to make or cause to be made, in any document filed with the bureau or in any proceeding, investigation or examination conducted under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

8. Section 8 of P.L.1967, c.93 (C.49:3-55) is amended to read as follows:

C.49:3-55 Determination of validity of filed document.

8. (a) Neither (1) the fact that an application for registration of any persons or a registration statement of any security has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the bureau chief that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a person, security or transaction means that the bureau chief has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a) of this section.

9. Section 9 of P.L.1967, c.93 (C.49:3-56) is amended to read as follows:

C.49:3-56 Registration required.

9. (a) It shall be unlawful for any person to act as a broker-dealer, agent, investment adviser or investment adviser representative in this State unless that person is registered or exempt from registration under this act;

(b) A person shall be exempt from registration as a broker-dealer if, during any period of 12 consecutive months, that person (1) does not effect more than 15 transactions with persons other than those specified in paragraph (5) of subsection (c) of section 2 of P.L.1967, c.93 (C.49:3-49) located within New Jersey; (2) does not effect transactions in more than five customer accounts of New Jersey residents; or (3) effects transactions with persons who have no place of residence in New Jersey and who are temporarily located in the State; if at the time of the transactions described in paragraph (1), (2) or (3) of this subsection (b), the broker-dealer has no place of business in this State and is a member in good standing of a recognized self-regulatory organization and is registered in the state in which the broker-dealer is located;

(c) Agents who represent broker-dealers in transactions exempt pursuant to paragraph (1), (2) or (3) of subsection (b) of this section shall be exempt from registration for those transactions if they are members of a recognized self-regulatory organization and registered in the state in which they are located at the time of the transaction;

(d) The burden of proving an exemption from registration under this section shall be on the person claiming the exemption. A person claiming an exemption from registration under this section shall keep his books and records open to inspection by the bureau. If the bureau chief finds it is in the public interest and necessary for the protection of investors, the bureau chief

may deny any exemption specified in paragraph (1), (2) or (3) of subsection (b) or in subsection (c) of this section as to any broker-dealer or agent. The bureau chief may proceed in summary fashion or otherwise;

(e) The bureau chief may identify classes of customers, securities, transactions and broker-dealers for the purpose of increasing the number of transactions or accounts available under the exemptions specified in paragraph (1), (2) or (3) of subsection (b) or subsection (c) of this section;

(f) The bureau chief may by order identify the self-regulatory organizations recognized under subsections (b) and (c) of this section and may by rule or order define the conditions under which non-resident persons are temporarily in New Jersey under paragraph (3) of subsection (b) of this section;

(g) A person shall be exempt from registration as an investment adviser or from making a notice filing required by section 10 of P.L.1967, c.93 (C.49:3-57), if:

(1) the person has a place of business in this State and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49); or

(2) the person has no place of business in this State, and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49).

The bureau chief may by rule or order determine the availability of the exemptions provided by this subsection (g), including the waiver of the conditions in paragraphs (1) and (2) of this subsection;

(h) It shall be unlawful for any broker-dealer or issuer to employ an agent in this State unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the bureau. When an agent terminates his connection with a particular broker-dealer or issuer, his authorization to engage in those activities which make him an agent is terminated;

(i) It shall be unlawful for any person to transact business in this State as an investment adviser unless (1) he is so registered under this act, is exempt from registration under this act, or is excluded from the definition of investment adviser under this act, or (2) he is registered as a bro-

ker-dealer without the imposition of a condition under paragraph (5) of subsection (b) of section 11 of P.L.1967, c.93 (C.49:3-58);

(j) It shall be unlawful for any investment adviser required to be registered pursuant to this section to employ an investment adviser representative, unless the investment adviser representative is also registered pursuant to this section. It is unlawful for any person registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless that investment adviser representative is registered under this act, or is exempt from registration. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by an investment adviser registered pursuant to this section or registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3. When an investment adviser representative described in this subsection begins or terminates employment with an investment adviser, the investment adviser and the investment adviser representative shall promptly notify the bureau chief. When an investment adviser representative terminates his connection with a particular investment adviser, his authorization to engage in those activities which make him an investment adviser representative is terminated;

(k) The bureau chief may summarily bar, pending final determination of any proceeding under this subsection, any person, who has been convicted of any crime of embezzlement under state, federal or foreign law or any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities, banking, insurance, or commodities trading laws or anti-fraud laws, from being a partner, officer or director of an issuer, broker-dealer or investment adviser, or from occupying a similar status or performing a similar function or from directly or indirectly controlling or being under common control or being controlled by an issuer, broker-dealer or investment adviser, or from acting as a broker-dealer, agent or investment adviser in this State. Any person barred by this subsection shall be entitled to request a hearing by the same procedures as set forth in subsection (c) of section 3 of P.L.1967, c.93 (C.49:3-50);

(l) Notwithstanding any other provision of this act, the bureau chief may bring an administrative or court action pursuant to section 29 of this act (C.49:3-70.1), to seek and obtain civil penalties for violations of this section;

(m) Every registration shall expire one year from its effective date unless renewed, except that the bureau chief may by rule provide that registrations shall all expire on the same date;

(n) Except with respect to advisers whose only clients are those described in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49), it is unlawful for any person who is registered or required to be registered under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, as an investment adviser to conduct advisory business in this State, unless that person files those documents filed with the Securities and Exchange Commission with the bureau chief, as the bureau chief may by rule or otherwise require, and a fee and consent to service of process, as the bureau chief, by rule or otherwise, may require;

(o) Notwithstanding anything to the contrary in this act, until October 11, 1999, the bureau chief may require the registration of any person who is registered or required to be registered as an investment adviser under section 203 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-3, and who has failed to promptly pay the fees required by subsection (n) of this section after being notified in writing by the bureau chief of the non-payment or underpayment of those fees. A person shall be considered to have promptly paid those fees if they are remitted to the bureau chief within 15 days following that person's receipt of the written notification from the bureau chief.

10. Section 10 of P.L.1967, c.93 (C.49:3-57) is amended to read as follows:

C.49:3-57 Obtaining initial, renewal registration.

10. (a) A broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal registration by filing with the bureau an application together with a consent to service of process pursuant to subsection (a) of section 26 of P.L.1967, c.93 (C.49:3-73). National Association of Securities Dealers, Inc. (NASD) member broker-dealers and their agents shall file their applications for initial or renewal registration with the Central Registration Depository, or its successor organization, as appropriate and available. The application shall contain whatever information the bureau chief by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser or registered broker-dealer acting as an investment adviser, the qualifications and

business history of any employee who is to give investment advice or who is an investment adviser representative; (4) any injunction or administrative order or conviction of a crime of the fourth degree or its equivalent in any other jurisdiction involving a security or any aspect of the securities or investment advisory business and any conviction of a crime of the first, second or third degree or its equivalent in any other jurisdiction; (5) the applicant's financial condition; and (6) in the case of an investment adviser, a copy of any information or brochure used by the adviser to comply with any rule of the bureau promulgated pursuant to subsection (b) of section 12 of P.L.1967, c.93 (C.49:3-59). If no denial, postponement or suspension order is in effect and no proceeding is pending under section 11 of P.L.1967, c.93 (C.49:3-58), registration becomes effective at noon of the thirtieth day after an application is filed. The bureau chief may by rule or order specify an earlier effective date, or he may by order defer the effective date until the first day of the next calendar month after the thirtieth day after the filing of the application. The bureau chief may by order defer the effective date for additional periods, as the applicant shall agree to in writing. The time limits herein provided shall run anew from the filing of any amendment;

(b) Every applicant for initial or renewal registration for broker-dealer, agent, investment adviser and investment adviser representative shall pay filing fees in the amounts as set by rule of the bureau chief. If an application is denied or withdrawn, the bureau shall retain the fee. Whenever any supplemental filing is made, for the purpose of keeping current the information furnished to the bureau chief, there may be a supplemental filing fee in an amount set by rule of the bureau chief;

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the registration period. There shall be no filing fee, except as may be provided by rule of the bureau chief;

(d) (1) The bureau chief may by rule require a minimum capital for registered broker-dealers not to exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o. The minimum capital required for a registered broker-dealer shall be determined by rule of the bureau chief;

(2) The bureau chief may by rule establish minimum financial requirements for investment advisers, not to exceed the limitations provided in section 222 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-18a, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over clients' funds or securities and investment advisers who do not maintain such custody or discretionary authority;

(e) The bureau chief may by rule require registered investment advisers who have custody of clients' funds or securities to post bonds in amounts not to exceed the limitations provided in section 222 of the "Investment Advisers Act of 1940," 15 U.S.C. s.80b-18a and registered broker-dealers to post bonds in amounts not to exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 24 of P.L.1967, c.93 (C.49:3-71). Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based, or within two years of the time when the person aggrieved knew or should have known of the existence of his cause of action, whichever is later. The dollar amount of the bonds shall be set by rule of the bureau chief;

(f) (1) The bureau chief may by rule provide for an examination which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser;

(2) Each applicant for broker-dealer, agent, investment adviser or investment adviser representative who takes an examination provided pursuant to paragraph (1) of this subsection shall pay examination fees in the amounts as set forth by rule of the bureau chief;

(g) (1) Registration as a broker-dealer or agent under this act for the limited purpose of engaging in the business of effecting or attempting to effect transactions in direct participation securities for the accounts of others or for his own account shall be permitted. All the requirements of this act shall apply to these limited registrations; except that any examination or other evaluation of proficiency or knowledge required by the bureau for this registration shall be limited to matters relating to direct participation securities and to the requirements of laws and regulations applicable to this registrant.

(2) Any applicant for a limited registration shall acknowledge in writing to the bureau prior to registration that he understands (i) the limitations on the scope of his authority to do business pursuant to this limited registration; and (ii) that any activity which exceeds the limitations of the registration shall violate the provisions of this act and may result in disciplinary action by the bureau, prosecution under this act or other laws, or civil liability, to the same extent as if he was not registered under this act.

11. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read as follows:

C.49:3-58 Denial, suspension, revocation of registration.

11. (a) The bureau chief may by order deny, suspend, or revoke any registration if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(i) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) has willfully violated or willfully failed to comply with any provision of this act or any rule or order authorized by this act or has willfully, materially aided others in such conduct;

(iii) has been convicted of any crime involving a security or any aspect of the securities, commodities, banking, insurance or investment advisory business or any crime involving moral turpitude; however, where the applicant can show by proof satisfactory to the bureau chief that during the 10-year period preceding the application he has conducted himself in such a manner as to warrant his registration consistent with all other provisions of this act, the conviction shall not be a bar to registration;

(iv) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, banking, insurance or investment advisory business;

(v) is the subject of an effective order of the bureau chief denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative or securities offering registrant;

(vi) is the subject of an order entered within the past five years by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking a securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to registration as a broker-dealer, agent, investment adviser, investment adviser representative or issuer, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state

banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934," or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Post Office fraud order; but (A) the bureau chief may not institute a revocation or suspension proceeding under this subparagraph (vi) more than two years from the date of the order relied on and (B) he may not enter an order under this subparagraph (vi) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law;

(vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business, as may be defined by rule of the bureau chief;

(viii) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the bureau chief may not enter an order against a broker-dealer or investment adviser for insolvency without a finding of insolvency as to the broker-dealer or investment adviser;

(ix) is not qualified on the basis of such factors as character, training, experience and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;

(x) has failed to pass an examination under subsection (f) of section 10 of P.L.1967, c.93 (C.49:3-57) if such an examination has been by rule provided for by the bureau chief;

(xi) has failed reasonably to supervise: his agents if he is a broker-dealer or issuer; the agents of a broker dealer or issuer for whom he has supervisory responsibility; or his employees who give investment advice if he is an investment adviser;

(xii) has failed to pay the proper fees, as set by rule of the bureau chief.

(b) The following provisions govern the application of subparagraph (ix) of paragraph (2) of subsection (a) of this section:

(1) The bureau chief may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (i) the broker-dealer himself if he is an individual or (ii) an agent of the broker-dealer;

(2) The bureau chief may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (i) the investment adviser himself if he is an individual or (ii) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;

(3) The bureau chief may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(4) The bureau chief shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

(5) The bureau chief shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. If he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser.

(c) The bureau chief, for good cause shown, may by order summarily postpone, suspend, revoke or deny any registration pending final determination of any proceeding under this section. Upon entry of the order, the bureau chief shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that the order has been entered and of the reasons therefor.

(1) The bureau chief shall entertain on no less than three days' notice a written application to lift the summary postponement, suspension or revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary postponement, suspension or revocation.

(2) Upon service of notice of the order issued by the bureau chief, the applicant or registrant shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(3) If an applicant or registrant fails to respond by filing a written answer and request for a hearing with the bureau or moving to vacate an order to suspend or revoke any registration within the 15-day prescribed period, the registrant shall have waived the opportunity to be heard and the order shall remain in effect until modified or vacated.

(d) If the bureau chief finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the bureau chief may by order summarily revoke or deny the registration or application;

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within such other period of time as the bureau chief may determine by rule or order. The bureau chief may nevertheless institute a revocation or suspension proceeding under subparagraph (ii) of paragraph (2) of subsection (a) of this section within two years after withdrawal becomes effective and enter a revocation or suspension order as of the last date on which registration was effective;

(f) (Deleted by amendment, P.L.1997, c.276).

(g) Every hearing which this act requires to be held shall be held in accordance with the "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et seq.).

12. Section 12 of P.L.1967, c.93 (C.49:3-59) is amended to read as follows:

C.49:3-59 Maintenance of records, examination.

12. (a) (Deleted by amendment, P.L.1997, c.276.)

(b) Every registered broker-dealer and investment adviser shall make and keep those accounts, correspondence, memoranda, papers, books, and other records as the bureau chief by rule prescribes. Such books, records and accounts shall conform to those prescribed by the Securities and Exchange Commission. All records and books so required shall be accessible to the bureau and preserved for three years unless the bureau chief by rule prescribes otherwise;

(c) With respect to investment advisers, the bureau chief may require by rule that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and investment advisory clients. To the extent determined by the bureau chief, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the "Investment Advisers Act of 1940" and the regulations promulgated thereunder may be used in whole or partial satisfaction of this requirement;

(d) Every registered broker-dealer and investment adviser shall file the financial reports the bureau chief prescribes by rule, except that the bureau

chief shall not require a registered broker-dealer to file financial reports which exceed the limitations provided in section 15 of the "Securities Exchange Act of 1934," 15 U.S.C. s.78o;

(e) If the information contained in any document filed with the bureau is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under subsection (h) of section 9 of P.L.1967, c.93 (C.49:3-56);

(f) All the records referred to in subsection (b) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the bureau chief, within or without this State, as the bureau chief deems necessary or appropriate in the public interest or for the protection of investors. The bureau chief may cooperate with the securities administrators of other states, the Securities and Exchange Commission, Commodity Futures Trading Commission, federal and state banking regulators, state insurance regulators and any national securities exchange or national securities association registered under the "Securities Exchange Act of 1934."

13. Section 13 of P.L.1967, c.93 (C.49:3-60) is amended to read as follows:

C.49:3-60 Offer or sale of securities, lawful; conditions.

13. It is unlawful for any security to be offered or sold in this State unless:

(a) The security or transaction is exempt under section 3 of P.L.1967, c.93 (C.49:3-50);

(b) (Deleted by amendment, P.L.1997, c.276.)

(c) (Deleted by amendment, P.L. 1985, c. 405.)

(d) (Deleted by amendment, P.L. 1985, c. 405.)

(e) The security is registered under this act; or

(f) It is a federal covered security for which a notice filing and fees have been submitted as required by section 14 of this act (C.49:3-60.1).

C.49:3-60.1 Documents required to be filed.

14. (a) The bureau chief, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal covered security under paragraph (2) of subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b):

(1) Prior to the initial offer of such federal covered security in this State, a notice as prescribed by the bureau chief by rule or otherwise or all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the "Securities Act of

1933," together with a consent to service of process signed by the issuer and with the fee required by section 15 of P.L.1967, c.93 (C.49:3-62);

(2) After the initial offer of such federal covered security in this State, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the "Securities Act of 1933;"

(3) To the extent necessary to compute fees, an annual or periodic report of the value of such federal covered securities offered or sold in this State;

(4) A notice setting forth the name and address of the issuer, and the name and the dollar amount of the securities issued and the number of the securities to be issued;

(5) That notice shall be effective on the later of date of its receipt by the bureau chief or effectiveness of the offering with the Securities and Exchange Commission and shall expire on June 30 of each year, unless renewed prior to expiration by filing an additional notice and fee, except that the bureau chief may by rule determine that such notice will automatically remain in effect in the case of unit investment trusts. A renewal notice shall take effect upon expiration of the notice filing being renewed. Only one notice and one fee needs to be filed for multiple portfolios, classes, trusts, or funds that are offered through one prospectus. In setting fees, the bureau shall take into account whether the investment company issuing the shares is an open-end management company or unit investment trust and shall establish different fees for different types of investment companies. In no event shall the fee charged in any calendar year for claiming this exemption exceed the fee charged for registering securities with the bureau under subsection (b) of section 15 of P.L.1967, c.93 (C.49:3-62);

(b) With respect to any security that is a federal covered security under subparagraph (D) of paragraph (4) of subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b)(4)(D), the bureau chief, by rule or otherwise, may require the issuer to file a notice on SEC Form D, 17 C.F.R. s.239.500, or a successor form, and a consent to service of process signed by the issuer no later than 15 days after the first sale of that federal covered security in this State, together with the fee required to be paid pursuant to paragraph (12) of subsection (b) of section 3 of P.L.1967, c.93 (C.49:3-50);

(c) The bureau chief, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the "Securities Act of 1933" with respect to a federal covered security under paragraph (3) or (4) of subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b)(3) or (4);

(d) The bureau chief may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under paragraph (1) of subsection (b) of section 18 of the "Securities Act of 1933," 15 U.S.C. s.77r(b)(1), if the bureau chief finds that (1) the order is in the public interest and (2) there is a failure to comply with any condition established under this section;

(e) The bureau chief, by rule or otherwise, may waive any or all of the provisions of this section.

15. Section 14 of P.L.1967, c.93 (C.49:3-61) is amended to read as follows:

C.49:3-61 Registration of security by qualification.

14. (a) Subject to the provisions of this section and section 15 of P.L.1967, c.93 (C.49:3-62) any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents:

(1) the information specified in subsection (c) of section 15 of P.L.1967, c.93 (C.49:3-62);

(2) the consent to service of process required by subsection (a) of section 26 of P.L.1967, c.93 (C.49:3-73);

(3) with respect to the issuer and any significant subsidiary; its name, address, and form of organization; the State or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(4) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(5) with respect to persons covered by paragraph (4) of this subsection; the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(6) with respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraph (4) of this subsection other than his occupation;

(7) with respect to every promoter if the issuer was organized within the past three years: the information specified in paragraph (4) of this subsection, any amount paid to him within the period or intended to be paid to him, and the consideration for any such payment;

(8) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer transaction: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(9) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(10) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(11) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer;

the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(12) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (4), (6), (7), (8), or (10) of this subsection and by any person who holds or will hold 10% or more in the aggregate of any such options;

(13) the dates of, parties to, and general effect concisely stated of, every management or other contract of material importance made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(14) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(15) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(16) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(17) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(18) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, accompanied by a declaration that there has been no substantial change in the financial position of the issuer since the date of such statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(19) such additional information as the bureau chief requires by rule or order.

(c) Registration by qualification shall become effective when the bureau chief so orders.

(d) The bureau chief may by rule or order require as a condition of registration by qualification that a prospectus containing any designated part of the information specified in subsection (b) of this section be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.

(e) The bureau chief may by rule or order require as a condition of registration by qualification (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this State be deposited in escrow until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The bureau chief may by rule or order determine the conditions of any escrow required hereunder, but he may not reject a depository solely because of location in another state.

(f) The bureau chief may by rule or order require as a condition of registration that any security registered by qualification be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the bureau chief or preserved for any period up to three years specified in the rule or order.

16. Section 7 of P.L.1985, c.405 (C.49:3-61.1) is amended to read as follows:

C.49:3-61.1 Coordination with federal registration.

7. a. Any security for which a registration statement has been filed under the "Securities Act of 1933," in connection with the same offering may be registered by coordination.

b. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 15 of P.L.1967, c.93 (C.49:3-62) and the consent to service of process required by section 26 of P.L.1967, c.93 (C.49:3-73):

(1) Three copies of the latest form of prospectus filed under the "Securities Act of 1933;"

(2) If the bureau chief by rule or otherwise requires, a copy of the articles of incorporation and bylaws, or other substantial equivalents, currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the bureau chief requests, any other information, or copies of any other documents, filed under the "Securities Act of 1933"; and

(4) An undertaking to forward all amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly, and in any event, not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever occurs first.

c. The bureau chief shall make reasonable efforts to coordinate comments or requests with the securities administrators in other jurisdictions in which registration is sought and particularly with jurisdictions in which the issuer is located.

d. A registration statement under this section becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending against any person directly or indirectly involved in the offering under subsection (c) of section 3, section 17 or 23 of P.L.1967, c.93 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act (C.49:3-70.1); and

(2) The registration statement has been on file with the bureau chief for at least five days, but if the registration statement is not filed with the bureau chief within 10 days after the initial filing under the "Securities Act of 1933," the registration statement has been on file with the bureau chief for

30 days or any shorter period the bureau chief, by rule or order, specifies; and

(3) There are no comments or requests from the bureau that have not been answered to the satisfaction of the bureau; and

(4) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter period as the bureau chief permits by rule or otherwise; and

(5) The offering is made within the limitations set forth in paragraphs (1), (2), (3) and (4) of this subsection.

The registrant shall promptly notify the bureau chief by telephone or telegram of the date and time when the federal registration statement became effective, and the content of a price amendment, if any is made, and shall promptly file a post-effective amendment containing the information and documents in the price amendment.

For the purposes of this section, "price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering prices.

e. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the bureau chief may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there is compliance with subsection d. of this section, if he promptly notifies the registrant by telephone or telegram, and in the case of a telephone notification, by subsequent written notification, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be void as of the time of its entry. The bureau chief may by rule or otherwise waive any of the conditions specified in paragraphs (1), (2), (3) and (4) of subsection d. of this section.

f. If the federal registration statement becomes effective before all the conditions in subsection d. are satisfied and they are not waived, the registration statement shall become effective as soon as all the conditions are satisfied. If the registrant advises the bureau chief of the date when the federal registration statement is expected to become effective, the bureau chief shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he contemplates the institution of a proceeding under section 17 of P.L.1967, c.93 (C.49:3-64), but any advice by the bureau chief pursuant to this

subsection shall not preclude the institution of such a proceeding at any time.

17. Section 8 of P.L.1985, c.405 (C.49:3-61.2) is amended to read as follows:

C.49:3-61.2 Registration by notification.

8. The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 7 of P.L.1985, c.405 (C.49:3-61.1) or by qualification under section 14 of P.L.1967, c.93 (C. 49:3-61):

a. Any security whose issuer, and any predecessors, have been in continuous operation for at least five years, if:

(1) There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or of any predecessor thereof, with a fixed maturity or a fixed interest or dividend provision; and

(2) The issuer, and any predecessors, during the past three fiscal years, have had an average net earnings, determined in accordance with generally accepted accounting practices:

(i) Which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision, which securities are outstanding at the date the registration statement is filed, and which average net earnings equal at least 5% of the amount of those outstanding securities, as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or by the book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement, to the extent that there is neither a readily determinable market price nor a cash offering price; or

(ii) Which average net earnings, if the issuer, and any predecessors, have not had any security of the type specified in subparagraph (i) of this paragraph outstanding for three full fiscal years, equal to at least 5% of the amount, as established in subparagraph (i) of this paragraph, of all securities which will be outstanding if all of the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this State, are issued;

b. A registration statement under this section shall contain the following information and shall be accompanied by the following documents, in addition to the information specified in section 15 of P.L.1967, c.93 (C.49:3-62) and the consent to service of process required by section 26 of P.L.1967, c.93 (C.49:3-73):

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary: its name, address, and form of organization, the state or foreign jurisdiction and the date of its organization, and the general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address, the amount of securities of the issuer held by him as of the date of the filing of the registration statement, and a statement of his reasons for making the offering;

(4) A description of the security being registered;

(5) The information and documents specified in paragraphs (10), (12), and (14) of subsection (b) of section 14 of P.L.1967, c.93 (C.49:3-61); and

(6) In the case of any registration under paragraph (2) of subsection a. of this section which does not satisfy the conditions of paragraph (1) of subsection a. of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence, if less than two years.

c. If no stop order is in effect and no proceeding is pending against any person directly or indirectly involved in the offering under subsection (c) of section 3, section 17 or section 23 of P.L.1967, c.93 (C.49:3-50, 49:3-64 or 49:3-70) or section 29 of this act (C.49:3-70.1), a registration statement under this section automatically becomes effective at three o'clock Eastern Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the bureau chief determines.

18. Section 15 of P.L.1967, c.93 (C.49:3-62) is amended to read as follows:

C.49:3-62 Filing of registration statement, fee.

15. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee for each registration statement, as set by rule of the bureau chief. This fee shall not be refundable.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this State; (2) the states in which a registration

statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the Securities and Exchange Commission.

(d) Any document filed pursuant to this supplementary act within three years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The bureau chief may by rule or order permit the omission of any item of information or document from any registration statement.

(f) (Deleted by amendment, P.L.1997, c.276.)

(g) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempt transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 17 of P.L.1967, c.93 (C.49:3-64). All outstanding securities of the same class as a registered security of the issuer are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 17 of P.L.1967, c.93 (C.49:3-64) (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the bureau chief.

(h) So long as a registration statement is effective, the bureau chief may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(i) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the "Investment Company Act of 1940," may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the bureau chief so orders. Every person filing such an amendment shall pay a filing fee, as

may be set by rule of the bureau chief, with respect to the additional securities proposed to be offered.

j. Every registration statement shall be accompanied by an undertaking by the registrant agreeing that, as a condition of registration, the registrant will allow the bureau chief in the bureau chief's discretion (subject in all cases to the constitutional or statutory rights of the registrant, its agents and principals, if any) to (1) make such investigations within or outside this State as the bureau chief deems necessary to determine if the registrant, the registrant's agents, or principals have violated or are about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, or (2) require or permit the registrant, the registrant's agents, and principals to file a statement in writing, under oath or otherwise as the bureau chief determines, as to all the facts and circumstances concerning the matter to be investigated.

k. The bureau chief may by rule or order restrict or condition a securities registration of any kind, or restrict the sale of such securities to accredited investors.

19. Section 16 of P.L.1967, c.3 (C.49:3-63) is amended to read as follows:

C.49:3-63 Filing of materials distributed to prospective investors.

16. The bureau chief may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is not required to be registered by subsection (a) or (f) of section 13 of P.L.1967, c.93 (C.49:3-60).

20. Section 17 of P.L.1967, c.93 (C.49:3-64) is amended to read as follows:

C.49:3-64 Issuance of stop order.

17. (a) The bureau chief may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds:

(1) that the order is in the public interest: and

(2) that:

(i) The registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under subsection (i) of section 15 of P.L.1967, c.93 (C.49:3-62) as of its effective date, or any report under subsection (h) of section 15 of P.L.1967, c.93

(C.49:3-62), is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(ii) Any provision of this act or any rule, order, or condition lawfully imposed thereunder has been willfully violated, in connection with the offering by (A) the person filing the registration statement, (B) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or (C) any underwriter; or

(iii) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal, foreign or State act applicable to the offering; but the bureau chief may not institute a proceeding against an effective registration statement under this subsection more than two years from the date of the order or injunction relied on; or

(iv) The issuer's enterprise or method of business includes or would necessarily include activities which are illegal where performed; or

(v) (Deleted by amendment, P.L.1985, c.405).

(vi) (Deleted by amendment, P.L.1985, c.405).

(vii) The applicant or registrant has failed to pay the proper filing fee, as set by rule of the bureau chief;

(viii) The issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, or any broker-dealer or other person involved directly or indirectly in the offering (A) has been convicted of any crime of embezzlement under state, federal or foreign law or any crime involving any theft, forgery or fraudulent practices in regard to any state, federal or foreign securities, investment advisory, banking, insurance, or commodities trading laws or anti-fraud laws; (B) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, banking, insurance or investment advisory business; (C) is the subject of an effective order of the bureau chief denying, suspending, or revoking securities registration, registration as a broker-dealer, agent, investment adviser or investment adviser representative; (D) is the subject of an order entered by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking any securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to,

registration as a broker-dealer, agent, investment adviser, investment adviser representative, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance commissioner, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934" or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Postal Service fraud order, except the bureau chief may not institute a revocation or suspension proceeding pursuant to this subsubparagraph (D) of this subparagraph more than two years from the date of the order relied on and he may not enter an order pursuant to this subsubparagraph (D) of this subparagraph on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law; (E) has engaged in dishonest or unethical practices in the securities business; or (F) is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature; or

(ix) The offering is a blind pool.

(b) (Deleted by amendment, P.L.1997, c.276.)

(c) The bureau chief may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding instituted pursuant to this section. Upon entry of such an order, the bureau chief shall promptly notify each person specified in subsection (d) of this section that it has been entered and of the reasons therefor.

(1) Upon service of notice of the order issued by the bureau chief, the applicant shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this subsection to postpone or suspend the effectiveness of any registration statement shall be subject to an application to vacate upon 10 days' notice, and in any event a preliminary hearing on the order to postpone or suspend the effectiveness of any registration statement shall be held within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(2) If an applicant fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate an order to postpone or suspend the effectiveness of any registration statement within

the 15-day period prescribed, the registrant shall have waived the opportunity to be heard and the order shall remain in effect until modified or vacated.

(d) No stop order may be entered pursuant to this section, except as provided in subsection (c), without (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(e) The bureau chief may vacate or modify a stop order if he finds that the conditions which prompted its entry have changed.

(f) Notwithstanding any other provision of this act to the contrary, the bureau chief may bring an administrative or court action pursuant to section 29 of this act (C.49:3-70.1) to seek and obtain civil penalties for violations of this section.

21. Section 18 of P.L.1967, c.93 (C.49:3-65) is amended to read as follows:

C.49:3-65 Handling of filed documents.

18. (a) A document is filed when it is received in completed form by the bureau;

(b) The bureau shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, revocation or other orders which have been entered under this act. The register shall be open for public inspection;

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the bureau chief prescribes;

(d) Upon request, the bureau chief shall furnish to any person photographic or other copies, certified under his seal of office if requested, of any entry in the register or any document in the custody of the bureau chief which is a public record. The bureau chief may establish such reasonable conditions and charges for the obtaining of such copies as will in his judgment be practicable.

(e) The provisions of this section are subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

22. Section 19 of P.L.1967, c.93 (C.49:3-66) is amended to read as follows:

C.49:3-66 Administration of act.

19. (a) This act shall be administered by the Bureau of Securities in the Division of Consumer Affairs of the Department of Law and Public Safety.

The principal executive officer of the bureau shall be a chief who is appointed by and serves at the pleasure of the Attorney General. The chief of the bureau shall have power to employ such officers and employees as may be necessary to carry out the purposes of this act and to define their duties;

(b) It shall be unlawful for any of the officers or employees of the bureau to use for personal benefit any information which is filed with or obtained by the bureau and which is not made public. No provision of this act authorizes any officers or employees of the bureau to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this act. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under subpoena directed to any of the officers or employees of the bureau.

23. Section 15 of P.L.1985, c.405 (C.49:3-66.1) is amended to read as follows:

C.49:3-66.1 Continuation of "Securities Enforcement Fund," fees, annual accounting of transactions.

15. The "Securities Enforcement Fund" in the Division of Consumer Affairs of the Department of Law and Public Safety shall continue as a nonlapsing, revolving fund. All fees, penalties, costs, fines and other moneys collected pursuant to this act, shall be deposited in the fund. Moneys in the fund shall be used by the Director of the Division of Consumer Affairs to administer the provisions of this act and to investigate violations and to enforce the prohibitions of this act to protect the public. There shall be made available from the General Fund such additional amounts as may be required to carry out the provisions of this act.

All fees set by rule of the bureau chief pursuant to this act may be imposed for revenue if the fees, taken together, are reasonably related to the overall costs of carrying out the regulatory and administrative duties of the bureau as set forth in this act.

The fees set pursuant to the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.) and supplements thereto which are in effect on the effective date of this act, but which are to be set by regulation pursuant to this act, shall remain in effect until the regulations promulgated pursuant to this act take effect.

An annual accounting of deposits to and withdrawals from the fund shall be made by the Director of the Division of Consumer Affairs and filed with the Attorney General and bureau chief and any State agency, as required by law.

24. Section 20 of P.L.1967, c.93 (C.49:3-67) is amended to read as follows:

C.49:3-67 Rules, forms, orders from bureau chief.

20. (a) The bureau chief may from time to time make, amend and rescind such rules, forms and orders as are reasonably necessary to carry out the provisions of this act, including rules and forms governing applications and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the bureau chief may classify securities, persons and matters within his jurisdiction, and prescribe different requirements for different classes;

(b) No rule, form or order may be made, amended or rescinded unless the bureau chief finds that the action is necessary and appropriate (1) in the public interest, or (2) for the protection of investors, or (3) consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the bureau chief may co-operate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of applications and reports wherever practicable;

(c) The bureau chief may by rule prescribe (1) the form and content of financial statements required under this act; and (2) the circumstances under which consolidated financial statements shall be filed. All financial statements shall be prepared in accordance with generally accepted accounting practices. The form and content of financial statements shall conform, insofar as practicable, to those prescribed by the Securities and Exchange Commission;

(d) All rules and forms promulgated by the bureau chief shall be filed as required pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Copies of the rules and samples of the forms shall be published in convenient form by the bureau for distribution to interested persons, subject to available appropriations.

25. Section 21 of P.L.1967, c.93 (C.49:3-68) is amended to read as follows:

C.49:3-68 Powers of bureau chief.

21. (a) The bureau chief in his discretion (1) may make such private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder,

(2) may require or permit any person to file a statement in writing, under oath or otherwise as the bureau chief determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder;

(b) For the purpose of any investigation or proceeding under this act, the bureau chief or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the bureau chief deems relevant or material to the inquiry. At his discretion, the bureau chief may make available private investigative materials to representatives of domestic or foreign governmental authorities, self-regulatory organizations, state or federal law enforcement officers, state securities administrators, and trustees in bankruptcy. The bureau may also disclose that information: (i) in court proceedings; (ii) if ordered to do so by a court of competent jurisdiction; or (iii) if appropriate, in furtherance of any ongoing investigation or proceeding. The bureau chief may also request and use private investigative materials provided to it by other federal and state authorities, including authorities of other states and foreign countries;

(c) In case of contumacy by, or refusal to obey a subpoena or order issued to, any person, the Superior Court, upon application by the bureau chief, may issue to the person an order requiring him to appear before the bureau chief, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. The court may grant injunctive relief restraining the issuance, sale or offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution from or within this State of any securities or investment advisory advice concerning securities by a person, or agent, employee, broker, partner, officer, director, investment adviser, investment adviser representative or issuer or stockholder thereof, until such person has fully complied with such subpoena or order and the bureau has completed its investigation. The court may proceed in the action in a summary manner or otherwise;

(d) No person is excused from attending and testifying or from producing any document or record before the bureau or in obedience to the subpoena or order of the bureau chief or any officer designated by him, or in any proceeding instituted by the bureau, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but the testimony or evidence (documentary or otherwise) compelled from an individual who has claimed his privilege against self-incrimination, or the fruits thereof,

may not be used to prosecute that individual or to subject that individual to any penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury, false swearing or contempt committed in testifying;

(e) When it shall appear to the bureau chief that the testimony of any person is essential to an investigation instituted by him as provided by this chapter, and that the failure of such person to appear and testify may defeat the proper and effective conduct thereof, the bureau chief, in addition to the other remedies provided for herein, may, by petition verified generally, setting forth the facts, apply to the Superior Court for a writ of ne exeat against such person. The court shall thereupon direct the issuance of the writ against such person requiring him to give sufficient bail conditioned to insure his appearance before the bureau chief for examination under oath in such investigation and that he will continue his appearance therein from time to time until the completion of the investigation and will appear before the court if the bureau chief shall institute any proceeding therein as a result of his investigation.

The court shall cause to be indorsed on the writ of ne exeat, in words at length, a suitable amount of bail upon which the person named in the writ shall be freed, having a due regard to the nature of the case and the value of the securities involved. All applications to be freed on bail shall be on notice to the bureau chief and the sufficiency of the bail given on the writ shall be approved by the court. All recognizances shall be to the State and all forfeitures thereof shall be declared by the court. The proceeds of the forfeitures shall be paid into the State treasury.

C.49:3-68.1 Restraints ordered by bureau chief.

26. (a) In case of contumacy by, or refusal to obey a subpoena or order issued to, any person, the bureau chief may, in his discretion, summarily order restraints on the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement, or distribution from or within the State of any securities or investment advisory advice concerning securities, by the person, or agent, employee, broker, partner, officer, director, investment adviser representative, or stockholder thereof, until that person has fully complied with that subpoena or order and the bureau has completed its investigation.

(b) The bureau chief may proceed in an action in a summary manner or otherwise, by issuing a cease and desist order, by denying, revoking or suspending any registration or exemption under this act, by assessing civil monetary penalties, or by any combination of these actions he deems appropriate. Upon entry of such an order, the bureau chief shall promptly notify each person subject thereto that it has been entered and of the reasons

therefor. In the case of an agent, notice shall also be given to the broker-dealer with which the agent is affiliated as shown on the Central Registration Depository, and in the case of an investment adviser representative, notice shall also be given to the investment adviser with which the investment adviser representative is affiliated as shown on Form ADV, 17 C.F.R. s.279.1, or successor federal registration form;

(1) The bureau chief shall entertain on no less than three days' notice an application to lift the summary order on written application of the person subject thereto and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the person subject thereto a written statement of the reasons for the summary order;

(2) Upon service of notice of the order issued by the bureau chief, each person subject thereto shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing, or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and in any event a preliminary hearing on the order shall be held within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing;

(3) If a person subject to the order fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate the order within the 15-day prescribed period, that person shall have waived the opportunity to be heard and the order shall remain in effect as to that person until modified or vacated by the bureau chief.

27. Section 22 of P.L.1967, c.93 (C.49:3-69) is amended to read as follows:

C.49:3-69 Enforcement actions by bureau chief.

22. (a) If it appears to the bureau chief that any person has, or directly or indirectly controls another person who has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, or if it appears that it will be against the public interest for any person to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise or distribute any securities from or within this State, the bureau chief may take, in addition to any other enforcement actions available under this act and in the bureau chief's discretion, either or both of the following actions:

(1) issue a cease and desist order against the persons engaged in the prohibited activities directing them to cease and desist from further illegal

activity or doing any acts in furtherance thereof. Upon entry of such an order, the bureau chief shall promptly notify each person subject thereto that it has been entered and of the reasons therefor. In the case of an agent, notice shall also be given to the broker-dealer with which the agent is affiliated as shown on the Central Registration Depository, and in the case of an investment adviser representative, notice shall also be given to the investment adviser with which the investment adviser representative is affiliated as shown on Form ADV, 17 C.F.R. s.279.1, or successor federal registration form;

(i) The bureau chief shall entertain on no less than three days' notice an application to lift the summary order on written application of the person subject thereto and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the person subject thereto a written statement of the reasons for the summary order;

(ii) Upon service of notice of the order issued by the bureau chief, each person subject thereto shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and in any event a preliminary hearing on the order shall be held within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing;

(iii) If any person subject to the order fails to respond by either filing a written answer and written request for a hearing with the bureau or moving to vacate the order within the 15-day prescribed period, that person shall have waived the opportunity to be heard and the order shall remain in effect as to that person until modified or vacated by the bureau chief; or

(2) Have an action brought by the Attorney General in the Superior Court on the bureau chief's behalf to enjoin the acts or practices to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the bureau chief, the court may enter an order of rescission, restitution or disgorgement or any other order within the court's power, directed to any person who has engaged in any act constituting a violation of any provision of this act or any rule or order hereunder. The court may not require the bureau chief to post a bond. The court may proceed in the action in a summary manner or otherwise;

(b) If it appears to the court in the action that such person has engaged in, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may enjoin such person, and any agent, employee, broker, partner, officer, director or stockholder thereof, from continuing such practices or engaging therein or doing any acts in furtherance thereof. The court may also enjoin the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution from or within this State of any securities by such persons, and any agent, employee, broker, partner, officer, director or stockholder thereof, until the court shall otherwise order;

(c) If the court grants injunctive relief as provided for in subsection (b) of this section, it may appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice constituting a violation of this act or any rule or order hereunder, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling, and to sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction of the court for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices constituting a violation of this act or any rule or order hereunder. The receiver may retain an attorney with the consent of the Attorney General and the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as justice shall require;

(d) If injunctive relief is granted as provided for in subsection (b) of this section against a corporation, partnership, company, association or trust, the court may appoint a receiver and may restrain the corporation, its officers, directors, stockholders, and agents, the partnership, company or association, its officers, members and agents, and the trust, its grantors, trustees, officers, cestuis que trustent and agents, from exercising any of its privileges or franchises, and in the case of a trust from executing the trust, and in all cases from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects except to the receiver appointed by the court until the court shall otherwise order.

Upon the appointment of the receiver, all the real and personal property of the corporation, partnership, company, association or trust, and its franchises, rights, privileges and effects shall forthwith vest in him and the corporation, partnership, company, association or trust shall be divested of the title thereto.

The receiver shall settle the estate and distribute the assets, and have all the powers and duties conferred upon receivers by the provisions of Title 14A of the New Jersey Statutes, Corporations, General, so far as the provisions thereof are applicable.

28. Section 23 of P.L.1967, c.93 (C.49:3-70) is amended to read as follows:

C.49:3-70 Violations, penalties.

23. (a) Any person who knowingly violates any provision of this act, except section 7 or 13 of P.L.1967, c.93 (C.49:3-54 or C.49:3-60), or who knowingly violates any rule or order under this act, or who willfully violates section 7 of P.L.1967, c.93 (C.49:3-54), knowing the statement made to be false or misleading in any material respect, shall be guilty of a second or third degree crime, depending upon the amount of the loss as provided in subsection (d) of this section.

(b) Any person who recklessly violates subsection (a), (b) or (c) of section 5 or paragraph (1) or (2) of subsection (a) or subsection (f) of section 6 of P.L.1967, c.93 (C.49:3-52 or 49:3-53) or section 6 of this act, shall be guilty of a crime of the fourth degree.

(c) For purposes of this section, "knowingly" and "recklessly" shall have the respective meanings ascribed to them in subsection (b) of N.J.S.2C:2-2.

(d) If the total value of all money or anything else of value paid by or lost by victims of the violations of this act, resulting from the same device, scheme or artifice, from the same untrue statement of a material fact or failure to state a material fact, from the same act, practice or course of business, or from any other fraud involving any security is:

(1) less than $75,000, or if no monetary value can be placed upon the loss or if no person pays or loses anything of monetary value, the offender is guilty of a crime of the third degree;

(2) $75,000 or more, the offender is guilty of a crime of the second degree;

(e) No person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(f) An indictment or information returned under this act shall be subject to the limitations of N.J.S.2C:1-6. A violation is committed when every element occurs or at the time when the course of conduct or the actor's complicity therein is terminated.

(g) Nothing in this act shall limit the power of this State to prosecute a person for conduct constituting a crime under any other law.

C.49:3-70.1 Violations, civil penalties.

29. Any person who violates any of the provisions of this act or who violates any rule or order under this act, shall be liable for the first violation to a penalty of not more than $10,000; for a second violation to a penalty of not more than $20,000; and for each subsequent violation to a penalty of not more than $20,000 per violation. One or more violations may occur at the same time or be part of the same conduct or pattern of conduct. The penalty shall be entered, with the requisite notice, sued for and recovered by and in the name of the bureau chief and shall be collected and enforced by summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., or administratively.

30. Section 24 of P.L.1967, c.93 (C.49:3-71) is amended to read as follows:

C.49:3-71 Action for deceit; liability.

24. (a) Any person who

(1) Offers, sells or purchases a security in violation of subsection (b) of section 8, subsection (a) of section 9 or section 13 of P.L.1967, c.93 (C.49:3-55, 49:3-56, or 49:3-60), or

(2) Offers, sells or purchases a security by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), or

(3) offers, sells or purchases a security by employing any device, scheme, or artifice to defraud, or

(4) offers, sells or purchases a security by engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, or

(5) engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities (i) in willful violation of this act or of any rule or order promulgated pursuant to this act, or (ii) employs any device, scheme or artifice to defraud the other person or engages in any act, practice or course of business or conduct which operates or would operate as a fraud or deceit on the other person, is liable as set forth in subsection (c) of this section;

(b) (1) If any claim is brought for violation of paragraph (2), (3), (4) or (5) of subsection (a) of this section, the person who bought the security or received the investment advice shall sustain the burden of proof that the

seller or giver of investment advice knew of the untruth or omission and intended to deceive the buyer or recipient of investment advice and that the buyer or recipient of investment advice has suffered a financial detriment;

(2) If any claim is brought for violation of paragraph (2), (3), (4) or (5) of subsection (a) of this section involving a purchase of securities by others or investment advice as to the selling of securities, the person who sold the security or who received the investment advice to sell the security shall sustain the burden of proof that that person suffered a net loss with respect to that sale or investment advice taking into account all transactions by that person in the same security or any security convertible into that security within one year before or after the sale or advice which is the basis of the claim;

(c) Any person who offered, sold or purchased a security or engaged in the business of giving investment advice to a person in violation of paragraph (1), (2), (3), (4) or (5) of subsection (a) of this section is liable to that person, who may bring an action either at law or in equity to recover the consideration paid for the security or the investment advice and any loss due to the advice, together with interest set at the rate established for interest on judgments for the same period by the Rules Governing the Courts of the State of New Jersey from the date of payment of the consideration for the investment advice or security, and costs, less the amount of any income received on the security, upon the tender of the security and any income received from the investment advice or on the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at the rate established for interest on judgments for the same period by the Rules Governing the Courts of the State of New Jersey from the date of disposition;

(d) Every person who directly or indirectly controls a seller liable under subsection (a) of this section, every partner, officer, or director of such a seller, or investment adviser, every person occupying a similar status or performing similar functions, every employee of such a seller or investment adviser who materially aids in the sale or in the conduct giving rise to the liability, and every broker-dealer, investment adviser, investment adviser representative or agent who materially aids in the sale or conduct are also liable jointly and severally with and to the same extent as the seller or investment adviser, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts under paragraphs (1) through (5) of subsection (a) of this section which give rise to liability. There is contribution as in cases of contract among the several persons so liable;

(e) Any tender specified in this section may be made at any time before entry of judgment;

(f) Every cause of action under this act survives the death of any person who might have been a plaintiff or defendant;

(g) No person may bring an action under this section more than two years after the contract of sale or the rendering of the investment advice, or more than two years after the time when the person aggrieved knew or should have known of the existence of his cause of action, whichever is later. No person may bring an action under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid, together with interest at the rate established for interest on judgments for the same period by the Rules Governing the Courts of the State of New Jersey at the time the offer was made, from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt;

(h) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract;

(i) Any condition, stipulation or provision binding any person acquiring any security or receiving investment advice to waive compliance with any provision of this act or any rule or order hereunder is void;

(j) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section or subsection (e) of section 10 of P.L.1967, c.93 (C.49:3-57).

31. Section 25 of P.L.1967, c.93 (C.49:3-72) is amended to read as follows:

C.49:3-72 Nonapplicability of act.

25. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the bureau chief, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

32. Section 26 of P.L.1967, c.93 (C.49:3-73) is amended to read as follows:

C.49:3-73 Consent to bureau chief as attorney for service of process.

26. (a) Every broker-dealer, agent or investment adviser applicant for registration under this act and every issuer who is required to file with the bureau to claim an exemption from registration or to register a security in this State shall file with the bureau, in such form as the bureau chief by rule prescribes, an irrevocable consent appointing the bureau chief or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the bureau, but it is not effective unless the plaintiff, who may be the bureau chief, in a suit, action or proceeding instituted on his behalf by the Attorney General forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at his last address on file with the bureau. It is the responsibility of the registrant to maintain its current address on file with the bureau. If process was served on the last address on file with the bureau and is returned by the post office unclaimed, refused or not forwarded, that service will constitute valid service;

(b) If any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this act or any rule or order authorized by this act, and he has not filed a consent to service of process under subsection (a) of this section and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct shall be considered equivalent to his appointment of the bureau chief or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the bureau, and it is not effective unless the plaintiff, who may be the bureau chief in any action instituted on his behalf by the Attorney General, forthwith sends notice of the service and a copy of the process by certified or registered mail to the defendant or respondent at his last known address.

33. Section 28 of P.L.1967, c.93 (C.49:3-75) is amended to read as follows:

C.49:3-75 Construction of act.

28. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact similar laws and to co-ordinate the interpretation and administration of this act with related federal regulations. The bureau chief and the bureau chief's designees may participate in private investigations and enforcement proceedings and cooperate in sharing information with other State authorities, and with authorities of other states and of federal and foreign governments.

Repealer.

34. The following are repealed:
Sections 2 and 3 of P.L.1967, c.96 (C.49:3-45 and C.49:3-46); and
Sections 1 and 27 of P.L.1967, c.93 (C.49:3-48 and 49:3-74).

35. This act shall take effect immediately.

Approved December 24, 1997.

CHAPTER 277

AN ACT concerning penalties for driving while intoxicated and amending R.S.39:4-50 and P.L.1981, c.512.

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.

R.S.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.

A conviction of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this subsection unless the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than .10%.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title or Title 2C of the New Jersey Statutes at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. In the case of any person who at the time of the imposition of sentence is less than 17 years of age, the forfeiture, suspension or revocation of the driving privilege

imposed by the court under this section shall commence immediately, run through the offender's seventeenth birthday and continue from that date for the period set by the court pursuant to paragraphs (1) through (3) of this subsection. A court that imposes a term of imprisonment under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the chief of the Intoxicated Driving Program Unit in the Department of Health and Senior Services; provided that for a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense, the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol and drug education and highway safety, as prescribed by the 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 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program Unit a copy of a person's conviction record. A fee of $100.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the 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 counselor certified by the Alcohol and Drug Counselor Certification Board of New Jersey or other professional with a minimum of five years' experience in the treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers; provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol and drug education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's

participation and compliance with the program. Nothing in this subsection shall bar these centers from developing their own education and treatment programs; provided that they are approved by the Division of Alcoholism and Drug Abuse.

Upon a person's failure to report to the initial screening or any subsequent ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Intoxicated Driving Program Unit. Upon attendance at an Intoxicated Driver Resource Center, a person shall be required to pay a per diem fee of $75.00 for the first offender program or a per diem fee of $100.00 for the second offender program, as appropriate. Any increases in the per diem fees after the first full year shall be determined pursuant to rules and regulations adopted by the Commissioner of Health and Senior Services in consultation with the Governor's Council on Alcoholism and Drug Abuse pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

The centers shall conduct a program of alcohol and drug education and highway safety, as prescribed by the Director of the Division of Motor Vehicles.

The Commissioner of Health and Senior Services shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this subsection.

2. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read as follows:

C.39:4-50.4a Revocation for refusal to submit to breath test; penalties.

2. The municipal court shall revoke the right to operate a motor vehicle of any operator who, after being arrested for a violation of R.S.39:4-50, shall refuse to submit to a test provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six months unless the refusal was in connection with a second offense under this section, in which case the revocation period shall be for two years or unless the refusal was in connection with a third or subsequent offense under this section in which case the revocation shall be for ten years. A conviction or administrative determination of a violation of a law of a substantially similar nature in another jurisdiction, regardless of whether that jurisdiction is a signatory to the Interstate Driver License Compact pursuant to P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction under this section.

The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person

had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marijuana; whether the person was placed under arrest, if appropriate, and whether he refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a test shall be referred to an Intoxicated Driver Resource Center established by subsection (f.) of R.S.39:4-50 and shall satisfy the same requirements of the center for refusal to submit to a test as provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with a first, second, third or subsequent offense under this section that must be satisfied by a person convicted of a commensurate violation of this section, or be subject to the same penalties as such a person for failure to do so. The revocation shall be independent of any revocation imposed by virtue of a conviction under the provisions of R.S.39:4-50.

In addition to issuing a revocation, the municipal court shall fine a person convicted under this section, a fine of not less than $250.00 nor more than $500.00.

3. This act shall take effect immediately.

Approved December 30, 1997.

CHAPTER 278

AN ACT concerning the remediation of contaminated sites, revising parts of the statutory law, and making appropriations.

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

C.58:10B-1.1 Short title.

1. Sections 23 through 43 and section 45 of P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and supplemented, shall be known and may be cited as the "Brownfield and Contaminated Site Remediation Act."

C.58:10B-1.2 Findings, declarations relative to remediation of contaminated sites.

2. The Legislature finds and declares that due to New Jersey's industrial history, large areas in the State's urban and suburban areas

formerly used for commercial and industrial purposes are underused or abandoned; that many of these properties, often referred to as brownfields, are contaminated with hazardous substances and pose a health risk to the nearby residents and a threat to the environment; and that these sites can be a blight to the neighborhood and a financial drain on a municipality because they have no productive use, and fail to generate property taxes and jobs. The Legislature further finds that often there are legal, financial, technical, and institutional impediments to the efficient and cost-effective cleanup of brownfield sites as well as all other contaminated sites wherever they may be. The Legislature finds and declares that the State needs to ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards coupled with a risk based and flexible regulatory system will result in more cleanups and thus the elimination of the public's exposure to these hazardous substances and the environmental degradation that contamination causes.

The Legislature therefore declares that strict remediation standards are necessary to protect public health and safety and the environment; that these standards should be adopted based upon the risk posed by discharged hazardous substances; that unrestricted remedies for contaminated sites are preferable and the State must adopt policies that encourage their use; that institutional and engineering controls should be allowed only when the public health risk and environmental protection standards are met; and that in order to encourage the cleanup of contaminated sites, there must be finality in the process, the provision of financial incentives, liability protection for innocent parties who clean up, cleanup procedures that are cost effective and regulatory action that is timely and efficient.

C.58:10B-21 Investigation, determination of extent of contamination of aquifers.

3. a. The Department of Environmental Protection shall investigate and determine the extent of contamination of every aquifer in this State. The department shall prioritize its investigations of aquifers giving the highest priority to those aquifers underlying urban or industrial areas that are known or suspected of having large areas of contamination. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an aquifer by the department and upon the department's determination of the extent of contamination of an aquifer, a person performing a remediation may rely upon that information for that person's submission of information to the department in the performance of a remediation.

c. The entire cost of the investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

d. Nothing in this section shall be construed to require or obligate the department to reclassify the groundwater of any aquifer.

C.58:10B-22 Investigation, mapping of historic fill areas.

4. a. The Department of Environmental Protection shall investigate and map those areas of the State at which large areas of historic fill exist. The department shall prioritize its investigations of historic fill areas giving highest priority to those areas of the State that are known or suspected to contain historic fill. This information shall be updated periodically as necessary. The information derived from the investigation shall be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system, and by making copies of any maps and data available to the public. The functions required pursuant to this section shall be considered a site remediation obligation of the State. The department may charge a reasonable fee for the reproduction of the maps and data which fee shall reflect the cost of their reproduction.

b. Upon completion of an investigation of an area of historic fill by the department and upon the department's determination of the location of historic fill in an area, a person performing a remediation may rely upon that information for that person's performance of a remediation and selection of a remedial action pursuant to subsection h. of section 35 of P.L.1993, c.139 (C.58:10B-12).

c. The entire cost of investigation required pursuant to this section shall be borne by the department from appropriations made to it by the Legislature specifically for this purpose. The department may not fund any part of this investigation by the imposition of a fee or charge on any person performing a remediation or upon any person who is in need of a permit or approval from the department.

C.58:10B-23 "Brownfields Redevelopment Task Force"; duties.

5. a. There is created the "Brownfields Redevelopment Task Force." The Task Force shall consist of five representatives from State agencies and six public members. The State agency representatives shall be from each of the following State agencies: the Office of State Planning in the Department of the Treasury, the Office of Neighborhood Empowerment in the Department of Community Affairs, the New Jersey Redevelopment Authority in the Department of Commerce and Economic Development, the Department of Transportation, and the Site Remediation Program in the Department of Environmental Protection. The six public members shall be appointed by the Governor with the advice and consent of the Senate. The public members shall include to the extent practicable: a representative of commercial or residential development interests, a representative of the financial community, a representative of a public interest environmental organization, a representative of a neighborhood or community redevelopment organization, a representative of a labor or trade organization, and a representative of a regional planning entity.

The Office of State Planning shall provide staff to implement the functions and duties of the Task Force. The public members of the Task Force shall serve without compensation but may be reimbursed for actual expenses in the performance of their duties. The Governor shall select the chairperson of the Task Force.

b. The Task Force shall prepare and update an inventory of brownfield sites in the State. In preparing the inventory, priority shall be given to those areas of the State that receive assistance from the Urban Coordinating Council or from the Office of Neighborhood Empowerment. To the extent practicable, the inventory shall include an assessment of the contaminants known or suspected to have been discharged or that are currently stored on the site, the extent of any remediation performed on the site, the site's proximity to transportation networks, and the availability of infrastructure to support the redevelopment of the site. The information gathered for the inventory shall, to the extent practicable, be made available to the public by entering it into the Department of Environmental Protection's existing geographic information system, by making this information available on the system and by making copies of any maps and data available to the public. The department may charge a reasonable fee for the reproduction of maps and data which fee shall reflect the cost of their reproduction.

c. In addition to its functions pursuant to subsection b. of this section, the Task Force shall:

(1) coordinate State policy on brownfields redevelopment, including incentives, regulatory programs, provision of infrastructure, and redevelopment planning assistance to local governments;

(2) use the inventory to prioritize sites based on their immediate economic development potential;

(3) prepare a plan of action to return these sites to productive economic use on an expedited basis;

(4) actively market sites on the inventory to prospective developers;

(5) use the inventory to provide a targeted environmental assessment of the sites, or of areas containing several brownfield sites, by the Department of Environmental Protection;

(6) consult with the Pinelands Commission concerning the remediation and redevelopment of brownfield sites located in the pinelands area as designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11);

(7) evaluate the performance of current public incentives in encouraging the remediation of and redevelopment of brownfields; and

(8) make recommendations to the Governor and the Legislature on means to better promote the redevelopment of brownfields, including the provision of necessary public infrastructure and methods to attract private investment in redevelopment.

d. As used in this section, "brownfield" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

C.58:10B-13.1 No further action letter; covenant not to sue.

6. a. Whenever after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) the Department of Environmental Protection issues a no further action letter pursuant to a remediation, it shall also issue to the person performing the remediation a covenant not to sue with respect to the real property upon which the remediation has been conducted. A covenant not to sue shall be executed by the person performing the remediation and by the department in order to become effective. The covenant not to sue shall be consistent with any conditions and limitations contained in the no further action letter. The covenant not to sue shall be for any area of concern remediated and may apply to the entire real property if the remediation included a preliminary assessment and, if necessary, a site investigation of the entire real property, and any other necessary remedial actions. The covenant remains effective only for as long as the real property for which the covenant was issued continues to meet the conditions of the no further action letter. Upon a finding by the department that real property or a portion thereof to which a covenant not to sue pertains, no longer meets

with the conditions of the no further action letter, the department shall provide notice of that fact to the person responsible for maintaining compliance with the no further action letter. The department may allow the person a reasonable time to come into compliance with the terms of the original no further action letter. If the property does not meet the conditions of the no further action letter and if the department does not allow for a period of time to come into compliance or if the person fails to come into compliance within the time period, the department may invoke the provisions of the covenant not to sue permitting revocation of the covenant not to sue.

Except as provided in subsection e. of this section, a covenant not to sue shall contain the following, as applicable:

(1) a provision releasing the person who undertook the remediation from all civil liability to the State to perform any additional remediation or for any cleanup and removal costs;

(2) for a remediation that involves the use of engineering or institutional controls:

(a) a provision requiring the person, or any subsequent owner, lessee, or operator during the person's period of ownership, tenancy, or operation, to maintain those controls, conduct periodic monitoring for compliance, and submit to the department, on a biennial basis, a certification that the engineering and institutional controls are being properly maintained and continue to be protective of public health and safety and of the environment. The certification shall state the underlying facts and shall include the results of any tests or procedures performed that support the certification; and

(b) a provision revoking the covenant if the engineering or institutional controls are not being maintained or are no longer in place; and

(3) for a remediation that involves the use of engineering controls but not for any remediation that involves the use of institutional controls only, a provision barring the person or persons whom the covenant not to sue benefits, from making a claim against the New Jersey Spill Compensation Fund and the Sanitary Landfill Facility Contingency Fund for any costs or damages relating to the real property and remediation covered by the covenant not to sue. The covenant not to sue shall not bar a claim by any person against the New Jersey Spill Compensation Fund and the Sanitary Landfill Contingency Fund for any remediation that involves only the use of institutional controls if, after a valid no further action letter has been issued, the department orders additional remediation, except that the covenant shall bar such a claim if the department ordered additional remediation in order to remove the institutional control.

b. Unless a covenant not to sue issued under this section is revoked by the department, the covenant shall remain effective. The covenant not to

sue shall apply to all successors in ownership of the property and to all persons who lease the property or who engage in operations on the property.

c. If a covenant not to sue is revoked, liability for any additional remediation shall not be applied retroactively to any person for whom the covenant remained in effect during that person's ownership, tenancy, or operation of the property.

d. A covenant not to sue and the protections it affords shall not apply to any discharge that occurs subsequent to the issuance of the no further action letter which was the basis of the issuance of the covenant, nor shall a covenant not to sue and the protections it affords relieve any person of the obligations to comply in the future with laws and regulations.

e. The covenant not to sue may be issued to any person who obtains a no further action letter as provided in subsection a. of this section. The covenant not to sue shall not provide relief from any liability, either under statutory or common law, to any person who is liable for cleanup and removal costs pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section.

7. Section 3 of P.L.1983, c.330 (C.13:1K-8) is amended to read as follows:

C.13:1K-8 Definitions.

3. "Remedial action workplan" means a plan for the remedial action to be undertaken at an industrial establishment, or at any area to which a discharge originating at the industrial establishment is migrating or has migrated; a description of the remedial action to be used to remediate the industrial establishment; a time schedule and cost estimate of the implementation of the remedial action; and any other relevant information the department deems necessary;

"Closing operations" means:

(1) the cessation of operations resulting in at least a 90 percent reduction in the total value of the product output from the entire industrial establishment, as measured on a constant, annual date-specific basis, within any five-year period, or, for industrial establishments for which the product output is undefined, a 90 percent reduction in the number of employees or a 90 percent reduction in the area of operations of an industrial establishment within any five-year period; provided, however, the department may approve a waiver of the provisions of this paragraph for any owner or operator who, upon application and review, evidences a good faith effort to maintain and expand product output, the number of employees, or area of operations of the affected industrial establishment;

(2) any temporary cessation of operations of an industrial establishment for a period of not less than two years;

(3) any judicial proceeding or final agency action through which an industrial establishment becomes nonoperational for health or safety reasons;

(4) the initiation of bankruptcy proceedings pursuant to Chapter 7 of the federal Bankruptcy Code, 11 U.S.C. s.701 et seq. or the filing of a plan of reorganization that provides for a liquidation pursuant to Chapter 11 of the federal Bankruptcy Code, 11 U.S.C. s.1101 et seq.;

(5) any change in operations of an industrial establishment that changes the industrial establishment's Standard Industrial Classification number to one that is not subject to this act; or

(6) the termination of a lease unless there is no disruption in operations of the industrial establishment, or the assignment of a lease;

"Transferring ownership or operations" means:

(1) any transaction or proceeding through which an industrial establishment undergoes a change in ownership;

(2) the sale or transfer of more than 50% of the assets of an industrial establishment within any five-year period, as measured on a constant, annual date-specific basis;

(3) the execution of a lease for a period of 99 years or longer for an industrial establishment; or

(4) the dissolution of an entity that is an owner or operator or an indirect owner of an industrial establishment, except for any dissolution of an indirect owner of an industrial establishment whose assets would have been unavailable for the remediation of the industrial establishment if the dissolution had not occurred;

"Change in ownership" means:

(1) the sale or transfer of the business of an industrial establishment or any of its real property;

(2) the sale or transfer of stock in a corporation resulting in a merger or consolidation involving the direct owner or operator or indirect owner of the industrial establishment;

(3) the sale or transfer of stock in a corporation, or the transfer of a partnership interest, resulting in a change in the person holding the controlling interest in the direct owner or operator or indirect owner of an industrial establishment;

(4) the sale or transfer of title to an industrial establishment or the real property of an industrial establishment by exercising an option to purchase; or

(5) the sale or transfer of a partnership interest in a partnership that owns or operates an industrial establishment, that would reduce, by 10% or more, the assets available for remediation of the industrial establishment;

"Change in ownership" shall not include:

(1) a corporate reorganization not substantially affecting the ownership of the industrial establishment;

(2) a transaction or series of transactions involving the transfer of stock, assets or both, among corporations under common ownership, if the transaction or transactions will not result in the diminution of the net worth of the corporation that directly owns or operates the industrial establishment by more than 10%, or if an equal or greater amount in assets is available for the remediation of the industrial establishment before and after the transaction or transactions;

(3) a transaction or series of transactions involving the transfer of stock, assets or both, resulting in the merger or de facto merger or consolidation of the indirect owner with another entity, or in a change in the person holding the controlling interest of the indirect owner of an industrial establishment, when the indirect owner's assets would have been unavailable for cleanup if the transaction or transactions had not occurred;

(4) a transfer where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling, or sibling of a parent of the transferee;

(5) a transfer to confirm or correct any deficiencies in the recorded title of an industrial establishment;

(6) a transfer to release a contingent or reversionary interest except for any transfer of a lessor's reversionary interest in leased real property;

(7) a transfer of an industrial establishment by devise or intestate succession;

(8) the granting or termination of an easement or a license to any portion of an industrial establishment;

(9) the sale or transfer of real property pursuant to a condemnation proceeding initiated pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

(10) execution, delivery and filing or recording of any mortgage, security interest, collateral assignment or other lien on real or personal property; or

(11) any transfer of personal property pursuant to a valid security agreement, collateral assignment or other lien, including, but not limited to, seizure or replevin of such personal property which transfer is for the purpose of implementing the secured party's rights in the personal property which is the collateral.

"Department" means the Department of Environmental Protection;

"Hazardous substances" means those elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311

of the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. s.1321) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to Section 307 of that act (33 U.S.C. s.1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of this act;

"Hazardous waste" shall have the same meaning as provided in section 1 of P.L.1976, c.99 (C.13:1E-38);

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States. Those facilities or parts of facilities subject to operational closure and post-closure maintenance requirements pursuant to the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.) or the "Solid Waste Disposal Act" (42 U.S.C. s.6901 et seq.), or any establishment engaged in the production or distribution of agricultural commodities, shall not be considered industrial establishments for the purposes of this act. The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), exempt certain sub-groups or classes of operations within those sub-groups within the Standard Industrial Classification major group numbers listed in this subsection upon a finding that the operation of the industrial establishment does not pose a risk to public health and safety;

"Negative declaration" means a written declaration, submitted by the owner or operator of an industrial establishment or other person assuming responsibility for the remediation under paragraph (3) of subsection b. of section 4 of P.L.1983, c.330 to the department, certifying that there has been no discharge of hazardous substances or hazardous wastes on the site, or that any such discharge on the site or discharge that has migrated or is migrating from the site has been remediated in accordance with procedures approved by the department and in accordance with any applicable remediation regulations;

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a hazardous substance or hazardous waste into the waters or onto the lands of the State;

"No further action letter" means a written determination by the department that, based upon an evaluation of the historical use of the

industrial establishment and the property, or of an area of concern or areas of concern, as applicable, and any other investigation or action the department deems necessary, there are no discharged hazardous substances or hazardous wastes present at the site of the industrial establishment, at the area of concern or areas of concern, or at any other site to which discharged hazardous substances or hazardous wastes originating at the industrial establishment have migrated, and that any discharged hazardous substances or hazardous wastes present at the industrial establishment or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

"Indirect owner" means any person who holds a controlling interest in a direct owner or operator, holds a controlling interest in another indirect owner, or holds an interest in a partnership which is an indirect owner or a direct owner or operator, of an industrial establishment;

"Direct owner or operator" means any person that directly owns or operates an industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be a direct owner or operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

"Area of concern" means any location where hazardous substances or hazardous wastes are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where hazardous substances or hazardous wastes have or may have migrated;

"Remediation standards" means the combination of numeric standards that establish a level or concentration and narrative standards, to which hazardous substances or hazardous wastes must be treated, removed, or otherwise cleaned for soil, groundwater, or surface water, as provided by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or environmental standards;

"Owner" means any person who owns the real property of an industrial establishment or who owns the industrial establishment. A holder of a mortgage or other security interest in the industrial establishment shall not be deemed to be an owner of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

"Operator" means any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. A holder of a mortgage or other security interest in the

industrial establishment shall not be deemed to be an operator of the industrial establishment unless or until it loses its exemption under P.L.1993, c.112 (C.58:10-23.11g4 et al.) or obtains title to the industrial establishment by deed of foreclosure, by other deed, or by court order or other process;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether hazardous substances or hazardous wastes are or were present at an industrial establishment or have migrated or are migrating from the industrial establishment, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any hazardous substance or hazardous waste is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of public records;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of hazardous substances or hazardous wastes, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remedial action" means those actions taken at an industrial establishment or offsite of an industrial establishment if hazardous substances or hazardous wastes have migrated or are migrating therefrom, as may be required by the department to protect public health, safety, and the environment. These actions may include the removal, treatment, containment, transportation, securing, or other engineering measures, whether to an unrestricted use or otherwise, designed to ensure that any discharged hazardous substances or hazardous wastes at the site or that have migrated or are migrating from the site, are remediated in compliance with the applicable health risk or environmental standards;

"Remedial investigation" means a process to determine the nature and extent of a discharge of hazardous substances or hazardous wastes at an industrial establishment or a discharge of hazardous substances or hazardous wastes that have migrated or are migrating from the site and the problems presented by a discharge, and may include data collection, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged hazardous substances or hazardous wastes exist at the industrial establishment or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment.

8. Section 4 of P.L.1983, c.330 (C.13:1K-9) is amended to read as follows:

C.13:1K-9 Closing, transfer procedures.

4. a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable. The notice to the department shall: identify the subject industrial establishment; describe the transaction requiring compliance with P.L.1983, c.330 (C.13:1K-6 et al.); state the date of the closing of operations or the date of the public release of the decision to close operations as evidenced by a copy of the appropriate public announcement, if applicable; state the date of execution of the agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer, if applicable; state the proposed date for closing operations or transferring ownership or operations; list the name, address, and telephone number of an authorized agent for the owner or operator; and certify that the information submitted is accurate. The notice shall be transmitted to the department in the manner and form required by the department. The department may, by regulation, require the submission of any additional information in order to improve the efficient implementation of P.L.1983, c.330.

b. (1) Subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L.1983, c.330 or P.L.1993, c.139 (C.13:1K-9.6 et al.), remediate the industrial establishment. The remediation shall be conducted in accordance with criteria, procedures, and time schedules established by the department.

(2) The owner or operator shall attach a copy of any approved negative declaration, approved remedial action workplan, no further action letter, or remediation agreement approval to the contract or agreement of sale or agreement to transfer or any option to purchase which may be entered into with respect to the transfer of ownership or operations. In the event that any

sale or transfer agreements or options have been executed prior to the approval of a negative declaration, remedial action workplan, no further action letter, or remediation agreement, these documents, as relevant, shall be transmitted by the owner or operator, by certified mail, overnight delivery, or personal service, prior to the transfer of ownership or operations, to all parties to any transaction concerning the transfer of ownership or operations, including purchasers, bankruptcy trustees, mortgagees, sureties, and financiers.

(3) The preliminary assessment, site investigation, remedial investigation, and remedial action for the industrial establishment shall be performed and implemented by the owner or operator of the industrial establishment, except that any other party may assume that responsibility pursuant to the provisions of P.L.1983, c.330.

c. The owner or operator of an industrial establishment shall, subsequent to closing operations, or of its public release of its decision to close operations, or prior to transferring ownership or operations except as otherwise provided in subsection e. of this section, as applicable, submit to the department for approval a proposed negative declaration or proposed remedial action workplan. Except as otherwise provided in section 6 of P.L.1983, c.330 (C.13:1K-11), and sections 13, 16, 17 and 18 of P.L.1993, c.139 (C.13:1K-11.2, C.13:1K-11.5, C.13:1K-11.6 and C.13:1K-11.7), the owner or operator of an industrial establishment shall not transfer ownership or operations until a negative declaration or a remedial action workplan has been approved by the department or the conditions of subsection e. of this section for remediation agreements have been met and until, in cases where a remedial action workplan is required to be approved or a remediation agreement has been approved, a remediation funding source, as required pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3), has been established.

d. (1) Upon the submission of the results of either the preliminary assessment, site investigation, remedial investigation, or remedial action, where applicable, which demonstrate that there are no discharged hazardous substances or hazardous wastes at the industrial establishment, or that have migrated from or are migrating from the industrial establishment, in violation of the applicable remediation regulations, the owner or operator may submit to the department for approval a proposed negative declaration as provided in subsection c. of this section.

(2) After the submission and review of the information submitted pursuant to a preliminary assessment, site investigation, remedial investigation, or remedial action, as necessary, the department shall, within 45 days of submission of a complete and accurate negative declaration, approve the negative declaration, or inform the owner or operator of the industrial

establishment that a remedial action workplan or additional remediation shall be required. The department shall approve a negative declaration by the issuance of a no further action letter.

e. The owner or operator of an industrial establishment, who has submitted a notice to the department pursuant to subsection a. of this section, may transfer ownership or operations of the industrial establishment prior to the approval of a negative declaration or remedial action workplan upon application to and approval by the department of a remediation agreement. The owner or operator requesting a remediation agreement shall submit the following documents: (1) an estimate of the cost of the remediation that is approved by the department; (2) a certification of the statutory liability of the owner or operator pursuant to P.L.1983, c.330 to perform and to complete a remediation of the industrial establishment in the manner and time limits provided by the department in regulation and consistent with all applicable laws and regulations; however, nothing in this paragraph shall be construed to be an admission of liability, or to impose liability on the owner or operator, pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) or pursuant to any other statute or common law; (3) evidence of the establishment of a remediation funding source in an amount of the estimated cost of the remediation and in accordance with the provisions of section 25 of P.L.1993, c.139 (C.58:10B-3); (4) a certification that the owner or operator is subject to the provisions of P.L.1983, c.330, including the liability for penalties for violating the act, defenses to liability and limitations thereon, the requirement to perform a remediation as required by the department, allowing the department access to the industrial establishment as provided in section 5 of P.L.1983, c.330 (C.13:1K-10), and the requirement to prepare and submit any document required by the department relevant to the remediation of the industrial establishment; and (5) evidence of the payment of all applicable fees required by the department.

The department may require in the remediation agreement that all plans for and results of the preliminary assessment, site investigation, remedial investigation, and the implementation of the remedial action workplan, prepared or initiated subsequent to the transfer of ownership or operations, be submitted to the department, for review purposes only, at the completion of each phase of the remediation.

The department shall adopt regulations establishing the manner in which the documents required pursuant to paragraphs (1) through (5), inclusive, of this subsection shall be submitted. The department shall approve the application for the remediation agreement upon the complete and accurate submission of the documents required to be submitted pursuant to this subsection. The regulations shall include a sample form of the certifications. Approval of a remediation agreement shall not affect an owner's or operator's right to avail itself of the provisions of section 6 of P.L.1983, c.330 (C.13:1K-11), of section 13, 14, 15, 16, 17, or 18 of P.L.1993, c.139

(C.13:1K-11.2, C.13:1K-11.3, C.13:1K-11.4, C.13:1K-11.5, C.13:1K-11.6 or C.13:1K-11.7), or of the other provisions of this section.

f. An owner or operator of an industrial establishment may perform a preliminary assessment, site investigation, or remedial investigation for a soil, surface water, or groundwater remediation without the prior submission to or approval of the department, except as otherwise provided in a remediation agreement required pursuant to subsection e. of this section. However, the plans for and results of the preliminary assessment, site investigation, and remedial investigation may, at the discretion of the owner or operator, be submitted to the department for its review and approval at the completion of each phase of the remediation.

g. The soil, groundwater, and surface water remediation standard and the remedial action to be implemented on an industrial establishment shall be selected by the owner or operator, and reviewed and approved by the department, based upon the policies and criteria enumerated in section 35 of P.L.1993, c.139 (C.58:10B-12).

h. An owner or operator of an industrial establishment may implement a soil remedial action at an industrial establishment without prior department approval of the remedial action workplan for the remediation of soil when the remedial action can reasonably be expected to be completed pursuant to standards, criteria, and time schedules established by the department, which schedules shall not exceed five years from the commencement of the implementation of the remedial action and if the owner or operator is implementing a soil remediation which meets the established minimum residential or nonresidential use soil remediation standards adopted by the department.

Nothing in this subsection shall be construed to authorize the closing of operations or the transfer of ownership or operations of an industrial establishment without the department's approval of a negative declaration, a remedial action workplan or a remediation agreement.

i. An owner or operator of an industrial establishment shall base the decision to select a remedial action based upon the standards and criteria set forth in section 35 of P.L.1993, c.139 (C.58:10B-12). When a remedial action selected by an owner or operator includes the use of an engineering or institutional controls that necessitates the recording of a notice pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), the owner or operator shall obtain the approval of the transferee of the industrial establishment.

At any time after the effective date of P.L.1993, c.139, an owner or operator may request the department to provide a determination as to whether a proposed remedial action is consistent with the standards and criteria set forth in section 35 of P.L.1993, c.139 (C.58:10B-12). The department shall make that determination based upon the standards and criteria set forth in that

section. The department shall provide any such determination within 30 calendar days of the department's receipt of the request.

j. An owner or operator proposing to implement a soil remedial action other than one which is set forth in subsection h. of this section must receive department approval prior to implementation of the remedial action.

k. An owner or operator of an industrial establishment shall not implement a remedial action involving the remediation of groundwater or surface water without the prior review and approval by the department of a remedial action workplan.

l. Submissions of a preliminary assessment, site investigation, remedial investigation, remedial action workplan, and the results of a remedial action shall be in a manner and form, and shall contain any relevant information relating to the remediation, as may be required by the department.

Upon receipt of a complete and accurate submission, the department shall review and approve or disapprove the submission in accordance with the review schedules established pursuant to section 2 of P.L.1991, c.423 (C.13:1D-106). The owner or operator shall not be required to wait for a response by the department before continuing remediation activities, except as otherwise provided in this section. Upon completion of the remediation, the plans for and results of the preliminary assessment, site investigation, remedial investigation, remedial action workplan, and remedial action and any other information required to be submitted as provided in section 35 of P.L.1993, c.139 (C.58:10B-12), that has not previously been submitted to the department, shall be submitted to the department for its review and approval.

The department shall review all information submitted to it by the owner or operator at the completion of the remediation to determine whether the actions taken were in compliance with rules and regulations of the department regarding remediation.

The department may review and approve or disapprove every remedial action workplan, no matter when submitted, to determine, in accordance with the criteria listed in subsection g. of section 35 of P.L.1993, c.139 (C.58:10B-12) if the remedial action that has occurred or that will occur is appropriate to meet the applicable health risk or environmental standards.

The department may order additional remediation activities at the industrial establishment, or offsite where necessary, or may require the submission of additional information, where (a) the department determines that the remediation activities undertaken were not in compliance with the applicable rules or regulations of the department; (b) all documents required to be submitted to the department were not submitted or, if submitted, were inaccurate, or deficient; or (c) discharged hazardous substances or hazardous wastes remain at the industrial establishment, or have migrated or are

migrating offsite, at levels or concentrations or in a manner that is in violation of the applicable health risk or environmental standards. Upon a finding by the department that the remediation conducted at the industrial establishment was in compliance with all applicable regulations, that no hazardous substances or hazardous wastes remain at the industrial establishment in a manner that is in violation of the applicable health risk or environmental standards, and that all hazardous substances or hazardous wastes that migrated from the industrial establishment have been remediated in conformance with the applicable health risk or environmental standards, the department shall approve the remediation for that industrial establishment by the issuance of a no further action letter.

9. Section 23 of P.L.1993, c.139 (C.58:10B-1) is amended to read as follows:

C.58:10B-1 Definitions.

23. As used in sections 23 through 43 and section 45 of P.L.1993, c.139 (C.58:10B-1 et seq.), as may be amended and supplemented:

"Area of concern" means any location where contaminants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, or disposed, or where contaminants have or may have migrated;

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

"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);

"Department" means the Department of Environmental Protection;

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a contaminant onto the land or into the waters of the State;

"Engineering controls" means any mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences and physical access controls;

"Environmental opportunity zone" has the meaning given that term pursuant to section 3 of P.L.1995, c.413 (C.54:4-3.152);

"Financial assistance" means loans or loan guarantees;

"Institutional controls" means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of that property. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, and deed notices;

"Limited restricted use remedial action" means any remedial action that requires the continued use of institutional controls but does not require the use of an engineering control;

"No further action letter" means a written determination by the department that based upon an evaluation of the historical use of a particular site, or of an area of concern or areas of concern at that site, as applicable, and any other investigation or action the department deems necessary, there are no discharged contaminants present at the site, at the area of concern or areas of concern, at any other site to which a discharge originating at the site has migrated, or that any discharged contaminants present at the site or that have migrated from the site have been remediated in accordance with applicable remediation regulations;

"Preliminary assessment" means the first phase in the process of identifying areas of concern and determining whether contaminants are or were present at a site or have migrated or are migrating from a site, and shall include the initial search for and evaluation of, existing site specific operational and environmental information, both current and historic, to determine if further investigation concerning the documented, alleged, suspected or latent discharge of any contaminant is required. The evaluation of historic information shall be conducted from 1932 to the present, except that the department may require the search for and evaluation of additional information relating to ownership and use of the site prior to 1932 if such information is available through diligent inquiry of the public records;

"Remedial action" means those actions taken at a site or offsite if a contaminant has migrated or is migrating therefrom, as may be required by the department, including the removal, treatment, containment, transportation, securing, or other engineering or treatment measures, whether to an unrestricted use or otherwise, designed to ensure that any discharged contaminant at the site or that has migrated or is migrating from the site, is remediated in compliance with the applicable health risk or environmental standards;

"Remedial action workplan" means a plan for the remedial action to be undertaken at a site, or at any area to which a discharge originating at a site is migrating or has migrated; a description of the remedial action to be used to remediate a site; a time schedule and cost estimate of the implementation

of the remedial action; and any other information the department deems necessary;

"Remedial investigation" means a process to determine the nature and extent of a discharge of a contaminant at a site or a discharge of a contaminant that has migrated or is migrating from the site and the problems presented by a discharge, and may include data collected, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity for remedial action and to support the evaluation of remedial actions if necessary;

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remediation fund" means the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4);

"Remediation funding source" means the methods of financing the remediation of a discharge required to be established by a person performing the remediation pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3);

"Remediation standards" means the combination of numeric standards that establish a level or concentration, and narrative standards to which contaminants must be treated, removed, or otherwise cleaned for soil, groundwater, or surface water, as provided by the department pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) in order to meet the health risk or environmental standards;

"Restricted use remedial action" means any remedial action that requires the continued use of engineering and institutional controls in order to meet the established health risk or environmental standards;

"Site investigation" means the collection and evaluation of data adequate to determine whether or not discharged contaminants exist at a site or have migrated or are migrating from the site at levels in excess of the applicable remediation standards. A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment;

"Unrestricted use remedial action" means any remedial action that does not require the continued use of engineering or institutional controls in order to meet the established health risk or environmental standards;

"Voluntarily perform a remediation" means performing a remediation without having been ordered or directed to do so by the department or by a court and without being compelled to perform a remediation pursuant to the provisions of P.L. 1983, c.330 (C.13:1K-6 et al.).

10. Section 24 of P.L.1993, c.139 (C.58:10B-2) is amended to read as follows:

C.58:10B-2 Rules, regulations, deviations from regulations.

24. a. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing criteria and minimum standards necessary for the submission, evaluation and approval of plans or results of preliminary assessments, site investigations, remedial investigations, and remedial action workplans and for the implementation thereof. The documents for the preliminary assessment, site investigation, remedial investigation, and remedial action workplan required to be submitted for a remediation, shall not be identical to the criteria and standards used for similar documents submitted pursuant to federal law, except as may be required by federal law. In establishing criteria and minimum standards for these terms the department shall strive to be result oriented, provide for flexibility, and to avoid duplicate or unnecessarily costly or time consuming conditions or standards.

b. The regulations adopted by the department pursuant to subsection a. of this section shall provide that a person performing a remediation may deviate from the strict adherence to the regulations, in a variance procedure or by another method prescribed by the department, if that person can demonstrate that the deviation and the resulting remediation would be as protective of human health, safety, and the environment, as appropriate, as the department's regulations and that the health risk standards established in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12) and any applicable environmental standards would be met. Factors to be considered in determining if the deviation should be allowed are whether the alternative method:

(1) has been either used successfully or approved by the department in writing or similar situations;

(2) reflects current technology as documented in peer-reviewed professional journals;

(3) can be expected to achieve the same or substantially the same results or objectives as the method which it is to replace; and

(4) furthers the attainment of the goals of the specific remedial phase for which it is used.

The department shall make available to the public, and shall periodically update, a list of alternative remediation methods used successfully or approved by the department as provided in paragraph (1) of this subsection.

c. To the extent practicable and in conformance with the standards for remediations as provided in section 35 of P.L.1993, c.139 (C.58:10-12), the department shall adopt rules and regulations that allow for certain remedial actions to be undertaken in a manner prescribed by the department without having to obtain prior approval from or submit detailed documentation to

the department. A person who performs a remedial action in the manner prescribed in the rules and regulations of the department, and who certifies this fact to the department, shall obtain a no further action letter from the department for that particular remedial action.

d. The department shall develop regulatory procedures that encourage the use of innovative technologies in the performance of remedial actions and other remediation activities.

e. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations adopted pursuant thereto, and with section 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C. s.471i.

11. Section 25 of P.L.1993, c.139 (C.58:10B-3) is amended to read as follows:

C.58:10B-3 Establishment, maintenance of remediation funding source.

25. a. The owner or operator of an industrial establishment or any other person required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), or a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.) who has been issued a directive or an order by a State agency, who has entered into an administrative consent order with a State agency, or who has been ordered by a court to clean up and remove a hazardous substance or hazardous waste discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), shall establish and maintain a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. A person who voluntarily undertakes a remediation pursuant to a memorandum of agreement with the department, or without the department's oversight, or who performs a remediation in an environmental opportunity zone is not required to establish or maintain a remediation funding source. A person who uses an innovative technology or who, in a timely fashion, implements an unrestricted use remedial action or a limited restricted use remedial action for all or part of a remedial action is not required to establish a remediation funding source for the cost of the remediation involving the innovative technology or permanent remedy. A person required to establish a remediation funding source pursuant to this section shall provide to the department satisfactory documentation that the requirement has been met.

The remediation funding source shall be established in an amount equal to or greater than the cost estimate of the implementation of the remediation

(1) as approved by the department, (2) as provided in an administrative consent order or remediation agreement as required pursuant to subsection e. of section 4 of P.L.1983, c.330, (3) as stated in a departmental order or directive, or (4) as agreed to by a court, and shall be in effect for a term not less than the actual time necessary to perform the remediation at the site. Whenever the remediation cost estimate increases, the person required to establish the remediation funding source shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate. Whenever the remediation or cost estimate decreases, the person required to obtain the remediation funding source may file a written request to the department to decrease the amount in the remediation funding source. The remediation funding source may be decreased to the amount of the new estimate upon written approval by the department delivered to the person who established the remediation funding source and to the trustee or the person or institution providing the remediation trust, the environmental insurance policy, or the line of credit, as applicable. The department shall approve the request upon a finding that the remediation cost estimate decreased by the requested amount. The department shall review and respond to the request to decrease the remediation funding source within 90 days of receipt of the request.

b. The person responsible for performing the remediation and who established the remediation funding source may use the remediation funding source to pay for the actual cost of the remediation. The department may not require any other financial assurance by the person responsible for performing the remediation other than that required in this section. In the case of a remediation performed pursuant to P.L.1983, c.330, the remediation funding source shall be established no more than 14 days after the approval by the department of a remedial action workplan or upon approval of a remediation agreement pursuant to subsection e. of section 4 of P.L.1983, c.330 (C.13:1K-9), unless the department approves an extension. In the case of a remediation performed pursuant to P.L.1976, c.141, the remediation funding source shall be established as provided in an administrative consent order signed by the parties, as provided by a court, or as directed or ordered by the department. The establishment of a remediation funding source for that part of the remediation funding source to be established by a grant or financial assistance from the remediation fund may be established for the purposes of this subsection by the application for a grant or financial assistance from the remediation fund and satisfactory evidence submitted to the department that the grant or financial assistance will be awarded. However, if the financial assistance or grant is denied or the department finds that the person responsible for establishing the remediation funding source did not take reasonable action to obtain the

grant or financial assistance, the department shall require that the full amount of the remediation funding source be established within 14 days of the denial or finding. The remediation funding source shall be evidenced by the establishment and maintenance of (1) a remediation trust fund, (2) an environmental insurance policy, issued by an entity licensed by the Department of Banking and Insurance to transact business in the State of New Jersey, to fund the remediation, (3) a line of credit from a person or institution satisfactory to the department authorizing the person responsible for performing the remediation to borrow money, or (4) a self-guarantee, or by any combination thereof. Where it can be demonstrated that a person cannot establish and maintain a remediation funding source for the full cost of the remediation by a method specified in this subsection, that person may establish the remediation funding source for all or a portion of the remediation, by securing financial assistance from the Hazardous Discharge Site Remediation Fund as provided in section 29 of P.L.1993, c.139 (C.58:10B-7).

c. A remediation trust fund shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the trust agreement shall be delivered to the department by certified mail within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The remediation trust fund agreement shall conform to a model trust fund agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or New Jersey agency.

The trust fund agreement shall provide that the remediation trust fund may not be revoked or terminated by the person required to establish the remediation funding source or by the trustee without the written consent of the department. The trustee shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the remediation trust fund shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination by the department that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement of moneys from the remediation trust fund in the amount of the documented costs.

The department shall return the original remediation trust fund agreement to the trustee for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section or the department notifies the person that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

d. An environmental insurance policy shall be established pursuant to the provisions of this subsection. An originally signed duplicate of the insurance policy shall be delivered to the department by certified mail, overnight delivery, or personal service within 30 days of receipt of notice from the department that the remedial action workplan or remediation agreement, as provided in subsection e. of section 4 of P.L.1983, c.330, is approved or as specified in an administrative consent order, civil order, or order of the department, as applicable. The environmental insurance policy may not be revoked or terminated without the written consent of the department. The insurance company shall release to the person required to establish the remediation funding source, or to the department or transferee of the property, as appropriate, only those moneys as the department authorizes, in writing, to be released. The person entitled to receive money from the environmental insurance policy shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation.

e. A line of credit shall be established pursuant to the provisions of this subsection. A line of credit shall allow the person establishing it to borrow money up to a limit established in a written agreement in order to pay for the cost of the remediation for which the line of credit was established. An originally signed duplicate of the line of credit agreement shall be delivered to the department by certified mail, overnight delivery, or personal service within 14 days of receipt of notice from the department that the remedial action workplan or remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330 is approved, or as specified in an administrative consent order, civil order, or order of the department, as applicable. The line of credit agreement shall conform to a model agreement as established by the department and shall be accompanied by a certification of acknowledgment that conforms to a model established by the department.

A line of credit agreement shall provide that the line of credit may not be revoked or terminated by the person required to obtain the remediation funding source or the person or institution providing the line of credit without the written consent of the department. The person or institution providing the line of credit shall release to the person required to establish the remediation funding source, or to the department or transferee of the property as appropriate, only those moneys as the department authorizes, in writing, to be

released. The person entitled to draw upon the line of credit shall submit documentation to the department detailing the costs incurred or to be incurred as part of the remediation. Upon a determination that the costs are consistent with the remediation of the site, the department shall, in writing, authorize a disbursement from the line of credit in the amount of the documented costs.

The department shall return the original line of credit agreement to the person or institution providing the line of credit for termination after the person required to establish the remediation funding source substitutes an alternative remediation funding source as specified in this section, or after the department notifies the person that that person is no longer required to maintain a remediation funding source for remediation of the contaminated site.

f. A person may self-guarantee a remediation funding source upon the submittal of documentation to the department demonstrating that the cost of the remediation as estimated in the remedial action workplan, in the remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330, in an administrative consent order, or as provided in a departmental or court order, would not exceed one-third of the tangible net worth of the person required to establish the remediation funding source, and that the person has a cash flow sufficient to assure the availability of sufficient moneys for the remediation during the time necessary for the remediation. Satisfactory documentation of a person's capacity to self-guarantee a remediation funding source shall consist only of a statement of income and expenses or similar statement of that person and the balance sheet or similar statement of assets and liabilities as used by that person for the fiscal year of the person making the application that ended closest in time to the date of the self-guarantee application. The self-guarantee application shall be certified as true to the best of the applicant's information, knowledge, and belief, by the chief financial, or similar officer or employee, or general partner, or principal of the person making the self-guarantee application. A person shall be deemed by the department to possess the required cash flow pursuant to this section if that person's gross receipts exceed its gross payments in that fiscal year in an amount at least equal to the estimated costs of completing the remedial action workplan schedule to be performed in the 12-month period following the date on which the application for self-guarantee is made. In the event that a self-guarantee is required for a period of more than one year, applications for a self-guarantee shall be renewed annually pursuant to this subsection for each successive year. The department may establish requirements and reporting obligations to ensure that the person proposing to self-guarantee a remediation funding source meets the criteria for self-guaranteeing prior to the initiation of remedial action and until completion of the remediation.

g. (1) If the person required to establish the remediation funding source fails to perform the remediation as required, the department shall make a written determination of this fact. A copy of the determination by the department shall be delivered to the person required to establish the remediation funding source and, in the case of a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), to any transferee of the property. Following this written determination, the department may perform the remediation in place of the person required to establish the remediation funding source. In order to finance the cost of the remediation the department may make disbursements from the remediation trust fund or the line of credit or claims upon the environmental insurance policy, as appropriate, or, if sufficient moneys are not available from those funds, from the remediation guarantee fund created pursuant to section 45 of P.L.1993, c.139 (C.58:10B-20).

(2) The transferee of property subject to a remediation conducted pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), may, at any time after the department's determination of nonperformance by the owner or operator required to establish the remediation funding source, petition the department, in writing, with a copy being sent to the owner and operator, for authority to perform the remediation at the industrial establishment. The department, upon a determination that the transferee is competent to do so, may grant that petition which shall authorize the transferee to perform the remediation as specified in an approved remedial action workplan, or to perform the activities as required in a remediation agreement, and to avail itself of the moneys in the remediation trust fund or line of credit or to make claims upon the environmental insurance policy for these purposes. The petition of the transferee shall not be granted by the department if the owner or operator continues or begins to perform its obligations within 14 days of the petition being filed with the department.

(3) After the department has begun to perform the remediation in the place of the person required to establish the remediation funding source or has granted the petition of the transferee to perform the remediation, the person required to establish the remediation funding source shall not be permitted by the department to continue its performance obligations except upon the agreement of the department or the transferee, as applicable, or except upon a determination by the department that the transferee is not adequately performing the remediation.

12. Section 26 of P.L.1993, c.139 (C.58:10B-4) is amended to read as follows:

C.58:10B-4 Hazardous Discharge Site Remediation Fund.

26. a. There is established in the New Jersey Economic Development Authority a special, revolving fund to be known as the Hazardous Discharge

Site Remediation Fund. Moneys in the remediation fund shall be dedicated for the provision of financial assistance or grants to municipal governmental entities, the New Jersey Redevelopment Authority, individuals, corporations, partnerships, and other private business entities, for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous wastes.

b. The remediation fund shall be credited with:

(1) moneys as are appropriated by the Legislature;

(2) moneys deposited into the fund as repayment of principal and interest on outstanding loans made from the fund;

(3) any return on investment of moneys deposited in the fund;

(4) remediation funding source surcharges imposed pursuant to section 33 of P.L.1993, c.139 (C.58:10B-11);

(5) moneys deposited into the fund from cost recovery subrogation actions; and

(6) moneys made available to the authority for the purposes of the fund.

13. Section 27 of P.L.1993, c.139 (C.58:10B-5) is amended to read as follows:

C.58:10B-5 Financial assistance from remediation fund.

27. a. (1) Financial assistance from the remediation fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of a remediation. Financial assistance pursuant to this act may be rendered only for that amount of the cost of a remediation for which the person cannot establish a remediation funding source. The limitations on receiving financial assistance established in this paragraph (1) shall not limit the ability of municipal governmental entities, the New Jersey Redevelopment Authority, persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action or a limited restricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation, to receive financial assistance from the fund.

(2) Financial assistance rendered to persons who voluntarily perform a remediation or perform a remediation in an environmental opportunity zone may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

(3) Financial assistance rendered to persons who do not have to provide financial assurance for the part of the remediation that involves an innovative technology, an unrestricted use remedial action, or a limited

restricted use remedial action may only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source.

b. Financial assistance may be rendered from the remediation fund to (1) owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L.1983, c.330 (C.13:1K-6 et al.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment, (2) persons who are liable for the cleanup and removal costs of a hazardous substance pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), and (3) persons who voluntarily perform a remediation of a discharge of a hazardous substance or hazardous waste.

c. Financial assistance and grants may be made from the remediation fund to municipal governmental entities or the New Jersey Redevelopment Authority that own or hold a tax sale certificate on real property or that have acquired real property through foreclosure or other similar means, or by voluntary conveyance for the purpose of redevelopment, and on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. Financial assistance and grants may not be made to any entity listed in this subsection for any real property used by that entity for the conduct of its official business.

d. Grants may be made from the remediation fund to persons and the New Jersey Redevelopment Authority, who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person or the authority qualifies for an innocent party grant pursuant to section 28 of P.L.1993, c.139 (C.58:10B-6).

e. Grants may be made from the remediation fund to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action .

For the purposes of this section, "person" shall not include any governmental entity.

14. 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 the demand for financial assistance or grants for moneys allocated in any paragraph exceeds the

percentage of funds allocated for that paragraph, financial assistance and grants dedicated for the purposes and in the percentages set forth in any other paragraph of this subsection, may, for any particular year, if the demand for financial assistance or grants for moneys allocated in that paragraph is less than the percentage of funds allocated for that paragraph, be obligated to the purposes set forth in the over allocated paragraph. The written determination shall be sent to the Senate Environment Committee, and the Assembly Agriculture and Waste Management Committee, or their successors. For the purposes of this section, "person" shall not include any governmental entity.

(1) At least 15% of the moneys shall be allocated for financial assistance to persons, and the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), 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 and the New Jersey Redevelopment Authority that owns or holds a tax sale certificate on real property or have acquired real property through foreclosure or other similar means, or by voluntary conveyance for the purpose of redevelopment, on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes. Grants provided pursuant to this paragraph shall be used for performing preliminary assessments, site investigations, and remedial investigations on real property in order to determine the existence or extent of any hazardous substance or hazardous waste contamination on those properties. A municipal governmental entity or the New Jersey Redevelopment Authority that has performed, or on which there has been performed, a preliminary assessment, site investigation or remedial investigation on property may obtain a loan for the purpose of continuing the remediation on those properties as necessary to comply with the applicable remediation regulations adopted by the department;

(3) At least 15% of the moneys shall be allocated for financial assistance to persons, the New Jersey Redevelopment Authority, 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 who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge;

(5) At least 15% of the moneys shall be allocated for financial assistance to persons 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 15% of the moneys shall be allocated for grants to persons 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, except as provided hereunder, 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; provided, however, that notwithstanding any other provision of this section the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), shall qualify for an innocent party grant pursuant to this paragraph where the immediate predecessor in title to the authority would have qualified for but failed to apply for or receive such grant. 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 or the New Jersey Redevelopment Authority may exceed $1,000,000;

(7) At least 5% of the moneys shall be allocated for financial assistance to persons 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);

(8) At least 5% of the moneys shall be allocated for matching grants for up to 25% of the project costs to qualifying persons who propose to perform a remedial action that uses an innovative technology except that no grant awarded pursuant to this paragraph to any qualifying person may exceed $100,000;

(9) At least 5% of the moneys shall be allocated for matching grants for up to 25% of the project costs to qualifying persons for the implementation of a limited restricted use remedial action or an unrestricted use remedial action except that no grant awarded pursuant to this paragraph to any qualifying person may exceed $100,000. The authority may use money allocated pursuant to this paragraph to provide loan guarantees to encourage

financial institutions to provide loans to any person who may receive financial assistance from the fund who plans to implement a limited restricted use remedial action or an unrestricted use remedial action; and

(10) 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 (9) 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.

For the purposes of paragraphs (8) and (9) of this subsection, "qualifying persons" means any person who has a net worth of not more than $2,000,000 and "project costs" means that portion of the total costs of a remediation that is specifically for the use of an innovative technology or to implement an unrestricted use remedial action or a limited restricted use remedial action, as applicable.

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 to municipal governmental entities and the New Jersey Redevelopment Authority established pursuant to P.L.1996, c.62 (C.55:19-20 et al.), shall bear an interest rate equal to 2 points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than 3 percent. All other 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 on such loans 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, in any calendar year, for one or more properties, shall be $1,000,000. Financial assistance and grants to any one municipal governmental entity or the New Jersey Redevelopment Authority 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 qualified person planning to use an innovative technology for the cost of that technology, a qualified person planning to use a limited restricted use remedial action or an unrestricted use remedial action for the cost of the remedial action, a person performing a remediation in an environmental opportunity zone, or a person voluntarily

performing a 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 Agriculture and Waste Management 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.

15. Section 30 of P.L.1993, c.139 (C.58:10B-8) is amended to read as follows:

C.58:10B-8 Financial assistance, grant recipients compliance, conditions.

30. a. The authority shall, by rule or regulation:

(1) require a financial assistance or grant recipient to provide to the authority, as necessary or upon request, evidence that financial assistance or grant moneys are being spent for the purposes for which the financial assistance or grant was made, and that the applicant is adhering to all of the terms and conditions of the financial assistance or grant agreement;

(2) require the financial assistance or grant recipient to provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant;

(3) establish a priority system for rendering financial assistance or grants for remediations identified by the department as involving an imminent and significant threat to a public water source, human health, or to a sensitive or significant ecological area pursuant to paragraph (3) of subsection a. of section 28 of P.L.1993, c.139 (C.58:10B-6);

(4) provide that payment of a grant shall be conditioned upon the subrogation to the department of all rights of the recipient to recover remediation costs from the discharger or other liable parties. All moneys

collected in a cost recovery subrogation action shall be deposited into the remediation fund;

(5) provide that an applicant for financial assistance or a grant pay a reasonable fee for the application which shall be used by the authority for the administration of the loan and grant program;

(6) provide that where financial assistance to a person other than a municipal governmental entity or the New Jersey Redevelopment Authority is for a portion of the remediation cost, that the proceeds thereof not be disbursed to the applicant until the costs of the remediation for which a remediation funding source has been established has been expended;

(7) adopt such other requirements as the authority shall deem necessary or appropriate in carrying out the purposes for which the Hazardous Discharge Site Remediation Fund was created.

b. An applicant for financial assistance or a grant shall be required to:

(1) provide proof, as determined sufficient by the authority, that the applicant, where applicable, cannot establish a remediation funding source for all or part of the remediation costs, as required by section 25 of P.L.1993, c.139 (C.58:10B-3). The provisions of this paragraph do not apply to grants to innocent persons, grants for the use of innovative technologies, or grants for the implementation of unrestricted use remedial actions or limited restricted use remedial actions or to financial assistance or grants to municipal governmental entities or the New Jersey Redevelopment Authority; and

(2) demonstrate the ability to repay the amount of the financial assistance and interest, and, if necessary, to provide adequate collateral to secure the financial assistance amount.

c. Information submitted as part of a loan or grant application or agreement shall be deemed a public record subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

d. In establishing requirements for financial assistance or grant applications and financial assistance or grant agreements, the authority:

(1) shall minimize the complexity and costs to applicants or recipients of complying with such requirements;

(2) may not require financial assistance or grant conditions that interfere with the everyday normal operations of the recipient's business activities, except to the extent necessary to ensure the recipient's ability to repay the financial assistance and to preserve the value of the loan collateral; and

(3) shall expeditiously process all financial assistance or grant applications in accordance with a schedule established by the authority for the review and the taking of final action on the application, which schedule shall reflect the degree of complexity of a financial assistance or grant application.

16. Section 33 of P.L.1993, c.139 (C.58:10B-11) is amended to read as follows:

C.58:10B-11 Remediation funding source surcharge.

33. a. There is imposed upon every person who is required to establish a remediation funding source pursuant to section 25 of P.L.1993, c.139 (C.58:10B-3) a remediation funding source surcharge. The remediation funding source surcharge shall be in an amount equal to 1% of the required amount of the remediation funding source required by the department to be maintained. No surcharge, however, may be imposed upon (1) that amount of the remediation funding source that is met by a self-guarantee as provided in subsection f. of section 25 of P.L.1993, c.139 (C.58:10B-3), (2) that amount of the remediation funding source that is met by financial assistance or a grant from the remediation fund, (3) any person who voluntarily performs a remediation pursuant to an administrative consent order, (4) any person who entered voluntarily into a memorandum of understanding with the department to remediate real property, as long as that person continues the remediation in a reasonable manner, or as required by law, even if subsequent to initiation of the memorandum of understanding, the person received an order by the department or entered into an administrative consent order to perform the remediation, (5) any person performing a remediation in an environmental opportunity zone, or (6) that portion of the cost of the remediation that is specifically for the use of an innovative technology or to implement a limited restricted use remedial action or an unrestricted use remedial action. The surcharge shall be based on the cost of remediation work remaining to be completed and shall be paid on an annual basis as long as the remediation continues and until the Department of Environmental Protection issues a no further action letter for the property subject to the remediation. The remediation funding source surcharge shall be due and payable within 14 days of the time of the department's approval of a remedial action workplan or signing an administrative consent order or as otherwise provided by law. The department shall collect the surcharge and shall remit all moneys collected to the Economic Development Authority for deposit into the Hazardous Discharge Site Remediation Fund.

b. By February 1 of each year, the department shall issue a report to the Senate Environment Committee and to the Assembly Agriculture and Waste Management Committee, or their successors, listing, for the prior calendar year, each person who owed the remediation funding source surcharge, the amount of the surcharge paid, and the total amount collected.

17. Section 35 of P.L.1993, c.139 (C.58:10B-12) is amended to read as follows:

C.58:10B-12 Adoption of remediation standards.

35. a. The Department of Environmental Protection shall adopt minimum remediation standards for soil, groundwater, and surface water quality necessary for the remediation of contamination of real property. The remediation standards shall be developed to ensure that the potential for harm to public health and safety and to the environment is minimized to acceptable levels, taking into consideration the location, the surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions, whether naturally occurring or man-made.

Until the minimum remediation standards for the protection of public health and safety as described herein are adopted, the department shall apply public health and safety remediation standards for contamination at a site on a case-by-case basis based upon the considerations and criteria enumerated in this section.

The department shall not propose or adopt remediation standards protective of the environment pursuant to this section, except standards for groundwater or surface water, until recommendations are made by the Environment Advisory Task Force created pursuant to section 37 of P.L.1993, c.139. Until the Environment Advisory Task Force issues its recommendations and the department adopts remediation standards protective of the environment as required by this section, the department shall continue to determine the need for and the application of remediation standards protective of the environment on a case-by-case basis in accordance with the guidance and regulations of the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," 42 U.S.C. s.9601 et seq. and other statutory authorities as applicable.

The department may not require any person to perform an ecological evaluation of any area of concern that consists of an underground storage tank storing heating oil for on-site consumption in a one to four family residential building.

b. In developing minimum remediation standards the department shall:

(1) base the standards on generally accepted and peer reviewed scientific evidence or methodologies;

(2) base the standards upon reasonable assumptions of exposure scenarios as to amounts of contaminants to which humans or other receptors will be exposed, when and where those exposures will occur, and the amount of that exposure;

(3) avoid the use of redundant conservative assumptions. The department shall avoid the use of redundant conservative assumptions by

the use of parameters that provide an adequate margin of safety and which avoid the use of unrealistic conservative exposure parameters and which guidelines make use of the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9601 et seq. and other statutory authorities as applicable;

(4) where feasible, establish the remediation standards as numeric or narrative standards setting forth acceptable levels or concentrations for particular contaminants; and

(5) consider and utilize, in the absence of other standards used or developed by the Department of Environmental Protection and the United States Environmental Protection Agency, the toxicity factors, slope factors for carcinogens and reference doses for non-carcinogens from the United States Environmental Protection Agency's Integrated Risk Information System (IRIS).

c. (1) The department shall develop residential and nonresidential soil remediation standards that are protective of public health and safety. For contaminants that are mobile and transportable to groundwater or surface water, the residential and nonresidential soil remediation standards shall be protective of groundwater and surface water. Residential soil remediation standards shall be set at levels or concentrations of contamination for real property based upon the use of that property for residential or similar uses and which will allow the unrestricted use of that property without the need of engineering devices or any institutional controls and without exceeding a health risk standard greater than that provided in subsection d. of this section. Nonresidential soil remediation standards shall be set at levels or concentrations of contaminants that recognize the lower likelihood of exposure to contamination on property that will not be used for residential or similar uses, which will allow for the unrestricted use of that property for nonresidential purposes, and that can be met without the need of engineering controls. Whenever real property is remediated to a nonresidential soil remediation standard, except as otherwise provided in paragraph (3) of subsection g. of this section, the department shall require, pursuant to section 36 of P.L.1993, c.139 (C.58:10B-13), that the use of the property be restricted to nonresidential or other uses compatible with the extent of the contamination of the soil and that access to that site be restricted in a manner compatible with the allowable use of that property.

(2) The department may develop differential remediation standards for surface water or groundwater that take into account the current, planned, or potential use of that water in accordance with the "Clean Water Act" (33

U.S.C. s.1251 et seq.) and the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

d. The department shall develop minimum remediation standards for soil, groundwater, and surface water intended to be protective of public health and safety taking into account the provisions of this section. In developing these minimum health risk remediation standards the department shall identify the hazards posed by a contaminant to determine whether exposure to that contaminant can cause an increase in the incidence of an adverse health effect and whether the adverse health effect may occur in humans. The department shall set minimum soil remediation health risk standards for both residential and nonresidential uses that:

(1) for human carcinogens, as categorized by the United States Environmental Protection Agency, will result in an additional cancer risk of one in one million;

(2) for noncarcinogens, will limit the Hazard Index for any given effect to a value not exceeding one.

The health risk standards established in this subsection are for any particular contaminant and not for the cumulative effects of more than one contaminant at a site.

e. Remediation standards and other remediation requirements established pursuant to this section and regulations adopted pursuant thereto shall apply to remediation activities required pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.), the "Major Hazardous Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.), the "Sanitary Landfill Facility Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-100 et seq.), the "Regional Low-Level Radioactive Waste Disposal Facility Siting Act," P.L.1987, c.333 (C.13:1E-177 et seq.), or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property. However, nothing in this subsection shall be construed to limit the authority of the department to establish discharge limits for pollutants or to prescribe penalties for violations of those limits pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), or to require the complete removal of nonhazardous solid waste pursuant to law.

f. (1) A person performing a remediation of contaminated real property, in lieu of using the established minimum soil remediation standard for either residential use or nonresidential use adopted by the department

pursuant to subsection c. of this section, may submit to the department a request to use an alternative residential use or nonresidential use soil remediation standard. The use of an alternative soil remediation standard shall be based upon site specific factors which may include (1) physical site characteristics which may vary from those used by the department in the development of the soil remediation standards adopted pursuant to this section; or (2) a site specific risk assessment. If a person performing a remediation requests to use an alternative soil remediation standard based upon a site specific risk assessment, that person shall demonstrate to the department that the requested deviation from the risk assessment protocol used by the department in the development of soil remediation standards pursuant to this section is consistent with the guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. §9601 et seq. and other statutory authorities as applicable. A site specific risk assessment may consider exposure scenarios and assumptions that take into account the form of the contaminant present, natural biodegradation, fate and transport of the contaminant, available toxicological data that are based upon generally accepted and peer reviewed scientific evidence or methodologies, and physical characteristics of the site, including, but not limited to, climatic conditions and topographic conditions. Nothing in this subsection shall be construed to authorize the use of an alternative soil remediation standard in those instances where an engineering control is the appropriate remedial action, as determined by the department, to prevent exposure to contamination.

Upon a determination by the department that the requested alternative remediation standard satisfies the department's regulations, is protective of public health and safety, as established in subsection d. of this section, and is protective of the environment pursuant to subsection a. of this section, the alternative residential use or nonresidential use soil remediation standard shall be approved by the department. The burden to demonstrate that the requested alternative remediation standard is protective rests with the person requesting the alternative standard and the department may require the submission of any documentation as the department determines to be necessary in order for the person to meet that burden.

(2) The department may, upon its own initiative, require an alternative remediation standard for a particular contaminant for a specific real property site, in lieu of using the established minimum residential use or nonresidential use soil remediation standard adopted by the department for a particular contaminant pursuant to this section. The department may require an alternative remediation standard pursuant to this paragraph upon a

determination by the department, based on the weight of the scientific evidence, that due to specific physical site characteristics of the subject real property, including, but not limited to, its proximity to surface water, the use of the adopted residential use or nonresidential use soil remediation standards would not be protective, or would be unnecessarily overprotective, of public health or safety or of the environment, as appropriate.

g. The development, selection, and implementation of any remediation standard or remedial action shall ensure that it is protective of public health, safety, and the environment, as applicable, as provided in this section. In determining the appropriate remediation standard or remedial action that shall occur at a site, the department and any person performing the remediation, shall base the decision on the following factors:

(1) Unrestricted use remedial actions, limited restricted use remedial actions and restricted use remedial actions shall be allowed except that unrestricted use remedial actions and limited restricted use remedial actions shall be preferred over restricted use remedial actions. The department, however, may not disapprove the use of a restricted use remedial action or a limited restricted use remedial action so long as the selected remedial action meets the health risk standard established in subsection d. of this section, and where, as applicable, is protective of the environment. The choice of the remedial action to be implemented shall be made by the person performing the remediation in accordance with regulations adopted by the department and that choice of the remedial action shall be approved by the department if all the criteria for remedial action selection enumerated in this section, as applicable, are met. The department may not require a person to compare or investigate any alternative remedial action as part of its review of the selected remedial action;

(2) Contamination may, upon the department's approval, be left onsite at levels or concentrations that exceed the minimum soil remediation standards for residential use if the implementation of institutional or engineering controls at that site will result in the protection of public health, safety and the environment at the health risk standard established in subsection d. of this section and if the requirements established in subsections a., b., c. and d. of section 36 of P.L.1993, c.139 (C.58:10B-13) are met;

(3) Real property on which there is soil that has not been remediated to the residential soil remediation standards, or real property on which the soil, groundwater, or surface water has been remediated to meet the required health risk standard by the use of engineering or institutional controls, may be developed or used for residential purposes, or for any other similar purpose, if (a) all areas of that real property at which a person may come into contact with soil are remediated to meet the residential soil remediation standards and (b) it is clearly demonstrated that for all areas of the real

property, other than those described in subparagraph (a) above, engineering and institutional controls can be implemented and maintained on the real property sufficient to meet the health risk standard as established in subsection d. of this section;

(4) Remediation shall not be required beyond the regional natural background levels for any particular contaminant. The department shall develop regulations that set forth a process to identify background levels of contaminants for a particular region. For the purpose of this paragraph "regional natural background levels" means the concentration of a contaminant consistently present in the environment of the region of the site and which has not been influenced by localized human activities;

(5) Remediation shall not be required of the owner or operator of real property for contamination coming onto the site from another property owned and operated by another person, unless the owner or operator is the person who is liable for cleanup and removal costs pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.);

(6) Groundwater that is contaminated shall not be required to be remediated to a level or concentration for any particular contaminant lower than the level or concentration that is migrating onto the property from another property owned and operated by another person;

(7) The technical performance, effectiveness and reliability of the proposed remedial action in attaining and maintaining compliance with applicable remediation standards and required health risk standards shall be considered. In reviewing a proposed remedial action, the department shall also consider the ability of the owner or operator to implement the proposed remedial action within a reasonable time frame without jeopardizing public health, safety or the environment;

(8) The use of a remedial action for soil contamination that is determined by the department to be effective in its guidance document created pursuant to section 38 of P.L.1993, c.139 (C.58:10B-14), is presumed to be an appropriate remedial action if it is to be implemented on a site in the manner described by the department in the guidance document and applicable regulations and if all of the conditions for remedy selection provided for in this section are met. The burden to prove compliance with the criteria in the guidance document is with the person performing the remediation;

(9) (Deleted by amendment, P.L.1997, c.278).

The burden to demonstrate that a remedial action is protective of public health, safety and the environment, as applicable, and has been selected in conformance with the provisions of this subsection is with the person proposing the remedial action.

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The department may require the person performing the remediation to supply the information required pursuant to this subsection as is necessary for the department to make a determination.

h. (1) The department shall adopt regulations which establish a procedure for a person to demonstrate that a particular parcel of land contains large quantities of historical fill material. Upon a determination by the department that large quantities of historic fill material exist on that parcel of land, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material in order to comply with applicable health risk or environmental standards. In these areas the department shall establish by regulation the requirement for engineering or institutional controls that are designed to prevent exposure of these contaminants to humans, that allow for the continued use of the property, that are less costly than removal or treatment, which maintain the health risk standards as established in subsection d. of this section, and, as applicable, are protective of the environment. The department may rebut the presumption only upon a finding by the preponderance of the evidence that the use of engineering or institutional controls would not be effective in protecting public health, safety, and the environment. The department may not adopt any rule or regulation that has the effect of shifting the burden of rebutting the presumption. For the purposes of this paragraph "historic fill material" means generally large volumes of non-indigenous material, no matter what date they were emplaced on the site, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. Historic fill material shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags or tailings.

(2) The department shall develop recommendations for remedial actions in large areas of historic industrial contamination. These recommendations shall be designed to meet the health risk standards established in subsection d. of this section, and to be protective of the environment and shall take into account the industrial history of these sites, the extent of the contamination that may exist, the costs of remedial actions, the economic impacts of these policies, and the anticipated uses of these properties. The department shall issue a report to the Senate Environment Committee and to the Assembly Agriculture and Waste Management Committee, or their successors, explaining these recommendations and making any recommendations for legislative or regulatory action.

(3) The department may not, as a condition of allowing the use of a nonresidential use soil remediation standard, or the use of institutional or engineering controls, require the owner of that real property, except as provided in section 36 of P.L.1993, c.139 (C.58:10B-13), to restrict the use of that property through the filing of a deed easement, covenant, or condition.

i. The department may not require a remedial action workplan to be prepared or implemented or engineering or institutional controls to be imposed upon any real property unless sampling performed at that real property demonstrates the existence of contamination above the applicable remediation standards.

j. Upon the approval by the department of a remedial action workplan, or similar plan that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that workplan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards have changed; however, the department may compel a different remediation standard if the difference between the new remediation standard and the remediation standard approved in the workplan or other plan differs by an order of magnitude. The limitation to the department's authority to change a workplan or similar plan pursuant to this subsection shall only apply if the workplan or similar plan is being implemented in a reasonable timeframe, as may be indicated in the approved remedial action workplan or similar plan.

k. Notwithstanding any other provisions of this section, all remediation standards and remedial actions that involve real property located in the Pinelands area shall be consistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), any rules and regulations promulgated pursuant thereto, and with section 502 of the "National Parks and Recreation Act of 1978," 16 U.S.C. s.471i.

l. Upon the adoption of a remediation standard for a particular contaminant in soil, groundwater, or surface water pursuant to this section, the department may amend that remediation standard only upon a finding that a new standard is necessary to maintain the health risk standards established in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12) or to protect the environment, as applicable. The department may not amend a public health based soil remediation standard to a level that would result in a health risk standard more protective than that provided for in subsection d. of section 35 of P.L.1993, c.139 (C.58:10B-12).

m. Nothing in P.L.1993, c.139 shall be construed to restrict or in any way diminish the public participation which is otherwise provided under the provisions of the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

n. Notwithstanding any provision of subsection a. of section 36 of P.L. 1993, c.139 (C.58:10B-13) to the contrary, the department may not require a person intending to implement a remedial action at an underground storage tank facility storing heating oil for on-site consumption at a one to four family residential dwelling to provide advance notice to a municipality prior to implementing that remedial action.

o. A person who has remediated a site pursuant to the provisions of this section, who was liable for the cleanup and removal costs of that discharge pursuant to the provisions of paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who remains liable for the discharge on that site due to a possibility that a remediation standard may change, undiscovered contamination may be found, or because an engineering control was used to remediate the discharge, shall maintain with the department a current address at which that person may be contacted in the event additional remediation needs to be performed at the site. The requirement to maintain the current address shall be made part of the conditions of the no further action letter issued by the department.

18. Section 36 of P.L.1993, c.139 (C.58:10B-13) is amended to read as follows:

C.58:10B-13 Use of nonresidential standards or other controls, requirements.

36. a. When real property is remediated to a nonresidential soil remediation standard or engineering or institutional controls are used in lieu of remediating a site to meet an established remediation standard for soil, groundwater, or surface water, the department shall, as a condition of the use of that standard or control measure:

(1) require the establishment of any engineering or institutional controls the department determines are reasonably necessary to prevent exposure to the contaminants, require maintenance, as necessary, of those controls, and require the restriction of the use of the property in a manner that prevents exposure;

(2) require, with the consent of the owner of the real property, the recording with the office of the county recording officer, in the county in which the property is located, a notice to inform prospective holders of an interest in the property that contamination exists on the property at a level that may statutorily restrict certain uses of or access to all or part of that property, a delineation of those restrictions, a description of all specific engineering or institutional controls at the property that exist and that shall be maintained in order to prevent exposure to contaminants remaining on the property, and the written consent to the notice by the owner of the property. The notice shall be recorded in the same manner as are deeds and other interests in real property. The department shall develop a uniform deed notice that ensures

the proper filing of the deed notice. The provisions of this paragraph do not apply to restrictions on the use of surface water or groundwater;

(3) require a notice to the governing body of each municipality in which the property is located that contaminants will exist at the property above residential use soil remediation standards or any other remediation standards and specifying the restrictions on the use of or access to all or part of that property and of the specific engineering or institutional controls at the property that exist and that shall be maintained;

(4) require, when determined necessary by the department, that signs be posted at any location at the site where access is restricted or in those areas that must be maintained in a prescribed manner, to inform persons on the property that there are restrictions on the use of that property or restrictions on access to any part of the site;

(5) require that a list of the restrictions be kept on site for inspection by governmental enforcement officials; and

(6) require a person, prior to commencing a remedial action, to notify the governing body of each municipality wherein the property being remediated is located. The notice shall include, but not be limited to, the commencement date for the remedial action; the name, mailing address and business telephone number of the person implementing the remedial action, or his designated representative; and a brief description of the remedial action.

b. If the owner of the real property does not consent to the recording of a notice pursuant to paragraph (2) of subsection a. of this section, the department shall require the use of a residential soil remediation standard in the remediation of that real property.

c. Whenever engineering or institutional controls on property as provided in subsection a. of this section are no longer required, or whenever the engineering or institutional controls are changed because of the performance of subsequent remedial activities, a change in conditions at the site, or the adoption of revised remediation standards, the department shall require that the owner or operator of that property record with the office of the county recording officer a notice that the use of the property is no longer restricted or delineating the new restrictions. The department shall also require that the owner or operator notify, in writing, the municipality in which the property is located of the removal or change of the restrictive use conditions.

d. The owner or lessee of any real property, or any person operating a business on real property, which has been remediated to a nonresidential use soil remediation standard or on which the department has allowed engineering or institutional controls for soil, groundwater, or surface water to protect the public health, safety, or the environment, as applicable, shall maintain

the engineering or institutional controls as required by the department. An owner, lessee, or operator who takes any action that results in the improper alteration or removal of engineering or institutional controls or who fails to maintain the engineering or institutional controls as required by the department, shall be subject to the penalties and actions set forth in section 22 of P.L.1976, c.141 (C.58:10-23.11u) and, where applicable, shall be liable for any additional remediation and damages pursuant to the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g). The provisions of this subsection shall not apply if a notification received pursuant to subsection b. of this section authorizes all restrictions or controls to be removed from the subject property.

e. Notwithstanding the provisions of any other law, or any rule, regulation, or order adopted pursuant thereto to the contrary, whenever contamination at a property is remediated in compliance with any soil, or any groundwater or surface water remediation standards that were in effect or approved by the department at the completion of the remediation, no person, except as otherwise provided in this section, shall be liable for the cost of any additional remediation that may be required by a subsequent adoption by the department of a more stringent remediation standard for a particular contaminant. Upon the adoption of a regulation that amends a remediation standard, or where the adoption of a regulation would change a remediation standard which was otherwise approved by the department, only a person who is liable to clean up and remove that contamination pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), and who does not have a defense to liability pursuant to subsection d. of that section, shall be liable for any additional remediation costs necessary to bring the site into compliance with the new remediation standards except that no person shall be so liable unless the difference between the new remediation standard and the level or concentration of a contaminant at the property differs by an order of magnitude. The department may compel a person who is liable for the additional remediation costs to perform additional remediation activities to meet the new remediation standard except that a person may not be compelled to perform any additional remediation activities on the site if that person can demonstrate that the existing engineering or institutional controls on the site prevent exposure to the contamination and that the site remains protective of public health, safety and the environment pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12). The burden to prove that a site remains protective is on the person liable for the additional remediation costs. A person liable for the additional remediation costs who is relying on engineering or institutional controls to make a site protective, shall comply with the provisions of subsections a., b., c. and d. of this section.

Nothing in the provisions of this subsection shall be construed to affect the authority of the department, pursuant to subsection f. of this section, to require additional remediation on real property where engineering controls were implemented.

Nothing in the provisions of this subsection shall limit the rights of a person, other than the State, or any department or agency thereof, to bring a civil action for damages, contribution, or indemnification as provided by statutory or common law.

f. Whenever the department approves or has approved the use of engineering controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment, the department may require additional remediation of that site only if the engineering controls no longer are protective of public health, safety, or the environment.

g. Whenever the department approves or has approved the use of engineering or institutional controls for the remediation of soil, groundwater, or surface water, to protect public health, safety or the environment, the department shall inspect that site at least once every five years in order to ensure that the engineering and institutional controls are being properly maintained and that the controls remain protective of public health and safety and of the environment.

h. A property owner of a site on which a deed notice has been recorded shall notify any person who intends to excavate on the site of the nature and location of any contamination existing on the site and of any conditions or measures necessary to prevent exposure to contaminants.

19. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to read as follows:

C.58:10-23.11b Definitions.

3. Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

"Administrator" means the chief executive of the New Jersey Spill Compensation Fund;

"Barrel" means 42 United States gallons or 159.09 liters or an appropriate equivalent measure set by the director for hazardous substances which are other than fluid or which are not commonly measured by the barrel;

"Board" means a board of arbitration convened by the administrator to settle disputed disbursements from the fund;

"Cleanup and removal costs" means all costs associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the State for the indemnification and legal defense of contractors pursuant to sections 1 through 11 of P.L.1991, c.373 (C.58:10-23.11f8 et seq.). For the purposes of this definition, costs incurred by the State shall not include any indirect costs for department oversight performed after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), but may include only those program costs directly related to the cleanup and removal of the discharge; however, where the State or the fund have expended money for the cleanup and removal of a discharge and are seeking to recover the costs incurred in that cleanup and removal action from a responsible party, costs incurred by the State shall include any indirect costs;

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

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

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State;

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare;

"Fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer, paid for similar hazardous substances, as shall be determined by the taxpayer pursuant to rules of the director;

"Fund" means the New Jersey Spill Compensation Fund;

"Hazardous substances" means the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined

as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C. s.1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.);

"Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad;

"Major facility" includes, but is not limited to, any refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport hazardous substances. "Major facility" shall include a vessel only when that vessel is engaged in a transfer of hazardous substances between it and another vessel, and in any event shall not include a vessel used solely for activities directly related to recovering, containing, cleaning up or removing discharges of petroleum in the surface waters of the State, including training, research, and other activities directly related to spill response.

A facility shall not be considered a major facility for the purpose of P.L.1976, c.141 unless it has total combined aboveground or buried storage capacity of:

(1) 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products, or

(2) 200,000 gallons or more for hazardous substances of all kinds.

In determining whether a facility is a major facility for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any underground storage tank at the facility used solely to store heating oil for on-site consumption shall not be considered when determining the combined storage capacity of the facility.

For the purposes of this definition, "storage capacity" shall mean only that total combined capacity which is dedicated to, used for or intended to be used for storage of hazardous substances of all kinds. Where appropriate to the nature of the facility, storage capacity may be determined by the

intended or actual use of open land or unenclosed space as well as by the capacities of tanks or other enclosed storage spaces;

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State;

"Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

"Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to this section shall not be considered petroleum or a petroleum product for the purposes of P.L.1976, c.141, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

"Taxpayer" means the owner or operator of a major facility subject to the tax provisions of P.L.1976, c.141;

"Tax period" means every calendar month on the basis of which the taxpayer is required to report under P.L.1976, c.141;

"Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility;

"Vessel" means every description of watercraft or other contrivance that is practically capable of being used as a means of commercial transportation of hazardous substances upon the water, whether or not self-propelled;

"Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State.

20. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to read as follows:

C.58:10-23.11g Liability for cleanup and removal costs.

8. a. The fund shall be strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages no matter by whom sustained, including but not limited to:

(1) The cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto;

(2) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

(3) Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge; provided that such loss or impairment exceeds 10% of the amount which claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

(4) Loss of tax revenue by the State or local governments for a period of one year due to damage to real or personal property proximately resulting from a discharge;

(5) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this act.

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a major facility or vessel, shall not exceed $50,000,000.00 for each major facility or $150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

c. (1) Any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable,

jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

(2) In addition to the persons liable pursuant to this subsection, in the case of a discharge of a hazardous substance from a vessel into the waters of the State, the owner or operator of a refinery, storage, transfer, or pipeline facility to which the vessel was en route to deliver the hazardous substance who, by contract, agreement, or otherwise, was scheduled to assume ownership of the discharged hazardous substance, and any other person who was so scheduled to assume ownership of the discharged hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs if the owner or operator of the vessel did not have the evidence of financial responsibility required pursuant to section 2 of P.L.1991, c.58 (C.58:10-23.11g2).

Where a person is liable for cleanup and removal costs as provided in this paragraph, any expenditures made by the administrator for that cleanup and removal shall constitute a debt of that person to the fund. The debt shall constitute a lien on all property owned by that person when a notice of lien identifying the nature of the discharge and the amount of the cleanup, removal and related costs expended from the fund is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the liable person and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup and removal, shall attach to the revenues and all real and personal property of the liable person, whether or not that person is insolvent.

For the purpose of determining priority of this lien over all other claims or liens which are or have been filed against the property of an owner or operator of a refinery, storage, transfer, or pipeline facility, the lien on the facility to which the discharged hazardous substance was en route shall have priority over all other claims or liens which are or have been filed against the property. The notice of lien filed pursuant to this paragraph which affects any property of a person liable pursuant to this paragraph other than the property of an owner or operator of a refinery, storage, transfer, or pipeline facility to which the discharged hazardous substance was en route, shall have priority from the day of the filing of the notice of the lien over all claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this paragraph.

To the extent that a person liable pursuant to this paragraph is not otherwise liable pursuant to paragraph (1) of this subsection, or under any other provision of law or under common law, that person may bring an action for indemnification for costs paid pursuant to this paragraph against any other person who is strictly liable pursuant to paragraph (1) of this subsection.

Nothing in this paragraph shall be construed to extend or negate the right of any person to bring an action for contribution that may exist under P.L.1976, c.141, or any other act or under common law.

(3) In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this paragraph shall be construed to alter liability of any person who acquired real property prior to September 14, 1993.

d. (1) In addition to those defenses provided in this subsection, an act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a major facility or vessel responsible for a discharge in any action arising under the provisions of this act.

(2) A person, including an owner or operator of a major facility, who owns real property acquired on or after September 14, 1993 on which there has been a discharge, shall not be liable for cleanup and removal costs or for any other damages to the State or to any other person for the discharged hazardous substance pursuant to subsection c. of this section or pursuant to civil common law, if that person can establish by a preponderance of the evidence that subparagraphs (a) through (d) apply, or if applicable, subparagraphs (a) through (e) apply:

(a) the person acquired the real property after the discharge of that hazardous substance at the real property;

(b) (i) at the time the person acquired the real property, the person did not know and had no reason to know that any hazardous substance had been discharged at the real property, or (ii) the person acquired the real property by devise or succession, except that any other funds or property received by that person from the deceased real property owner who discharged a hazardous substance or was in any way responsible for a hazardous

substance, shall be made available to satisfy the requirements of P.L.1976, c.141, or (iii) the person complies with the provisions of subparagraph (e) of paragraph (2) of this subsection;

(c) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to this section;

(d) the person gave notice of the discharge to the department upon actual discovery of that discharge.

To establish that a person had no reason to know that any hazardous substance had been discharged for the purposes of this paragraph (2), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property. For the purposes of this paragraph (2), all appropriate inquiry shall mean the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicates that a site investigation is necessary, as defined in section 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance with rules and regulations promulgated by the department defining these terms.

Nothing in this paragraph (2) shall be construed to alter liability of any person who acquired real property prior to September 14, 1993; and

(e) For the purposes of this subparagraph the person must have (i) acquired the property subsequent to a hazardous substance being discharged on the site and which discharge was discovered at the time of acquisition as a result of the appropriate inquiry, as defined in this paragraph (2), (ii) performed, following the effective date of P.L.1997, c.278, a remediation of the site or discharge consistent with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12), or, relied upon a valid no further action letter from the department for a remediation performed prior to acquisition, or obtained approval of a remedial action workplan by the department after the effective date of P.L.1997, c.278 and continued to comply with the conditions of that workplan, and (iii) established and maintained all engineering and institutional controls as may be required pursuant to sections 35 and 36 of P.L.1993, c.139. A person who complies with the provisions of this subparagraph by actually performing a remediation of the site or discharge as set forth in (ii) above shall be issued, upon application, a no further action letter by the department. A person who complies with the provisions of this subparagraph either by receipt of a no further action letter from the department following the effective date of P.L.1997, c.278, or by relying on a previously issued no further action letter shall not be liable for any further remediation including any changes in a remediation

standard or for the subsequent discovery of a hazardous substance, at the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property. Notwithstanding any other provisions of this subparagraph, a person who complies with the provisions of this subparagraph only by virtue of the existence of a previously issued no further action letter shall receive no liability protections for any discharge which occurred during the time period between the issuance of the no further action letter and the property acquisition. Compliance with the provisions of this subparagraph (e) shall not relieve any person of any liability for a discharge that is off the site of the property covered by the no further action letter, for a discharge that occurs at that property after the person acquires the property, for any actions that person negligently takes that aggravates or contributes to a discharge of a hazardous substance, for failure to comply in the future with laws and regulations, or if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of the no further action letter.

(3) Notwithstanding the provisions of paragraph (2) of this subsection to the contrary, if a person who owns real property obtains actual knowledge of a discharge of a hazardous substance at the real property during the period of that person's ownership and subsequently transfers ownership of the property to another person without disclosing that knowledge, the transferor shall be strictly liable for the cleanup and removal costs of the discharge and no defense under this subsection shall be available to that person.

(4) Any federal, State, or local governmental entity which acquires ownership of real property through bankruptcy, tax delinquency, abandonment, escheat, eminent domain, condemnation or any circumstance in which the governmental entity involuntarily acquires title by virtue of its function as sovereign, or where the governmental entity acquires the property by any means for the purpose of promoting the redevelopment of that property, shall not be liable, pursuant to subsection c. of this section or pursuant to common law, to the State or to any other person for any discharge which occurred or began prior to that ownership. This paragraph shall not provide any liability protection to any federal, State or local governmental entity which has caused or contributed to the discharge of a hazardous substance. This paragraph shall not provide any liability protection to any federal, State, or local government entity that acquires ownership of real property by condemnation or eminent domain where the real property is being remediated in a timely manner at the time of the condemnation or eminent domain action.

e. Neither the fund nor the Sanitary Landfill Contingency Fund established pursuant to P.L. 1981, c.306 (C.13:1E-100 et seq.) shall be liable

for any damages incurred by any person who is relieved from liability pursuant to subsection d. or f. of this section for a remediation that involves the use of engineering controls but the fund and the Sanitary Landfill Contingency Fund shall be liable for any remediation that involves only the use of institutional controls if after a valid no further action letter has been issued the department orders additional remediation except that the fund and the Sanitary Landfill Contingency Fund shall not be liable for any additional remediation that is required to remove an institutional control.

f. Notwithstanding any other provision of this section, a person, who owns real property acquired on or after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for any cleanup and removal costs or damages, under this section or pursuant to any other statutory or civil common law, to any person, other than the State and the federal government, harmed by any hazardous substance discharged on that property prior to acquisition, and any migration off that property related to that discharge, provided all the conditions of this subsection are met:

(1) the person acquired the real property after the discharge of that hazardous substance at the real property;

(2) the person did not discharge the hazardous substance, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for a discharge pursuant to this section;

(3) the person gave notice of the discharge to the department upon actual discovery of that discharge;

(4) within 30 days after acquisition of the property, the person commenced a remediation of the discharge, including any migration, pursuant to a department oversight document executed prior to acquisition, and the department is satisfied that remediation was completed in a timely and appropriate fashion; and

(5) Within ten days after acquisition of the property, the person agrees in writing to provide access to the State for remediation and related activities, as determined by the State.

The provisions of this subsection shall not relieve any person of any liability:

(1) for a discharge that occurs at that property after the person acquired the property;

(2) for any actions that person negligently takes that aggravates or contributes to the harm inflicted upon any person;

(3) if that person fails to maintain the institutional or engineering controls on the property or to otherwise comply with the provisions of a no

further action letter or a remedial action workplan and a person is harmed thereby;

(4) for any liability to clean up and remove, pursuant to the department's regulations and directions, any hazardous substances that may have been discharged on the property or that may have migrated therefrom; and

(5) for that person's failure to comply in the future with laws and regulations.

g. Nothing in the amendatory provisions to this section adopted pursuant to P.L.1997, c.278 shall be construed to remove any defense to liability that a person may have had pursuant to subsection e. of this section that existed prior to the effective date of P.L.1997, c.278.

h. Nothing in this section shall limit the requirements of any person to comply with P.L.1983, c.330 (C.13:1K-6 et seq.).

21. Section 2 of P.L.1995, c.413 (C.54:4-3.151) is amended to read as follows:

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, residential, or other productive purposes.

22. Section 3 of P.L.1995, c.413 (C.54:4-3.152) is amended to read as follows:

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);

"Limited restricted use remedial action" means any remedial action that requires the continued use of institutional controls but does not require the use of an engineering control;

"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;

"Remediation" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action;

"Remediation cost" means cost associated with the implementation of a remediation, including all direct and indirect legal, administrative and capital costs, engineering costs, and annual operation, maintenance, and monitoring costs;

"Unrestricted use remedial action" means any remedial action that does not require the continued use of engineering or institutional controls in order to meet the established health risk or environmental standards.

23. Section 5 of P.L.1995, c.413 (C.54:4-3.154) is amended to read as follows:

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), shall, 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 except that a tax exemption may be extended up to fifteen years, at the municipality's option, if the qualified real property is to be remediated with a limited restricted use remedial action or an unrestricted use remedial action. The property tax exemption shall end if the difference between the real property taxes otherwise due and payments made in lieu of those taxes equals the total remediation cost for the qualified real property;

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 regulations 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, industrial, residential, or other productive purpose during the time period for which the real property tax exemption is given.

24. Section 7 of P.L.1995, c.413 (C.54:4-3.156) is amended to read as follows:

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.

Where a property tax exemption has been extended because of the proposed implementation of a limited restricted use remedial action or unrestricted use remedial action, the municipality may provide for a different schedule for the payment in lieu of real property taxes which payments may not exceed the length of the property tax exemption.

c. For the purposes of this section, only 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 and as if the designation of the environmental opportunity zone had not occurred.

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.58:10B-24 Duties of Department of Environmental Protection.

25. The Department of Environmental Protection shall:

(1) Prepare materials for dissemination to the public that explain the environmental and health risks associated with site remediations in general and which are designed to assist local governments and the public in assessing the risks associated with particular site remediation projects;

(2) Serve as an informational resource for county improvement authorities who are involved in remediating and redeveloping contaminated redevelopment areas and for municipalities and residents of this State who may be impacted by the remediation or redevelopment of contaminated real property regardless of who is undertaking the remediation or redevelopment;

(3) Work with residents and municipalities to form neighborhood informational groups whose purpose is to research, understand and disseminate information in neighborhoods concerning the public health and environmental risks associated with site remediations and redevelopment, as well as the economic benefits to be gained; and

(4) Make recommendations to the Legislature and the Governor in order to improve the public understanding, perception and risk associated with site remediations in the State.

26. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read as follows:

C.13:1D-9 Powers of department.

12. The department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State. The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards to the environment and its ecology;

b. Conduct and supervise Statewide programs of education, including the preparation and distribution of information relating to conservation, environmental protection and ecology;

c. Require the registration of persons engaged in operations which may result in pollution of the environment and the filing of reports by them containing such information as the department may prescribe to be filed relative to pollution of the environment, all in accordance with applicable codes, rules or regulations established by the department;

d. Enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any codes, rules and regulations of the department. Any information relating to secret processes concerning methods of manufacture or production, obtained in the course of such inspection, investigation or determination, shall be kept confidential, except this information shall be available to the department for use, when relevant, in any administrative or judicial proceedings undertaken to administer, implement, and enforce State environmental law, but shall remain subject only to those confidentiality protections otherwise afforded by federal law and by the specific State environmental laws and regulations that the department is administering, implementing and enforcing in that particular case or instance. In addition, this information shall be available upon request to the United States Government for use in administering, implementing, and enforcing federal environmental law, but shall remain subject to the confidentiality protection afforded by federal law. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing pollution of the environment;

e. Receive or initiate complaints of pollution of the environment, including thermal pollution, hold hearings in connection therewith and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in summary proceedings in the Superior Court;

f. Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the State and the relationship thereof to the environment, and in connection therewith prepare and make available to appropriate agencies in the State technical information concerning conservation and environmental protection, cooperate with the Commissioner of Health and Senior Services in the preparation and distribution of environmental protection and health bulletins for the purpose of educating the public, and cooperate with the Commissioner of Health and Senior Services in the preparation of a program of environmental protection;

g. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated,

approved and supervised by the department. In reviewing such plans and programs and in determining conditions under which such plans may be approved, the department shall give due consideration to the development of a comprehensive ecological and environmental plan in order to be assured insofar as is practicable that all proposed plans and programs shall conform to reasonably contemplated conservation and environmental protection plans for the State and the varied areas thereof;

h. Administer or supervise programs of conservation and environmental protection, prescribe the minimum qualifications of all persons engaged in official environmental protection work, and encourage and aid in coordinating local environmental protection services;

i. Establish and maintain adequate bacteriological, radiological and chemical laboratories with such expert assistance and such facilities as are necessary for routine examinations and analyses, and for original investigations and research in matters affecting the environment and ecology;

j. Administer or supervise a program of industrial planning for environmental protection; encourage industrial plants in the State to undertake environmental and ecological engineering programs; and cooperate with the State Departments of Health and Senior Services, Labor, and Commerce and Economic Development in formulating rules and regulations concerning industrial sanitary conditions;

k. Supervise sanitary engineering facilities and projects within the State, authority for which is now or may hereafter be vested by law in the department, and shall, in the exercise of such supervision, make and enforce rules and regulations concerning plans and specifications, or either, for the construction, improvement, alteration or operation of all public water supplies, all public bathing places, landfill operations and of sewerage systems and disposal plants for treatment of sewage, wastes and other deleterious matter, liquid, solid or gaseous, require all such plans or specifications, or either, to be first approved by it before any work thereunder shall be commenced, inspect all such projects during the progress thereof and enforce compliance with such approved plans and specifications;

l. Undertake programs of research and development for the purpose of determining the most efficient, sanitary and economical ways of collecting, disposing or utilizing of solid waste;

m. Construct and operate, on an experimental basis, incinerators or other facilities for the disposal of solid waste, provide the various municipalities and counties of this State, the Board of Public Utilities, and the Division of Local Government Services in the Department of Community Affairs with statistical data on costs and methods of solid waste collection, disposal and utilization;

n. Enforce the State air pollution, water pollution, conservation, environmental protection, waste and refuse disposal laws, rules and regulations, including the making and signing of a complaint and summons for their violation by serving the summons upon the violator and thereafter filing the complaint promptly with a court having jurisdiction;

o. Acquire by purchase, grant, contract or condemnation, title to real property, for the purpose of demonstrating new methods and techniques for the collection or disposal of solid waste;

p. Purchase, operate and maintain, pursuant to the provisions of this act, any facility, site, laboratory, equipment or machinery necessary to the performance of its duties pursuant to this act;

q. Contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

r. With the approval of the Governor, cooperate with, apply for, receive and expend funds from, the federal government, the State Government, or any county or municipal government or from any public or private sources for any of the objects of this act;

s. Make annual and such other reports as it may deem proper to the Governor and the Legislature, evaluating the demonstrations conducted during each calendar year;

t. Keep complete and accurate minutes of all hearings held before the commissioner or any member of the department pursuant to the provisions of this act. All such minutes shall be retained in a permanent record, and shall be available for public inspection at all times during the office hours of the department;

u. Require any person subject to a lawful order of the department, which provides for a period of time during which such person subject to the order is permitted to correct a violation, to post a performance bond or other security with the department in such form and amount as shall be determined by the department. Such bond need not be for the full amount of the estimated cost to correct the violation but may be in such amount as will tend to insure good faith compliance with said order. The department shall not require such a bond or security from any public body, agency or authority. In the event of a failure to meet the schedule prescribed by the department, the sum named in the bond or other security shall be forfeited unless the department shall find that the failure is excusable in whole or in part for good cause shown, in which case the department shall determine what amount of said bond or security, if any, is a reasonable forfeiture under the circumstances. Any amount so forfeited shall be utilized by the department for the correction of the violation or violations, or for any other action required to insure compliance with the order; and

v. Encourage and aid in coordinating State, regional and local plans, efforts and programs concerning the remediation and reuse of former industrial or commercial properties that are currently underutilized or abandoned and at which there has been, or is perceived to have been, a discharge, or threat of a discharge, of a contaminant. For the purposes of this subsection, "underutilized property" shall not include properties undergoing a reasonably timely remediation or redevelopment process.

27. Section 2 of P.L.1976, c.141 (C.58:10-23.11a) is amended to read as follows:

C.58:10-23.11a Findings and declarations.

2. The Legislature finds and declares: that New Jersey's lands and waters constitute a unique and delicately balanced resource; that the protection and preservation of these lands and waters promote the health, safety and welfare of the people of this State; that the tourist and recreation industry dependent on clean waters and beaches is vital to the economy of this State; that the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction; and that the storage and transfer of petroleum products and other hazardous substances between vessels, between facilities and vessels, and between facilities, whether onshore or offshore, is a hazardous undertaking and imposes risk of damage to persons and property within this State.

The Legislature finds and declares that the discharge of petroleum products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State. The Legislature intends by the passage of this act to exercise the powers of this State to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharges, and to provide for the defense and indemnification of certain persons under contract with the State for claims or actions resulting from the provision of services or work to mitigate or clean up a release or discharge of hazardous substances.

The Legislature further finds and declares that many former industrial sites in the State remain vacant or underutilized in part because they have been contaminated by a discharge of a hazardous substance; that these properties constitute an economic drain on the State and the municipalities in which they exist; that it is in the public interest to have these properties cleaned up sufficiently so that they can be safely returned to productive use; and that it should be a function of the Department of Environmental

Protection to facilitate and coordinate activities and functions designed to clean up contaminated sites in this State.

28. Section 7 of P.L.1976, c.141 (C.58:10-23.11f) is amended to read as follows:

C.58:10-23.11f Cleanup and removal of hazardous substances.

7. a. (1) Whenever any hazardous substance is discharged, the department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of the discharge or may direct the discharger to clean up and remove, or arrange for the cleanup and removal of, the discharge. If the discharge occurs at any hazardous waste facility or solid waste facility, the department may order the hazardous waste facility or solid waste facility closed for the duration of the cleanup and removal operations. The department may monitor the discharger's compliance with any such directive. Any discharger who fails to comply with such a directive shall be liable to the department in an amount equal to three times the cost of such cleanup and removal, and shall be subject to the revocation or suspension of any license issued or permit held authorizing that person to operate a hazardous waste facility or solid waste facility.

(2) Whenever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance. In an action for contribution, the contribution plaintiffs need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to the provisions of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), and the contribution defendant shall have only the defenses to liability available to parties pursuant to subsection d. of section 8 of P.L.1976, c.141 (C.58:10-23.11g). In resolving contribution claims, a court may allocate the costs of cleanup and removal among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution pursuant to any other statute or under common law.

(3) In an action for contribution taken pursuant to this subsection, a contribution plaintiff may file a claim with the court for treble damages. A contribution plaintiff may be granted an award of treble damages by the court from one or more contribution defendants only upon a finding by the court that: (a) the contribution defendant is a person who was named on or subject to a directive issued by the department, who failed or refused to

comply with such a directive, and who is subject to contribution pursuant to this subsection; (b) the contribution plaintiff gave 30 days' notice to the contribution defendant of the plaintiff's intention to seek treble damages pursuant to this subsection and gave the contribution defendant an opportunity to participate in the cleanup; (c) the contribution defendant failed or refused to enter into a settlement agreement with the contribution plaintiff; and (d) the contribution plaintiff entered into an agreement with the department to remediate the site. Notwithstanding the foregoing requirements, any authorization to seek treble damages made by the department prior to the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.) shall remain in effect, provided that the department or the contribution plaintiff gave notice to the contribution defendant of the plaintiff's request to the department for authorization to seek treble damages.

A contribution defendant from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for good cause shown, failed or refused to enter the settlement agreement with the contribution plaintiff or where principles of fundamental fairness will be violated. One third of an award of treble damages in a contribution action pursuant to this paragraph shall be paid to the department, which sum shall be deposited in the New Jersey Spill Compensation Fund. The other two thirds of the treble damages award shall be shared by the contribution plaintiffs in the proportion of the responsibility for the cost of the cleanup and removal that the contribution plaintiffs have agreed to with the department or in an amount as has been agreed to by those parties.

Cleanup and removal of hazardous substances and actions to minimize damage from discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for cleanup and removal of oil and hazardous substances established pursuant to section 311(c)(2) of the federal Water Pollution Control Act Amendments of 1972 (Pub.L.92-500, 33 U.S.C. s. 1251 et seq.).

Whenever the department acts to clean up and remove a discharge or contracts to secure prospective cleanup and removal services, it is authorized to draw upon the money available in the fund. Such money shall be used to pay promptly for all cleanup and removal costs incurred by the department in cleaning up, in removing or in minimizing damage caused by such discharge.

Nothing in this section is intended to preclude removal and cleanup operations by any person threatened by such discharges, provided such persons coordinate and obtain approval for such actions with ongoing State or federal operations. No action taken by any person to contain or clean up and remove a discharge shall be construed as an admission of liability for

said discharge. No person who renders assistance in containing or cleaning up and removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup or removal operations, no person shall discharge any detergent into the waters of this State without prior authorization of the commissioner.

b. Notwithstanding any other provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.), the department, subject to the approval of the administrator with regard to the availability of funds therefor, or a local unit as a part of an emergency response action and with the approval of the department, may clean up and remove or arrange for the cleanup and removal of any hazardous substance which:

(1) Has not been discharged from a grounded or disabled vessel, if the department determines that such cleanup and removal is necessary to prevent an imminent discharge of such hazardous substance; or

(2) Has not been discharged, if the department determines that such substance is not satisfactorily stored or contained and said substance possesses any one or more of the following characteristics:

(a) Explosiveness;

(b) High flammability;

(c) Radioactivity;

(d) Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or an imminent and severe damage to the environment;

(e) Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

(f) High toxicity and is stored or being transported in a container or motor vehicle, truck, rail car or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, rail car or other mechanized conveyance, and such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

(3) Has been discharged prior to the effective date of P.L.1976, c.141.

c. If and to the extent that he determines that funds are available, the administrator shall approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a

hazardous substance other than petroleum as authorized by subsection b. of this section; provided that in determining the availability of funds, the administrator shall not include as available funds revenues realized or to be realized from the tax on the transfer of petroleum, to the extent that such revenues result from a tax levied at a rate in excess of $0.01 per barrel, pursuant to subsection b. of section 9 of P.L.1976, c.141 (C.58:10-23.11h), unless the administrator determines that the sum of claims paid by the fund on behalf of petroleum discharges or cleanup and removals plus pending reasonable claims against the fund on behalf of petroleum discharges or cleanup and removals is greater than 30% of the sum of all claims paid by the fund plus all pending reasonable claims against the fund.

d. The administrator may only approve and make payments for any cleanup and removal costs incurred by the department for the cleanup and removal of a hazardous substance discharged prior to the effective date of P.L.1976, c.141, pursuant to subsection b. of this section, if, and to the extent that, he determines that adequate funds from another source are not or will not be available; and provided further, with regard to the cleanup and removal costs incurred for discharges which occurred prior to the effective date of P.L.1976, c.141, the administrator may not during any one-year period pay more than $18,000,000 in total or more than $3,000,000 for any discharge or related set or series of discharges.

e. Notwithstanding any other provisions of P.L.1976, c.141, the administrator, after considering, among any other relevant factors, the department's priorities for spending funds pursuant to P.L.1976, c.141, and within the limits of available funds, shall make payments for the restoration or replacement of, or connection to an alternative water supply for, any private residential well destroyed, contaminated, or impaired as a result of a discharge prior to the effective date of P.L.1976, c.141; provided, however, total payments for said purpose shall not exceed $500,000 for the period between the effective date of this subsection e. and January 1, 1983, and in any calendar year thereafter.

f. Any expenditures made by the administrator pursuant to this act shall constitute, in each instance, a debt of the discharger to the fund. The debt shall constitute a lien on all property owned by the discharger when a notice of lien, incorporating a description of the property of the discharger subject to the cleanup and removal and an identification of the amount of cleanup, removal and related costs expended from the fund, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment or order docket the name and address of the discharger and the amount of the lien as set forth in the notice of lien. Upon entry by the clerk, the lien, to the amount committed by the administrator for cleanup

and removal, shall attach to the revenues and all real and personal property of the discharger, whether or not the discharger is insolvent.

The notice of lien filed pursuant to this subsection which affects the property of a discharger subject to the cleanup and removal of a discharge shall create a lien with priority over all other claims or liens which are or have been filed against the property, except if the property comprises six dwelling units or less and is used exclusively for residential purposes, this notice of lien shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this notice of lien. The notice of lien filed pursuant to this subsection which affects any property of a discharger, other than the property subject to the cleanup and removal, shall have priority from the day of the filing of the notice of the lien over all other claims and liens filed against the property, but shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien pursuant to this subsection.

g. In the event a vessel discharges a hazardous substance into the waters of the State, the cleanup and removal and related costs resulting from that discharge that constitute a maritime lien on the discharging vessel pursuant to 33 U.S.C. s.1321 or any other law, may be recovered by the Department of Environmental Protection in an action in rem brought in the district court of the United States. An impoundment of a vessel resulting from this action shall continue until:

(1) the claim against the owner or operator of the vessel for the cleanup and removal and related costs of the discharge is satisfied;

(2) the owner or operator of the vessel, or a representative of the owner or operator, provides evidence of financial responsibility as provided in section 2 of P.L.1991, c.58 (C.58:10-23.11g2) and satisfactorily guarantees that these costs will be paid; or

(3) the impoundment is otherwise vacated by a court order. The remedy provided in this subsection is in addition to any other remedy or enforcement power that the department may have under any other law.

Any action brought by the State pursuant to this subsection and any impoundment of a vessel resulting therefrom shall not subject the State to be in any way liable for a subsequent or continued discharge of a hazardous substance from that vessel.

29. Section 1 of P.L.1993, c.112 (C.58:10-23.11g4) is amended to read as follows:

C.58:10-23.11g4 Definitions.

1. For purposes of sections 1 through 5 of P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8):

"Active participation in the management" or "participation in the management" means actual participation in the management or operational affairs by the holder of the security interest and shall not include the mere capacity, or ability to influence, or the unexercised right to control vessel, facility, or underground storage tank facility operations.

(1) A holder of a security interest shall be considered to be in active participation in the management, while the borrower is still in possession, only if the holder either:

(a) exercises decision making control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's waste disposal or hazardous substance handling practices; or

(b) exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to:

(i) environmental compliance; or

(ii) all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. Operational aspects of the enterprise include functions such as that of facility manager, underground storage tank facility manager, or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of credit manager, accounts payable or receivable manager, or both, personnel manager, controller, chief financial officer, or similar functions.

(2) No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the vessel, facility, or underground storage tank facility in which indicia of ownership are to be held, or requires a prospective borrower to clean up a vessel, facility, or underground storage tank facility or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the vessel's, facility's, or underground storage tank facility's management, provided however, that a holder shall not be required to conduct or require an inspection to qualify for the protection for holders granted pursuant to sections 1 through 5 of P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8), and the liability of a holder shall not be based on or affected by the holder not conducting or not requiring an inspection.

(3) Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management

for purposes of sections 1 through 5 of P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8). The authority for the holder to make such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all activities up to foreclosure and its equivalents.

(a) A holder who engages in policing activities prior to foreclosure shall remain within the exemption provided that the holder does not by such actions participate in the management of the vessel, facility, or underground storage tank facility. Such actions include, but are not limited to, requiring the borrower to clean up the vessel, facility, or underground storage tank facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, State, and local environmental and other laws, rules and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the vessel, facility, or underground storage tank facility (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial conditions during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations or promises from the borrower).

(b) A holder who engages in work out activities prior to foreclosure and its equivalents shall remain within the exemption provided that the holder does not by such action participate in the management of the vessel, facility, or underground storage tank facility. For purposes of this act, "work out" refers to those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to: prevent, cure, or mitigate a default by the borrower or obligor; or preserve or prevent the diminution of the value of the security. Work out activities include, but are not limited to: restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations or promises from the borrower.

(4) A holder does not participate in the management of a vessel, facility, or underground storage tank facility by making any response or performing any response action or undertaking any cleanup or removal or similar action under the federal "Comprehensive Environmental Response, Compensa-

tion, and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. s.9601 et seq.), the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.), P.L.1986, c.102 (C.58:10A-21 et seq.), or any other State or federal environmental law or regulation.

"Date of foreclosure" means the date on which the holder obtains legal or equitable title to the vessel or facility pursuant to or incident to foreclosure.

"Fair consideration" means the value of the security interest when calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the cases of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure and its equivalents, plus any unpaid interest, rent or penalties (whether arising before or after foreclosure and its equivalents), plus all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure and its equivalents, retention, maintaining the business activities of the enterprise, preserving, protecting and preparing the vessel, facility, or underground storage tank facility prior to sale, re-lease of property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus response costs incurred under applicable federal or State environmental cleanup laws or regulations, or at the direction of an on-scene coordinator, less any amounts received by the holder in connection with any partial disposition of the property, net revenues received as a result of maintaining the business activities of the enterprise, and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of property subject to a lease financing transaction) pursuant to foreclosure and its equivalents. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this definition.

"Foreclosure" or "foreclosure and its equivalents" means purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other form or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower) by which the holder acquires title to or possession of the secured property.

"Holder" is a person who maintains indicia of ownership primarily to protect a security interest. A holder includes the initial holder (such as a loan originator), any subsequent holder (such as a successor-in-interest or

subsequent purchaser of the security interest on the secondary market), a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest, or a receiver or other person who acts on behalf or for the benefit of a holder.

"Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

"Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as a protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reasons why any ownership indicia are held shall be as protection for a security interest.

"Security interest" means an interest in a vessel or facility created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trusts receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a vessel or facility for the purpose of securing a loan or other obligation.

"Underground storage tank" shall have the same meaning as set forth in section 2 of P.L. 1986, c.102 (C.58:10A-22).

"Underground storage tank facility" shall mean one or more underground storage tanks.

30. Section 2 of P.L.1993, c.112 (C.58:10-23.11g5) is amended to read as follows:

C.58:10-23.11g5 Liability for cleanup costs, damages.

2. A person who maintains indicia of ownership of a vessel, facility, or underground storage tank facility primarily to protect a security interest in a vessel, facility, or underground storage tank facility and who does not participate in the management of the vessel or facility or underground storage tank facility is not deemed to be an owner or operator of the vessel, facility, or underground storage tank facility, shall not be deemed the discharger or responsible party for a discharge from the vessel, facility, or underground storage tank facility and shall not be liable for cleanup costs or damages resulting from discharges from the vessel or facility pursuant to sections 8, 18, and 22 of P.L.1976, c.141 (C.58:10-23.11g, 58:10-23.11q and 58:10-23.11u), section 2 of P.L.1990, c.75 (C.58:10-23.11u1), or section 8 of P.L.1986, c.102 (C.58:10A-28) except to the extent that liability may still apply to holders after foreclosure as set forth in section 3 of P.L. 1993, c.112 (C.58:10-23.11g6).

31. Section 3 of P.L.1993, c.112 (C.58:10-23.11g6) is amended to read as follows:

C.58:10-23.11g6 Status and liability of holders after foreclosure.

3. The indicia of ownership, held after foreclosure, continue to be maintained primarily as a protection for a security interest provided that the holder did not participate in management prior to foreclosure and that the holder undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or otherwise divest itself of the vessel, facility, or underground storage tank facility in a reasonably expeditious manner in accordance with the means and procedures specified in this section. Such a holder may liquidate, maintain business operations, undertake environmental response actions pursuant to State and federal law, and take measures to preserve, protect or prepare the secured asset prior to sale or other disposition, without losing status as a person who maintains indicia of ownership primarily to protect a security pursuant to section 2 of P.L.1993, c.112 (C.58:10-23.11g5).

a. For purposes of establishing that a holder is seeking to sell, re-lease property held pursuant to a new lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest a vessel, facility, or underground storage tank facility in a reasonably expeditious manner, the holder may use whatever commercially reasonable means are relevant or appropriate with respect to the vessel, facility, or underground storage tank facility, or may employ the means specified in this section.

b. (1) A holder that outbids, rejects or fails to act upon a written bona fide, firm offer of fair consideration within 90 days of receipt of the offer, and which offer is received at any time after six months following the date of foreclosure, shall not be deemed to be using a commercially reasonable means for the purpose of this section. A "written bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed vessel, facility, or underground storage tank facility, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this subsection, the six-month period begins to run from the time that the holder acquires a marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

(2) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the vessel, facility, or underground storage tank facility within the 90-day period, establishes that the ownership indicia in the secured property are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or State law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

c. A holder establishes that it is proceeding in a commercially reasonable manner after foreclosure by, within 12 months following foreclosure, listing the vessel, facility, or underground storage tank facility with a broker, dealer, or agent who deals with the type of property in question, or by advertising the vessel, facility, or underground storage tank facility as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the vessel, facility, or underground storage tank facility in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. For purposes of this subsection, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title.

d. A holder shall sell, re-lease the property held pursuant to a new lease financing transaction, or otherwise divest such vessel, facility, or underground storage tank facility in a reasonably expeditious manner, but not later than five years after the date of foreclosure, except that a holder may continue to hold the property for a time period longer than five years without losing status as a person who maintains indicia of ownership

primarily to protect a security interest if (1) the holder has made a good faith effort to sell, re-lease or otherwise divest itself of the property using commercially reasonable means or other procedures prescribed by this act; (2) the holder has obtained any approvals required pursuant to applicable federal or State banking or other lending laws to continue its possession of the property; and (3) the holder has exercised reasonable custodial care to prevent or mitigate any new discharges from the vessel, facility, or underground storage tank facility that could substantially diminish the market value of the property.

e. (1) The exemption granted to holders pursuant to this section shall not apply to the liability for any new discharge from the vessel, facility, or underground storage tank facility, occurring after the date of foreclosure, that is caused by acts or omissions of the holder which can be shown, based on a preponderance of the evidence, to have been negligent. In the event a property has both preexisting and new discharges, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to those cleanup costs or damages that relate directly to the new discharge. In the event there is a substantial commingling of a new discharge with a preexisting discharge, the liability, if any, allocable to the holder pursuant to this subsection shall be limited to the cleanup costs or damages in excess of those cleanup costs or damages relating to the preexisting discharge.

In order to establish that a discharge occurred or began prior to the date of foreclosure, a holder may perform, but shall not be required to perform, an environmental audit, in accordance with any applicable Department of Environmental Protection regulations and guidelines, to identify such discharges at the vessel, facility, or underground storage tank facility. Upon receipt of a complete audit from the holder, the Department of Environmental Protection shall, within 90 days of its receipt of the audit, review the audit and transmit its findings to the holder. The Department of Environmental Protection may charge reasonable fees and adopt any additional regulations necessary to provide guidelines for the submission and review of such audits.

(2) Nothing in this subsection shall be deemed to impose liability for a new discharge from the vessel, facility, or underground storage tank facility that is authorized pursuant to a federal or State permit or cleanup procedure.

(3) The exemption granted to holders of indicia of ownership to protect a security interest shall not apply to liability, if any, pursuant to applicable law and regulation, for arranging for the offsite disposal or treatment of a hazardous substance or by accepting for transportation and disposing of a hazardous substance at an offsite facility selected by the holder.

f. (1) A holder who acquires an underground storage tank continues to hold the exemption granted to holders pursuant to this section if there is an

operator of the underground storage tank, other than the holder, who is in control of the underground storage tank or has responsibility for compliance with applicable federal and State requirements.

(2) If an operator does not exist, a holder continues to maintain the exemption from liability granted to holders pursuant to this section if the holder: (i) empties all underground storage tanks within 60 days after foreclosure or within 60 days after the effective date of P.L.1997, c.278 (C.58:10B-1.1 et al.), whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank remains in the underground storage tank, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; (ii) empties those underground storage tanks that are discovered after foreclosure within 60 days of discovery or within 60 days of the effective date of P.L.1997, c.278, whichever is later, so that no more than one inch of residue, or .3 percent by weight of the total capacity of the underground storage tank remains in the system, leaves vent lines open and functioning, and caps and secures all other lines, pumps, manways, and ancillary equipment; and (iii) permanently closes the underground storage tank pursuant to the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) or temporarily closes the underground storage tank.

g. An underground storage tank may be temporarily closed until a subsequent purchaser has acquired marketable title to the underground storage tank. When a subsequent purchaser acquires marketable title to the facility, the purchaser shall operate the underground storage tank in accordance with applicable State and federal laws or shall permanently close or remove the underground storage tank in accordance with the provisions of P.L.1986. c.102 (C.58:10A-21 et seq.).

For the purposes of this section, an underground storage tank shall be considered temporarily closed if a holder installs or continues to operate and maintain corrosion protection and reports suspected releases to the Department of Environmental Protection. If the underground storage tank has not been upgraded to comply with the provisions of P.L.1986, c.102 and the applicable federal law or does not comply with the standards for new underground storage tanks pursuant to State and federal law except for spill and overfill protection, and is temporarily closed for 12 months or more, the holder shall conduct a site investigation in accordance with rules and regulations adopted by the department.

32. Section 4 of P.L.1993, c.112 (C.58:10-23.11g7) is amended to read as follows:

C.58:10-23.11g7 Departmental rights retained; violations, penalties.

4. a. Nothing in sections 1 through 5 of P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit or limit the

rights of the Department of Environmental Protection to clean up a property or to obtain a lien on the property of a discharger or holder in order to recover cleanup costs pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any recovery of cleanup costs from a holder pursuant to a lien obtained by the Department of Environmental Protection shall be limited to the actual financial benefit conferred on such holder by a cleanup or removal action, and shall not exceed the amount realized by the holder on the sale or other disposition of the property.

b. Nothing in sections 1 through 5 of P.L.1993, c.112 (C.58:10-23.11g4 through 58:10-23.11g8) shall be deemed to prohibit or limit the rights of the Department of Environmental Protection, pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f), to direct the holder to take any emergency response actions, including closure of the vessel, facility, or underground storage tank facility, necessary to prevent, contain or mitigate a continuing or new discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

c. (1) If a holder forecloses on a vessel, facility, or underground storage tank facility at which it has actual knowledge a discharge occurred or began prior to the date of foreclosure, the holder shall, within 30 days of the date of foreclosure, notify the Department of Environmental Protection that foreclosure has occurred. Any person who fails to give notice required pursuant to this subsection or knowingly gives or causes to be given false information in any such report, shall be subject to a civil penalty not to exceed $25,000. A court, in determining the amount of the penalty to be imposed, shall consider, among other relevant factors, the amount of any damages caused by the failure to give timely notice and whether the failure to notify was inadvertent or intentional.

(2) The holder shall immediately notify the Department of Environmental Protection of any new discharge, of which it has actual knowledge, occurring after the date of foreclosure, from the vessel, facility, or underground storage tank facility. Any person who fails to give notice required pursuant to this subsection or knowingly gives or causes to be given any false information in any such report, shall be subject to a civil penalty not to exceed $10,000 per day for each violation. A court, in determining the amount of the penalty to be imposed and the appropriateness of imposing multiple penalties for a continuing offense, shall consider, among other relevant factors, the amount of any damages caused by the failure to give timely notice and whether the failure to notify was inadvertent or intentional.

(3) Any penalty incurred under this section may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq., in the Superior Court or a municipal court. Failure to give any required notice pursuant to this subsection shall not cause the

holder to lose its status as a person who maintains indicia of ownership primarily to protect a security interest.

C.58:10-23.11g8a Compliance not required; loss of exemption.

33. A holder of an interest in an underground storage tank shall not be required to comply with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) unless the holder loses the exemption under P.L.1993, c.112 (C.58:10-23.11g4 et seq.).

C.58:10B-26 Definitions relative to redevelopment agreements.

34. As used in sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31):

"Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3);

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the State pursuant to the provisions of section 35 of P.L.1997, c.278 (C.58:10B-27).

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

"Project" or "redevelopment project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within an area of land whereon a contaminated site is located, under a redevelopment agreement with the State pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27).

"Redevelopment agreement" means an agreement between the State and a developer under which the developer agrees to perform any work or undertaking necessary for the remediation of the contaminated site located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction or rehabilitation of any structure or improvement of commercial, industrial or public structures or improvements within an area of land whereon a contaminated site is located pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), and the State agrees that the developer shall be eligible for the reimbursement of up to 75% of the costs of remediation of the contaminated site from the fund established pursuant to section 38 of P.L.1997, c.278 (C.58:10B-30) as authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28).

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

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site except that "remediation costs" shall not include any costs incurred in financing the remediation.

C.58:10B-27 Terms and conditions of agreements.

35. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer may enter into a redevelopment agreement with the State pursuant to the provisions of this section. The State may not enter into a redevelopment agreement with a developer who is liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the contamination at the site proposed to be in the redevelopment agreement.

The decision whether or not to enter into a redevelopment agreement is solely within the discretion of the Commissioner of Commerce and Economic Development and the State Treasurer and both must agree to enter into the redevelopment agreement. Nothing in P.L.1997, c.278 (C.58:10B-1.1 et al.) may be construed to compel the commissioner and the State Treasurer to enter into any redevelopment agreement.

The Commissioner of Commerce and Economic Development in consultation with the State Treasurer shall negotiate the terms and conditions of any redevelopment agreement on behalf of the State. The redevelopment agreement shall specify the amount of the reimbursement to be awarded the developer, the frequency of payments and the length of time in which that reimbursement shall be granted. In no event shall the amount of the reimbursement, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c.413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 75% of the total cost of the remediation.

The commissioner and the State Treasurer may only enter into a redevelopment agreement if they make a finding that the State tax revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer. This finding may be made by an estimation based upon the professional judgment of the commissioner and the State Treasurer.

The percentage of each payment to be made to the developer pursuant to the redevelopment agreement shall be conditioned on the occupancy rate

of the buildings or other work areas located on the property. The redevelopment agreement shall provide for the payments made in order to reimburse the developer to be in the same percentages as the occupancy rate at the site except that upon the attainment of a 90% occupancy rate, the developer shall be entitled to the entire amount of each payment toward the reimbursement as set forth in the redevelopment agreement. The redevelopment agreement shall provide for the frequency of the director's finding of the occupancy rate during the payment schedule.

b. In deciding whether or not to enter into a redevelopment agreement and in negotiating a redevelopment agreement with a developer, the commissioner shall consider the following factors:

(1) the economic feasibility of the redevelopment project;

(2) the extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;

(3) the degree to which the redevelopment project will advance State, regional and local development and planning strategies;

(4) the likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the remediation costs incurred as provided in the redevelopment agreement;

(5) the relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

(6) the need of the redevelopment agreement to the viability of the redevelopment project; and

(7) the degree to which the redevelopment project enhances and promotes job creation and economic development.

C.58:10B-28 Eligibility for reimbursement; certification.

36. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, any developer that enters into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), may be eligible for reimbursement of up to 75% of the costs of the remediation of the subject real property pursuant to the provisions of this section upon the commencement of a business operation within a redevelopment project.

b. To be eligible for reimbursement of the costs of remediation, a developer shall submit an application, in writing, to the director for review and certification of the reimbursement. The director shall review the request for the reimbursement upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The director shall also make a finding of the occupancy rate of the property

subject to the redevelopment agreement in the frequency set forth in the redevelopment agreement as provided in section 35 of P.L.1997, c.278 (C.58:10B-27).

The director shall certify a developer to be eligible for the reimbursement if the director finds that:

(1) a place of business is located in the area subject to the redevelopment agreement that has generated new tax revenues;

(2) the developer had entered into a memorandum of agreement with the Commissioner of Environmental Protection, after the developer entered into the redevelopment agreement, for the remediation of contamination located on the site of the redevelopment project pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29) and the developer is in compliance with the memorandum of agreement; and

(3) the costs of the remediation were actually and reasonably incurred. In making this finding the director may consult with the Department of Environment Protection.

c. When filing an application for certification for a reimbursement pursuant to this section, the developer shall submit to the director a certification of the total remediation costs incurred by the developer for the remediation of the subject property located at the site of the redevelopment project as provided in the redevelopment agreement, information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, and such other information as the director deems necessary in order to make the certifications and findings pursuant to this section.

C.58:10B-29 Qualification for certification of reimbursement of remediation costs; memorandum of agreement.

37. a. To qualify for the certification of reimbursement of the remediation costs authorized pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28), a developer shall enter into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of the site of the redevelopment project.

b. Under the memorandum of agreement, the developer shall agree to perform and complete any remediation activity as may be required by the Department of Environmental Protection to ensure the remediation is conducted pursuant to the regulations adopted by the Department of Environmental Protection pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.).

c. After the developer has entered into a memorandum of agreement with the Commissioner of Environmental Protection, the commissioner shall submit a copy thereof to the developer, the clerk of the municipality in

which the subject property is located, the Commissioner of the Department of Commerce and Economic Development, and the director.

C.58:10B-30 Brownfield Site Reimbursement Fund.

38. a. There is created in the Department of Treasury a special fund to be known as the Brownfield Site Reimbursement Fund. Moneys in the fund shall be dedicated to the purpose of reimbursing a developer who enters into a redevelopment agreement pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27) and is certified for reimbursement pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). A special account within the fund shall be created for each developer upon approval of a certification pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). The Legislature shall annually appropriate the entire balance of the fund for the purposes of reimbursement of remediation costs as provided in section 39 of P.L.1997, c.278 (C.58:10B-31).

b. The fund shall be credited with an amount from the General Fund, determined sufficient by the Commissioner of Commerce and Economic Development, to provide the negotiated reimbursement to the developer. Moneys credited to the fund shall be an amount that equals the percent of the remediation costs expected to be reimbursed pursuant to the redevelopment agreement. In estimating the amount of new State taxes that is anticipated to be derived from a redevelopment project pursuant to section 35 of P.L.1997, c.278 (C.58:10B-27), the Commissioner of Commerce and Economic Development and the State Treasurer shall consider taxes from the following: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), that is a taxpayer in respect of net profits from business, a distributive share of partnership income, or a prorata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

C.58:10B-31 Reimbursement of remediation costs.

39. a. The State Treasurer shall reimburse the developer the amount of the remediation costs agreed upon in the redevelopment agreement, and as provided in sections 35 and 36 of P.L.1997, c.278 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification by the director pursuant to

section 36 of P.L.1997, c.278 (C.58:10B-28). The developer shall be entitled to periodic payments from the fund in an amount, in the frequency, and over the time period as provided in the redevelopment agreement. Notwithstanding any other provision of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not reimburse the developer any amount of the remediation costs from the fund until the State Treasurer is satisfied that the anticipated tax revenues from the redevelopment project have been realized by the State in an amount sufficient to pay for the cost of the reimbursements.

b. A developer shall submit to the director updated remediation costs actually incurred by the developer for the remediation of the contaminated property located at the site of the redevelopment project as provided in the redevelopment agreement. The reimbursement authorized pursuant to this section shall continue until such time as the aggregate dollar amount of the agreed upon reimbursement. To remain entitled to the reimbursement authorized pursuant to this section, the developer shall perform and complete all remediation activities as may be required pursuant to the memorandum of agreement entered into with the Commissioner of Environmental Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29). The Department of Environmental Protection may review the remediation costs incurred by the developer to determine if they are reasonable.

40. a. There is established a Legislative Underground Storage Tank Remediation Task Force. The task force shall consist of seven members as follows: one member of the Senate to be appointed by the Senate President; one member of the General Assembly to be appointed by the Speaker of the General Assembly; the Commissioner of Environmental Protection or a designee; an environmental consultant with a degree in hydrogeology and experience in petroleum underground storage tank remediations to be appointed by the Senate President; a representative of an environmental interest group to be appointed by the Senate President; a small business representative who owns or operates an underground storage tank to be appointed by the Speaker of the General Assembly; and a representative from a major oil company to be appointed by the Speaker of the General Assembly.

The chairman of the task force shall be jointly appointed by the Senate President and the Speaker of the General Assembly. Vacancies shall be filled in the same manner as the original appointments are made.

b. The task force shall evaluate the use of expanded risk based decision making that allows for alternative remediation standards and natural attenuation in all environmental media at petroleum underground storage

tank discharge sites; consider the use of standard probabilistic approaches in the development of minimum remediation standards; examine and evaluate the State policies that are preventing the development and use of alternative remediation standards for soil and groundwater and the implementation of the Risk Based Corrective Action decision making process described in ASTM standard 1739-95.

Within six months of the first meeting, the task force shall prepare a written report to the Legislature and the Chairman of the Senate Environment Committee, and the Assembly Agriculture and Waste Management Committee or their successor committees. The report shall include a comparison of the department's process for remediating petroleum underground storage tanks with the process recommended in the Risk Based Corrective Action decision making process described in ASTM standard 1739-95 or that used by other states, an examination of the process that could be used to develop alternative remediation standards, a review and discussion of any policy changes necessary in order to allow for natural attenuation in all environmental media; together with any recommendations for further legislative remedies regarding expanded risk based decision making at petroleum underground storage tank discharge sites.

(3) The task force shall convene its first meeting within sixty days of the effective date of P.L.1997, c.278.

41. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $3,000,000 for the investigations, determinations, and data collection and entry into the geographic information system as provided in section 3 of this act.

42. There is appropriated to the Department of Environmental Protection from the "1996 Environmental Cleanup Fund" created pursuant to section 19 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond of 1996," P.L.1996, c.70, the sum of $2,000,000 for the data collection and entry into the geographic information system as provided in section 4 of this act.

43. Section 14 of P.L.1993, c.139 (C.13:1K-11.3) is amended to read as follows:

C.13:1K-11.3 Application for limited site review.

14. a. The owner or operator of an industrial establishment planning to close operations or transfer ownership or operations of the industrial establishment may, in lieu of complying with the provisions of subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9), apply to the department for a limited site review. An application for a limited site review pursuant to this section shall include:

(1) the notice required pursuant to the provisions of subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9);

(2) a certification that for the industrial establishment, a remedial action workplan has previously been implemented and a no further action letter has been issued pursuant to P.L.1983, c.330, a negative declaration has been previously approved by the department pursuant to P.L.1983, c.330, or the department or the United States Environmental Protection Agency, pursuant to the "Resource Conservation and Recovery Act," 42 U.S.C. s.6901 et seq. or the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 42 U.S.C. s.9601 et seq., or any other law, has previously approved a remediation of the industrial establishment equivalent to that performed pursuant to the provisions of P.L.1983, c.330;

(3) a certification that the owner or operator has performed remediation activities at the industrial establishment that are consistent with current regulations established by the department in order to identify areas of concern and, based on those remediation activities, that subsequent to the issuance of the negative declaration, no further action letter or remediation approval described in paragraph (2) of this subsection, a discharge has occurred at the industrial establishment that was not remediated in accordance with the procedures established by the department or that any remediation performed has not been approved by the department and that no other discharge of a hazardous substance or hazardous waste has occurred at the industrial establishment;

(4) a certification that for any underground storage tank covered by the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), an approved method of secondary containment or a monitoring system as required by P.L.1986, c.102, has been installed;

(5) a copy of the most recent negative declaration, no further action letter, or other approval, as applicable, approved by the department for the industrial establishment; and

(6) a proposed negative declaration, if applicable.

b. Upon the submission of a complete application, and after an inspection if necessary, the department may:

(1) approve the negative declaration upon a finding that any discharge of a hazardous substance or hazardous waste, as certified to pursuant to paragraph (3) of subsection a. of this section, has been remediated consistent with the applicable remediation regulations as established by the department; or

(2) require that the owner or operator perform a remediation as set forth in subsection b. of section 4 of P.L.1983, c.330 (C.13:1K-9) only for those areas of concern identified by the information provided pursuant to paragraph (3) of subsection a. of this section upon a finding that further investigation or remediation is necessary to bring the industrial establishment into compliance with the applicable remediation regulations.

c. The owner or operator of an industrial establishment subject to the provisions of this section shall not close operations or transfer ownership or operations until a remedial action workplan, or a negative declaration, as applicable, has been approved by the department or upon approval of a remediation agreement as provided in subsection e. of section 4 of P.L.1983, c.330.

44. Section 43 of P.L.1993, c.139 (C.58:10B-19) is amended to read as follows:

C.58:10B-19 Implementation of interim response action.

43. The owner or operator of an industrial establishment who has submitted a notice to the department pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9), or any person who has discharged a hazardous substance or is liable for the remediation of that discharge pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or any person who has been directed to or has entered into an agreement with the department to remediate a discharge, may implement an interim response action prior to departmental approval of that action. The interim response action may be implemented when the expeditious temporary or partial remediation of a discharged hazardous substance or hazardous waste is necessary to contain or stabilize a discharge prior to implementation of an approved remedial action workplan in order to prevent, minimize, or mitigate damage to public health or safety or to the environment which may otherwise result from a discharge. The interim response action shall be implemented in compliance with the procedures and standards established by the department. The department may require submission of a notice of intent to implement an interim response action, what those actions will be, and may require, subsequent to completion of the interim response action, a report detailing the actions taken and a certification that the interim response action was implemented in accordance with all applicable laws and regulations. The department shall review these submissions to verify whether the interim

response action was implemented in accordance with applicable laws and regulations. The department shall not require that additional remediation be undertaken at an area of concern subject to the interim response action except in instances when further remediation is necessary to bring that area of concern into compliance with the applicable remediation regulations.

The department may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations establishing a fee schedule, as necessary, reflecting the actual costs associated with the review of the interim response action and any implementation thereof.

45. Section 6 of P.L.1993, c.112 (C.58:10-23.11g9) is amended to read as follows:

C.58:10-23.11g9 Obligations of trusts, estates.

6. In the event of the discharge of a hazardous substance from a vessel, facility, or underground storage tank facility, which vessel, facility, or underground storage tank facility is all or part of a trust, receivership estate, guardianship estate or estate of a deceased person, only the assets of the trust or estate, or assets of any discharger other than the fiduciary of such trust or estate, shall be subject to the obligation to pay for the cleanup of the discharge as set forth in the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) or subject to any obligations imposed pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.).

46. Section 20 of P.L.1993, c.139 (C.13:1K-11.9) is amended to read as follows:

C.13:1K-11.9 Responsibilities of owner as landlord, operator as tenant.

20. a. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the landlord shall be responsible for providing any information that is requested by the tenant that is not otherwise available through a diligent inquiry by the tenant, and the tenant shall be responsible for providing any information that is requested by the landlord that is not otherwise available through a diligent inquiry by the landlord.

b. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, the person that remediates the industrial establishment shall provide copies to the other person of all submissions to the department concerning the remediation.

c. Where the owner of an industrial establishment is a landlord and the operator of the industrial establishment is a tenant, and there has been a failure to comply with the provisions of P.L.1983, c.330, the landlord or the tenant may petition the department, in writing, to first compel that party who

is responsible pursuant to the provisions of the lease, to comply with the requirements of P.L.1983, c.330. The department shall develop a form for a petition made pursuant to this section, and shall establish a list of documents required to be submitted with the petition which shall include, but not be limited to: (1) a copy of the notice required pursuant to subsection a. of section 4 of P.L.1983, c.330 (C.13:1K-9); (2) the names and addresses of the landlord and the tenant; (3) a copy of the signed lease between the landlord and the tenant; (4) a certification by the petitioner that includes the relevant facts concerning noncompliance with the act; and (5) any other documents the department deems relevant. The department shall make a determination that the provisions of the lease are unclear within 30 days of receipt of a complete petition. Upon a determination by the department that the provisions of the lease are unclear as it relates to the responsibility of either party to comply with the provisions of P.L.1983, c.330, or upon the failure by the person responsible pursuant to the provisions of the lease to comply, the department may compel compliance by all persons subject to the requirements of P.L.1983, c.330 for the industrial establishment.

47. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to read as follows:

C.13:1K-13 Grounds for voiding sale; violations; penalties.

8. a. Failure of the transferor to perform a remediation and obtain department approval thereof as required pursuant to the provisions of this act is grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee, entitles the transferee to recover damages from the transferor, and renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting from the failure to implement the remedial action workplan. A transferee may not act to void the sale or transfer of an industrial establishment or any real property except upon providing notice to the transferor of the failure to perform and affording the transferor a reasonable amount of time to comply with the provisions of this act. A transferee may bring an action in Superior Court to void the sale or transfer of an industrial establishment or any real property or to recover damages from the transferor, pursuant to this section.

b. Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of this act is liable for a penalty of not more than $25,000.00 for each offense. If the violation is of a continuing nature, each day during which it continues shall constitute

an additional and separate offense. Penalties shall be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or management official of an industrial establishment who knowingly directs or authorizes the violation of any provisions of this act shall be personally liable for the penalties established in this subsection.

C.58:10B-25 Designation of State environmental agency under federal law.

48. Pursuant to section 941 of the federal "Taxpayer Relief Act of 1997," Pub. L. 105-34, the Governor shall designate the Department of Environmental Protection as the appropriate State environmental agency to issue statements that an area is within a targeted area and that there has been a release, or threat of release, or disposal of any hazardous substance at or on that area. For the purposes of this section "targeted area" and "hazardous substance" shall have the meanings given to them in the federal act.

49. This act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 279

AN ACT concerning the professionalization of the office of municipal clerk, amending various parts of the statutory law, and supplementing Chapter 9 of Title 40A of the New Jersey Statutes.

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

1. N.J.S.40A:9-133 is amended to read as follows:

Municipal clerk, appointment, duties.

40A:9-133. a. In every municipality there shall be a municipal clerk appointed for a three-year term by the governing body of the municipality. Commencing January 1 following the third anniversary of the effective date of P.L.1997, c.279 (C.40A:9-133.9 et al.), no person shall be appointed or reappointed as a municipal clerk unless that person holds a registered municipal clerk certificate issued pursuant to section 3 or section 4 of P.L.1985, c.174 (C.40A:9-133.3 or C.40A:9-133.4).

b. For the purposes of tenure, the term of a municipal clerk shall be deemed to have begun as of the actual date upon which a person serving as municipal clerk is appointed. In the event of a vacancy in the office of municipal

clerk, an appointment shall be made for a new term and not for the unexpired term. A reappointment of an incumbent municipal clerk made within 60 days following the expiration of the prior term shall not be considered to be a new appointment and the effective date of the reappointment shall date back to the date of expiration of the initial term of appointment.

c. Within 90 days of the occurrence of a vacancy in the office of municipal clerk by reason of the departure of a registered municipal clerk, the governing body may appoint a person who does not hold a registered municipal clerk certificate to serve as acting municipal clerk for a period not to exceed one year and commencing on the date of the vacancy. Any person so appointed may, with the approval of the Director of the Division of Local Government Services in the Department of Community Affairs, be reappointed as acting municipal clerk for a maximum of two subsequent one-year terms following the termination of the temporary appointment. No local unit shall fill the position of acting municipal clerk for more than three consecutive years. Time served as acting municipal clerk may be credited toward the experience authorized as a substitute for the college education requirement pursuant to section 2 of P.L.1985, c.174 (C.40A:9-133.2). Time served as acting municipal clerk may not be credited as time served as municipal clerk for the purpose of acquiring tenure pursuant to section 7 of P.L.1985, c.174 (C.40A:9-133.7).

d. (Deleted by amendment, P.L.1997,c.279).

e. The municipal clerk shall:

(1) act as secretary of the municipal corporation and custodian of the municipal seal and of all minutes, books, deeds, bonds, contracts, and archival records of the municipal corporation. The governing body may, however, provide by ordinance that any other specific officer shall have custody of any specific other class of record;

(2) act as secretary to the governing body, prepare meeting agendas at the discretion of the governing body, be present at all meetings of the governing body, keep a journal of the proceedings of every meeting, retain the original copies of all ordinances and resolutions, and record the minutes of every meeting;

(3) serve as the chief administrative officer in all elections held in the municipality, subject to the requirements of Title 19 of the Revised Statutes;

(4) serve as chief registrar of voters in the municipality, subject to the requirements of Title 19 of the Revised Statues;

(5) serve as the administrative officer responsible for the acceptance of applications for licenses and permits and the issuance of licenses and permits, except where statute or municipal ordinance has delegated that responsibility to some other municipal officer;

(6) serve as coordinator and records manager responsible for implementing local archives and records retention programs as mandated pursuant to Title 47 of the Revised Statutes;

(7) perform such other duties as are now or hereafter imposed by statute, regulation or by municipal ordinance or regulation.

f. If a governing body fails or refuses to comply with subsection a., b. or c. of this section, the director may order the governing body to comply by a date certain which shall afford the governing body a reasonable time within which to comply.

2. Section 1 of P.L.1981, c.394 (C.40A:9-133.1) is amended to read as follows:

C.40A:9-133.1 Municipal clerks, apointment, continuation, tenure.

1. a. The provisions of any other law to the contrary notwithstanding, commencing on the effective date of P.L.1981, c.394, all municipal clerks shall hold office by virtue of appointment pursuant to the provisions of N.J.S. 40A:9-133, except as otherwise provided in this section.

b. All municipal clerks holding office on the effective date of P.L.1981, c.394 shall continue in office until their successors are appointed in the manner provided by N.J.S. 40A:9-133.

c. Nothing contained in P.L.1981, c.394 or in any other statute shall prevent any municipal clerk who, upon the effective date of P.L.1981, c.394, holds office by virtue of election thereto, from acquiring tenure upon being appointed thereto after the effective date of P.L.1981, c.394, if the clerk otherwise qualifies for tenure pursuant to N.J.S.40A:9-134.

3. Section 2 of P.L.1985, c.174 (C.40A:9-133.2) is amended to read as follows:

C.40A:9-133.2 Application for examination; qualifications.

2. Commencing on the effective date of P.L.1985, c.174, the Director of the Division of Local Government Services in the Department of Community Affairs shall hold examinations semiannually, and at such other times as he may deem appropriate, for certification as municipal clerk. An applicant for examination shall furnish proof to the director, not less than 30 days before an examination, that the applicant is not less than 21 years of age, is a citizen of the United States, is of good moral character, has obtained a certificate or diploma issued after at least four years of study at an approved secondary school or has received an academic education considered and accepted by the Commissioner of Education as fully equivalent, and has completed at least two years of education at a college of recognized standing. For purposes of this section, 30 college credits will be

considered equivalent to one year of college. An applicant who does not meet the two-year college requirement may substitute on a year-for-year basis full-time experience or the equivalent part-time experience in a position as deputy municipal clerk, assistant municipal clerk or other position of county or municipal government which performs duties relative to those performed by a municipal clerk as described in subsection e. of N.J.S.40A:9-133. An applicant shall also present proof of completion of the following courses offered through Rutgers, The State University or similar courses offered at a college or university approved by the Division of Local Government Services in the Department of Community Affairs:

Introduction of the Duties of the Municipal Clerk;
Advanced Duties of the Municipal Clerk;
Local Election Administration;
Information and Records Management and
Municipal Finance Administration for Municipal Clerks.

Every applicant submitting an application prior to January 1, 1997 may present proof of satisfactory completion of a course in Municipal Finance Administration, in lieu of the course in Municipal Finance Administration for Municipal Clerks.

The proofs required pursuant to this section shall be provided on the application forms and in the manner as shall be prescribed by the director. Each completed application shall be accompanied by a fee in the amount of $50 payable to the order of the State Treasurer. Examinations shall be written, or both written and oral, and shall be of such character as fairly to test and determine the qualifications, fitness and ability of the person tested to actually perform the duties of municipal clerk.

4. Section 3 of P.L.1985, c.174 (C.40A:9-133.3) is amended to read as follows:

C.40A:9-133.3 Certification; fee.

3. Upon the successful completion of the examination by an applicant, a certificate shall be issued to the applicant as a registered municipal clerk. The certificate fee shall be $50 payable to the order of the State Treasurer.

5. Section 7 of P.L.1985, c.174 (C.40A:9-133.7) is amended to read as follows:

C.40A:9-133.7 Reappointment; removal for good cause.

7. Notwithstanding the provisions of any other law to the contrary, any person who:

a. Shall be reappointed municipal clerk subsequent to having received a registered municipal clerk certificate pursuant to P.L.1985, c.174 and

having served as municipal clerk or performed the duties of municipal clerk for not less than three consecutive years immediately prior to such reappointment; or

b. Shall have acquired tenure; shall hold office during good behavior and efficiency, and compliance with the continuing education requirements set forth in section 8 of P.L.1997, c.279 (C.40A:9-133.10), notwithstanding that such reappointment was for a fixed term of years; and shall not be removed therefrom for political reasons but only for good cause shown and after a proper hearing before the director or the director's designee. The removal of a registered municipal clerk shall be only upon a written complaint setting forth with specificity the charge or charges against the clerk. The complaint shall be filed with the director and a certified copy of the complaint shall be served upon the person so charged, with notice of a designated hearing date before the director or the director's designee, which shall be not less than 30 days nor more than 60 days from the date of service of the complaint. Such date may be extended by the Superior Court for good cause shown upon the application of either party. The person so charged and the complainant shall have the right to be represented by counsel and the power to subpoena witnesses and documentary evidence together with discovery proceedings. The provisions of this section shall apply to every person actually in office as registered municipal clerk, whether or not in the classified service under Title 11A of the New Jersey Statutes (Civil Service).

For the purposes of this section, the definition of good cause for removal of a municipal clerk may include the failure of the clerk to meet the continuing education requirements set forth in section 8 of P.L.1997,c.279 (C.40A:9-133.10).

6. N.J.S.40A:9-134 is amended to read as follows:

Tenure for municipal clerks.

40A:9-134. On or before December 31, 1985, any person holding the office of municipal clerk in any municipality and having held such office continuously for five years from the date of his original appointment shall have tenure in such office and shall not be removed therefrom except for good cause shown after a fair and impartial hearing.

For the purposes of this section, the definition of good cause for removal of a municipal clerk may include the failure of the clerk to meet the continuing education requirements set forth in section 8 of P.L.1997, c.279 (C.40A:9-133.10).

C.40A:9-133.9 Application for registered municipal clerk by tenured municipal clerk.

7. Within six months of the effective date of P.L.1997, c.279 (C.40A:9-133.9 et al.), any municipal clerk who has been granted tenure pursuant to P.L.1981, c.394, or P.L.1985, c.174 but does not hold a registered municipal clerk certificate shall apply to the director for a registered municipal clerk certificate. Application shall be made on a form approved by the director at no cost to the applicant. Upon verification of the applicant's tenured status, the director shall issue a registered municipal clerk certificate, marked as restricted to the municipality employing the municipal clerk. A municipal clerk holding such a certificate shall then be subject to all provisions affecting other certificate holders under P.L.1997, c.279 (C.40A:9-133.9 et al.) including but not limited to renewal, continuing education and maintenance of tenure rights.

C.40A:9-133.10 Renewal of certificates; conditions; fee.

8. a. Commencing July 1, 1996 all registered municipal clerk certificates issued pursuant to section 3 or section 4 of P.L.1985, c.174 (C.40A:9-133.3 or C.40A:9-133.4), or section 7 of P.L.1997, c.279 (C.40A:9-133.9) shall be renewed upon application, payment of the required fee, and verification that the applicant has met the requirements as set forth in this section. Each renewal shall be for a period of two years. The renewal date shall be 30 days prior to the expiration date.

b. All registered municipal clerk certificates subject to renewal pursuant to this section issued prior to July 1, 1996 shall have an expiration date of June 30, 1998. All registered municipal clerk certificates issued on or after July 1, 1996 shall expire two years from the date on which the certificate was originally issued.

c. Each applicant for renewal of a registered municipal clerk certificate shall, on a form prescribed by the director, furnish proof of having earned at least 2.0 continuing education units in subject areas related to the statutory duties of the municipal clerk and minimum contact hours as prescribed by the director. For the purposes of this section, 1.0 continuing education unit equals 10 contact hours. Upon verification of this requirement, and upon payment of a fee of $50 to the order of the Treasurer of the State of New Jersey, the director shall renew the registered municipal clerk certificate.

d. Where the holder of a registered municipal clerk certificate has allowed the certificate to lapse by failing to renew the certificate, a new application and certificate shall be required. If application is made within six months of the expiration of the certificate, then application may be made in the same manner as renewal but the application shall be accompanied by the fee for a new application.

C.40A:9-133.11 Rules, regulations.

9. The director is authorized to adopt, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations, forms and procedures as may be necessary to carry out the terms of this act.

C.40A:9-133.12 Costs of complying with requirements; "costs" defined.

10. Nothing in P.L.1997, c.279 (C.40A:9-133.9 et al.) shall be construed as requiring a municipal governing body to pay any of the costs an individual may incur in complying with the requirements for obtaining or renewing a registered municipal clerk certificate; however, a municipal governing body, by resolution, may determine to reimburse an individual for all or any portion of the costs an individual may incur. For the purposes of this section, the term "costs" shall include but not be limited to the costs associated with course registration, application fees, transportation and leaves of absence.

11. This act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 280

AN ACT concerning collection of certain surcharges, amending and supplementing P.L.1995, c.9 and amending P.L.1983, c.65.

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

1. Section 2 of P.L.1995, c.9 (C.2B:19-2) is amended to read as follows:

C.2B:19-2 Findings, declarations.

2. The Legislature finds and declares that:

a. The Judiciary routinely enters judgments and court orders setting forth assessments, surcharges, fines and restitution against litigants pursuant to statutory law.

b. The enforcement of court orders is crucial to ensure respect for the rule of law and credibility of the court process.

c. Despite monitoring of judgments and court orders by probation divisions and other segments of the Judiciary responsible for doing so, many

orders are not complied with because there is a lack of central coordination, funding, automation, and control.

d. The Judiciary has successfully developed a hearing officer program in child support enforcement and a pilot criminal enforcement court project, which is in the process of being expanded, that have demonstrated significant increases in collections and compliance.

e. The Governor's Management Review Commission has reviewed the collections process in New Jersey and made recommendations supporting the establishment and funding of a Statewide comprehensive enforcement program operated by the Judiciary.

f. Upon passage of this act, the Supreme Court and the Chief Justice will establish a Statewide comprehensive enforcement program within the present structure of the Superior Court which will provide for the enforcement of court orders and oversee collection of court-ordered fines, assessments, surcharges and judgments in the civil, criminal and family divisions, the Tax Court and in certain municipal court matters as provided in section 6 of this act. The comprehensive enforcement program will provide for the collection of certain surcharges administratively imposed by the Division of Motor Vehicles as provided in section 6 of this act (C.2B:19-6). The comprehensive enforcement program will utilize the child support hearing officer model and the pilot project criminal enforcement court model, supported by a Statewide automation system designed to increase collections, compliance and accountability.

2. Section 4 of P.L.1995, c.9 (C.2B:19-4) is amended to read as follows:

C.2B:19-4 Deduction of collections to fund program.

4. a. Subject to the approval of the Director of the Division of Budget and Accounting, the Administrative Office of the Courts is authorized to deduct an amount up to 25% of all moneys collected through the comprehensive enforcement program, except for victim restitution and for Victims of Crime Compensation Board assessments, for deposit in the "Comprehensive Enforcement Program Fund" established pursuant to section 3 of P.L.1995, c.9 (C.2B:19-3) to fund the comprehensive enforcement program, the CAPS computer system, enforced community service, and other programs employed to collect court ordered financial obligations. The Administrative Office of the Courts shall promulgate a schedule for the deduction of collections to be deposited in the "Comprehensive Enforcement Program Fund."

b. (Deleted by amendment, P.L.1997, c.280).

3. Section 6 of P.L.1995, c.9 (C.2B:19-6) is amended to read as follows:

C.2B:19-6 Unresolved money collection matters; DMV surcharges.

6. a. All matters involving the collection of moneys in the Superior Court and Tax Court which have not been resolved in accordance with an order of the court may be transferred, pursuant to court rule, to the comprehensive enforcement program for such action as may be appropriate.

b. (1) A municipal court may request that all matters which have not been resolved in accordance with an order of that court be transferred to the comprehensive enforcement program for such action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the enforcing of orders transferred from any municipal court shall be subject to the 25% deduction authorized pursuant to section 4 of this act except for moneys collected in connection with the enforcement of orders related to parking violations.

(2) Nothing contained in this act shall prevent any municipal court from contracting the services of a private collection agency to collect any moneys which have not been remitted in accordance with an order of that court.

c. The Director of the Division of Motor Vehicles may refer matters of surcharges imposed administratively under the New Jersey Merit Rating Plan in accordance with the provisions of section 6 of P.L.1983, c.65 (C.17:29A-35) which have not been satisfied to the comprehensive enforcement program in accordance with the procedures established pursuant to section 4 of P.L.1997, c.280 (C.2B:19-10) to be reduced to judgment and for such additional action as may be appropriate. All moneys collected through the comprehensive enforcement program which result from the collection of these surcharge moneys shall be subject to the 25% deduction authorized pursuant to section 4 of P.L.1995, c.9 (C.2B:19-4).

C.2B:19-10 Referral of uncollected DMV surcharges.

4. The Director of the Division of Motor Vehicles and the Administrative Office of the Courts shall develop procedures for the referral of uncollected surcharges imposed administratively by the Division of Motor Vehicles under the New Jersey Merit Rating Plan pursuant to section 6 of P.L.1983, c.65 (C.17:29A-35). These procedures shall include, but shall not be limited to, the following:

a. The total dollar amount of uncollected surcharges imposed on a driver and the number of months of delinquency which may result in referral pursuant to section 6 of P.L.1995, c.9 (C.2B:19-6) including procedures for installment payments, procedures for negotiating and implementing new schedules for installment payments and surcharges deferred until the end of

a policy term of an automobile insurance policy as permitted by section 6 of P.L.1983, c.65 (C.17:29A-35);

b. The interval of referral between the Division of Motor Vehicles and the comprehensive enforcement program such as monthly, quarterly or semi-annually and the method of referral such as through the municipal court where the Title 39 violation occurred or directly to the Superior Court;

c. The form of notice to be provided by the Division of Motor Vehicles when a surcharge is imposed indicating that an unpaid surcharge may be referred to the comprehensive enforcement program; and

d. Procedures for payment to the Division of Motor Vehicles of moneys collected and the billing and accounting methods to be used.

5. Section 6 of P.L.1983, c.65 (C.17:29A-35) is amended to read as follows:

C.17:29A-35 New Jersey Merit Rating Plan.

6. a. (Deleted by amendment, P.L.1997, c.151.)

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to, the following provisions:

(1) (a) Plan surcharges shall be levied, beginning on or after January 1, 1984, by the Division of Motor Vehicles on any driver who has accumulated, within the immediately preceding three-year period, beginning on or after February 10, 1983, six or more motor vehicle points, as provided in Title 39 of the Revised Statutes, exclusive of any points for convictions for which surcharges are levied under paragraph (2) of this subsection; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. Surcharges shall be levied for each year in which the driver possesses six or more points. Surcharges assessed pursuant to this paragraph shall be $100.00 for six points, and $25.00 for each additional point.

(b) (Deleted by amendment, P.L.1984, c.1.)

(2) Plan surcharges shall be levied for convictions (a) under R.S.39:4-50 for violations occurring on or after February 10, 1983, and (b) under section 2 of P.L.1981, c.512 (C.39:4-50.4a), or for offenses committed in other jurisdictions of a substantially similar nature to those under R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), for violations occurring on or after January 26, 1984. Except as hereinafter provided, surcharges under this paragraph shall be levied annually for a three-year period, and shall be $1,000.00 per year for each of the first two convictions, for a total surcharge of $3,000 for each conviction, and $1,500.00 per year

for the third conviction occurring within a three-year period, for a total surcharge of $4,500 for the third conviction. If a driver is convicted under both R.S.39:4-50 and section 2 of P.L.1981, c.512 (C.39:4-50.4a) for offenses arising out of the same incident, the driver shall be assessed only one surcharge for the two offenses.

If, upon written notification from the Division of Motor Vehicles, mailed to the last address of record with the division, a driver fails to pay a surcharge levied under this subsection, the license of the driver shall be suspended forthwith until the surcharge is paid to the Division of Motor Vehicles; except that the Division of Motor Vehicles may authorize payment of the surcharge on an installment basis over a period not to exceed 12 months. If a driver fails to pay the surcharge or any installments on the surcharge, the total surcharge shall become due immediately.

The director may authorize any person to pay the surcharge levied under this section by use of a credit card, and the director is authorized to require the person to pay all costs incurred by the division in connection with the acceptance of the credit card.

In addition to any other remedy provided by law, the director is authorized to utilize the provisions of the SOIL (Setoff of Individual Liability) program established pursuant to P.L.1981, c.239 (C.54A:9-8.1 et seq.) to collect any surcharge levied under this section that is unpaid on or after the effective date of this act. As an additional remedy, the director may issue a certificate to the Clerk of the Superior Court stating that the person identified in the certificate is indebted under this surcharge law in such amount as shall be stated in the certificate. The certificate shall reference the statute under which the indebtedness arises. Thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon the record of docketed judgments the name of such person as debtor; the State as creditor; the address of such person, if shown in the certificate; the amount of the debt so certified; a reference to the statute under which the surcharge is assessed, and the date of making such entries. The docketing of the entries shall have the same force and effect as a civil judgment docketed in the Superior Court, and the director 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 an action, but without prejudice to any right of appeal. Upon entry by the clerk of the certificate in the record of docketed judgments in accordance with this provision, interest in the amount specified by the court rules for post-judgment interest shall accrue from the date of the docketing of the certificate, however payment of the interest may be waived by the director. In the event that the surcharge remains unpaid following the issuance of the certificate of debt and the director takes any further collection action including referral of the

matter to the Attorney General or his designee, the fee imposed, in lieu of the actual cost of collection, may be 20 percent of the surcharge or $200, whichever is greater. The director shall provide written notification to a driver of the proposed filing of the certificate of debt 10 days prior to the proposed filing; such notice shall be mailed to the driver's last address of record with the division.

All moneys collectible under this subsection b. shall be billed and collected by the Division of Motor Vehicles except as provided in P.L.1997, c.280 (C.2B:19-10 et al.) for the collection of unpaid surcharges. Of the moneys collected: 10%, or the actual cost of administering the collection of the surcharge, whichever is less, shall be retained by the Division of Motor Vehicles until August 31, 1996; five percent, or the actual cost of administering the cancellation notification system established pursuant to section 50 of P.L.1990, c.8 (C.17:33B-41), whichever is less, shall be retained by the Division of Motor Vehicles until August 31, 1996; and prior to October 1, 1991, the remainder shall be remitted to the New Jersey Automobile Full Insurance Underwriting Association and on or after October 1, 1991 until August 31, 1996, the remainder shall be remitted to the New Jersey Automobile Insurance Guaranty Fund created pursuant to section 23 of P.L.1990, c.8 (C.17:33B-5). Commencing on September 1, 1996, or such earlier time as the Commissioner of Banking and Insurance shall certify to the State Treasurer that amounts on deposit in the New Jersey Automobile Insurance Guaranty Fund are sufficient to satisfy the current and anticipated financial obligations of the New Jersey Automobile Full Insurance Underwriting Association, all plan surcharges collected by the Division of Motor Vehicles under this subsection b. shall be remitted to the Division of Motor Vehicles Surcharge Fund for transfer to the Market Transition Facility Revenue Fund, as provided in section 12 of P.L.1994, c.57 (C.34:1B-21.12), for the purposes of section 4 of P.L.1994, c.57 (C.34:1B-21.4) until such a time as all the Market Transition Facility bonds, notes and obligations issued pursuant to that section 4 of that act and the costs thereof are discharged and no longer outstanding. From the date of certification by the Commissioner of Banking and Insurance that the moneys collectible under this subsection are no longer needed to fund the association or at such a time as all Market Transition Facility bonds, notes and obligations issued pursuant to section 4 of P.L.1994, c.57 (C.34:1B-21.4) and the costs thereof are discharged and no longer outstanding moneys collectible under this subsection shall, subject to appropriation, be remitted to the New Jersey Property-Liability Insurance Guaranty Association created pursuant to section 6 of P.L.1974, c.17 (C.17:30A-6) to be used for payment of any loans made by that association to the New Jersey Automobile Insurance Guaranty Fund pursuant to paragraph (10) of

subsection a. of section 8 of P.L.1974, c.17 (C.17:30A-8); provided that all such payments shall be subject to and dependent upon appropriation by the State Legislature.

(3) In addition to any other authority provided in P.L.1983, c.65 (C.17:29A-33 et al.), the commissioner, after consultation with the Director of the Division of Motor Vehicles, is specifically authorized (a) (Deleted by amendment, P.L.1994, c.64), (b) to impose, in accordance with paragraph (1)(a) of this subsection, surcharges for motor vehicle violations or convictions for which motor vehicle points are not assessed under Title 39 of the Revised Statutes, or (c) to reduce the number of points for which surcharges may be assessed below the level provided in paragraph (1)(a) of this subsection, except that the dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall be uniform on a Statewide basis for each filer, without regard to classification or territory. Surcharges adopted by the commissioner on or after January 1, 1984 for motor vehicle violations or convictions for which motor vehicle points are not assessable under Title 39 of the Revised Statutes shall not be retroactively applied but shall take effect on the date of the New Jersey Register in which notice of adoption appears or the effective date set forth in that notice, whichever is later.

c. No motor vehicle violation surcharges shall be levied on an automobile insurance policy issued or renewed on or after January 1, 1984, except in accordance with the New Jersey Merit Rating Plan, and all surcharges levied thereunder shall be assessed, collected and distributed in accordance with subsection b. of this section.

d. (Deleted by amendment, P.L.1990, c.8.)

e. The Commissioner of Banking and Insurance and the Director of the Division of Motor Vehicles as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

6. This act shall take effect on the 90th day after enactment except for section 4 which shall take effect immediately.

Approved January 6, 1998.

CHAPTER 281

AN ACT concerning accidental disability retirement in the Police and Firemen's Retirement System, amending and supplementing P.L.1944, c.255, and supplementing P.L.1958, c.143 (C.43:3B-1 et seq.).

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

1. Section 7 of P.L.1944, c.255 (C.43:16A-7) is amended to read as follows:

C.43:16A-7 Retirement for accidental disability; allowance; death benefits.

7. (1) Upon the written application by a member in service, by one acting in his behalf or by his employer any member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him. The application to accomplish such retirement must be filed within five years of the original traumatic event, but the board of trustees may consider an application filed after the five-year period if it can be factually demonstrated to the satisfaction of the board of trustees that the disability is due to the accident and the filing was not accomplished within the five-year period due to a delayed manifestation of the disability or to other circumstances beyond the control of the member.

(2) Upon retirement for accidental disability, a member shall receive an accidental disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his aggregate contributions 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 the member's actual annual compensation for which contributions were being made at the time of the occurrence of the accident or at the time of the member's retirement, whichever provides the largest possible benefit to the member.

(3) Upon receipt of proper proofs of the death of a member who has retired on accidental disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 3 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service; provided, however, that if such death shall occur after the member shall have attained 55 years of age the amount payable shall equal 1/2 of such compensation instead of 3 1/2 times such compensation.

(4) Permanent and total disability resulting from a cardiovascular, pulmonary or musculo-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

C.43:16A-7.3 Applicability of increased accidental disability retirement.

2. Any increased pension benefits payable under this act, P.L.1997, c.281 (C.43:16A-7.3 et al.), shall apply to the benefits received by any member who retired on an accidental disability retirement on or after April 1, 1991 and shall apply only to pension benefits payable on or after the effective date of this act.

C.43:3B-8.5 Nonapplicability of C.43:3B-8 to P.L.1997, c.281.

3. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not apply to section 7 of P.L.1944, c.255 (C.43:16A-7), as amended by this act, P.L.1997, c.281 (C.43:16A-7.3 et al.), and the annual cost of living adjustment received by surviving spouses under P.L.1958, c.143 (C.43:3B-1 et seq.), as amended and supplemented by P.L.1969, c.169, shall be calculated as of the date of retirement of the member of the retirement system.

4. This act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 282

AN ACT concerning the Pinelands Development Credit Bank, and amending P.L.1985, c.310.

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

1. Section 18 of P.L.1985, c.310 (C.13:18A-47) is amended to read as follows:

C.13:18A-47 Funding of the bank; proceeds from the sale of credits.

18. a. There is appropriated to the bank, from the General Fund, the sum of $5,000,000.00. This sum shall be used for the purchase of pinelands development credits and to extend pinelands development credit guarantees, as herein provided.

b. The proceeds from the sale of pinelands development credits by the board or a county board shall remain available to the board or county board

for the purposes of this act. Within 60 days after December 31, 2005 the board shall transfer to the General Fund all funds remaining on deposit in the bank. The board may transfer part or all of the funds on deposit in the bank to the General Fund prior to this date upon the affirmative vote of two-thirds of the members of the board.

c. Within 30 days after December 31, 2005 a county board shall transfer to the board that percentage of the funds remaining on deposit in the county bank which reflects the percentage of the matching grant made by the board to the county board pursuant to section 16 of P.L.1985, c.310 (C.13:18A-45).

2. Section 19 of P.L.1985, c.310 (C.13:18A-48) is amended to read as follows:

C.13:18A-48 Extension of pinelands development credit guarantee, purchases.

19. Notwithstanding any other provisions of this act to the contrary:

a. No pinelands development credit guarantee shall be extended for a period of time in excess of five years;

b. No pinelands development credit guarantee shall be extended after December 31, 2005;

c. No pinelands development credit shall be purchased by the bank after December 31, 2005.

3. This act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 283

AN ACT appropriating $9,000,000 from the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, for the purpose of providing State grants and loans to assist local government units to acquire, for recreation and conservation purposes, lands in the coastal area that have been damaged by storms or storm-related flooding.

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 "1995 New Jersey Coastal Blue Acres Trust Fund,"

established pursuant to section 27 of the "Green Acres, Farmland and Historic Preservation, and Blue Acres Bond Act of 1995," P.L.1995, c.204, the sum of $9,000,000 for the purpose of providing State grants and loans to assist local government units to acquire, for recreation and conservation purposes, lands in the coastal area that have been damaged by storms or storm-related flooding, as authorized pursuant to subsection a. of section 11 of P.L.1995, c.204. This sum shall include administrative costs.

2. This act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 284

AN ACT concerning criminal history record background checks of applicants for certain certifications, amending the title and body of P.L.1997, c.100, and repealing section 1 thereof.

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

1. The title of P.L.1997, c.100 is amended to read as follows:

An Act concerning criminal history record background checks for certain persons and supplementing Title 26, Title 45, and Title 53 of the Revised Statutes.

2. Section 2 of P.L.1997, c.100 (C.26:2H-83) is amended to read as follows:

C.26:2H-83 Background checks for nurse aide, personal care assistant certification.

2. a. The Department of Health and Senior Services shall not issue a nurse aide or personal care assistant certification to any applicant, except on a conditional basis as provided for in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84), unless the Commissioner of Health and Senior Services first determines, consistent with the requirements of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A person shall be disqualified from certification if that person's

criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

(1) In New Jersey, any crime or disorderly persons offense:

(a) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or

(b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or

(c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(d) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10.

(2) In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 2 through 6 and section 14 of P.L.1997, c.100 (C.26:2H-83 through 87 and C.53:1-20.9a) if the person has affirmatively demonstrated to the Commissioner of Health and Senior Services clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted person would hold or has held, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the person when the offense was committed;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

c. If a person subject to the provisions of sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the commissioner shall not issue a nurse aide or personal care assistant

certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84) or the applicant's prospective employer if known, of that denial.

3. Section 3 of P.L.1997, c.100 (C.26:2H-84) is amended to read as follows:

C.26:2H-84 Qualification, disqualification for certification; petition for hearing.

3. a. An applicant for certification shall submit to the Commissioner of Health and Senior Services the applicant's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the commissioner shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer if known, of the person's qualification or disqualification for certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87). If the applicant is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the applicant, but shall not be identified in the notice to the applicant's employer or prospective employer.

c. The applicant shall have 30 days from the date of the written notice of disqualification to petition the commissioner for a hearing on the accuracy of the applicant's criminal history record information or to establish the applicant's rehabilitation under subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83). The commissioner shall notify the applicant's employer or prospective employer of the applicant's petition for a hearing within five days following the receipt of the petition from the applicant. Upon the issuance of a final decision upon a petition to the commissioner pursuant to this subsection, the commissioner shall notify the applicant and the applicant's employer or prospective employer as to whether the applicant remains disqualified from certification under sections 2 through 6 of P.L.1997, c.100 (C.26:2H-83 through 87).

d. An applicant may be issued conditional certification and may be employed as a nurse aide or a personal care assistant conditionally for a

period not to exceed 180 days, pending completion of a criminal history record background check required under sections 2 through 6 of P.L.1997,c.100 (C.26:2H-83 through 87), if the person submits to the commissioner a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 2 of P.L.1997, c.100 (C.26:2H-83). A person who submits a false sworn statement shall be disqualified from certification as a nurse aide or a personal care assistant, as the case may be, and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 2 of P.L.1997, c.100 (C.26:2H-83). A conditionally employed person who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by the employer until the commissioner rules on the applicant's petition but, pending the commissioner's ruling, the employer shall not permit the applicant to have unsupervised contact with patients, residents or clients, as the case may be, who are 60 years of age or older.

4. Section 4 of P.L.1997, c.100 (C.26:2H-85) is amended to read as follows:

c.26:2H-85 Assumption of cost of background checks.

4. An applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 3 of P.L.1997, c.100 (C.26:2H-84) or an applicant's prospective employer may assume the cost of the criminal history record background check conducted on an applicant for nurse aide or personal care assistant certification, as the case may be, pursuant to sections 2 through 6 and section 14 of P.L.1997,c.100 (C.26:2H-83 through 87 and C.53:1-20.9a); or the employer or prospective employer may require the applicant to pay the cost of the criminal history record background check.

5. Section 6 of P.L.1997, c.100 (C.26:2H-87) is amended to read as follows:

C.26:2H-87 False statement, fine.

6. Any person submitting a false sworn statement pursuant to section 3 of P.L.1997, c.100 (C.26:2H-84) shall be subject to a fine of not more than $1,000, which may be assessed by the Commissioner of Health and Senior Services.

6. Section 7 of P.L.1997, c.100 (C.45:11-24.3) is amended to read as follows:

C.45:11-24.3 Background checks for homemaker-home health aide certification applicant.

7. a. The New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety shall not issue a homemaker-home health aide certification to any applicant, except on a conditional basis as provided for in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4), unless the board first determines, consistent with the requirements of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that person from being certified. A person shall be disqualified from certification if that person's criminal history record background check reveals a record of conviction of any of the following crimes and offenses:

(1) In New Jersey, any crime or disorderly persons offense:

(a) involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or N.J.S.2C:15-1 et seq.; or

(b) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.; or

(c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(d) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10.

(2) In any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no person shall be disqualified from certification on the basis of any conviction disclosed by a criminal history record background check performed pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a) if the person has affirmatively demonstrated to the New Jersey Board of Nursing in the Division of Consumer Affairs clear and convincing evidence of the person's rehabilitation. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted person would hold or has held, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the person when the offense was committed;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

c. If a person subject to the provisions of sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9) refuses to consent to, or cooperate in, the securing of a criminal history record background check, the New Jersey Board of Nursing shall not issue a homemaker-home health aide certification and shall notify the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of section 8 of P.L.1997, c.100 (C.45:11-24.4) or the applicant's prospective employer if known, of that denial.

7. Section 8 of P.L.1997, c.100 (C.45:11-24.4) is amended to read as follows:

C.45:11-24.4 Qualification, disqualification for certification; petition for hearing.

8. a. An applicant for homemaker-home health aide certification shall submit to the New Jersey Board of Nursing the applicant's name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the New Jersey Board of Nursing shall immediately notify, in writing, the applicant, and the applicant's employer if the applicant is conditionally employed as provided in subsection d. of this section or the applicant's prospective employer if known, of the person's qualification or disqualification for homemaker-home health aide certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9). If the applicant is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the applicant, but shall not be identified in the notice to the applicant's employer or prospective employer.

c. The applicant shall have 30 days from the date of the written notice of disqualification to petition the New Jersey Board of Nursing for a hearing

on the accuracy of the applicant's criminal history record information or to establish the applicant's rehabilitation under subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3). The board shall notify the applicant's employer or prospective employer of the applicant's petition for a hearing within five days following the receipt of the petition from the applicant. Upon the issuance of a final decision upon a petition to the board pursuant to this subsection, the board shall notify the applicant and the applicant's employer or prospective employer as to whether the applicant remains disqualified from certification under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9).

d. An applicant may be issued conditional certification and may be employed as a homemaker-home health aide conditionally for a period not to exceed 180 days, pending completion of a criminal history record background check required under sections 7 through 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.9), if the person submits to the New Jersey Board of Nursing a sworn statement attesting that the person has not been convicted of any crime or disorderly persons offense as described in section 7 of P.L.1997, c.100 (C.45:11-24.3). A person who submits a false sworn statement shall be disqualified from certification as a homemaker-home health aide and shall not have an opportunity to establish rehabilitation pursuant to subsection b. of section 7 of P.L.1997, c.100 (C.45:11-24.3). A conditionally employed person who disputes the accuracy of the criminal history record information and who files a petition requesting a hearing pursuant to subsection c. of this section may remain employed by the employer until the board rules on the applicant's petition but, pending the board's ruling, the employer shall not permit the applicant to have unsupervised contact with patients or clients who are 60 years of age or older.

8. Section 9 of P.L.1997, c.100 (C.45:11-24.5) is amended to read as follows:

C.45:11-24.5 Assumption of cost of background checks.

9. A home health agency or a health care service firm, as defined in regulations of the Division of Consumer Affairs, may assume the cost of the criminal history record background check conducted on an applicant for homemaker-home health aide certification pursuant to sections 7 through 13 and section 14 of P.L.1997, c.100 (C.45:11-24.3 through 24.9 and C.53:1-20.9a); or it may require the applicant to pay the cost of the criminal history record background check.

9. Section 10 of P.L.1997, c.100 (C.45:11-24.6) is amended to read as follows:

C.45:11-24.6 Conditions for issuance of biennial recertification.

10. The Division of Consumer Affairs shall require that the New Jersey Board of Nursing issue biennial recertifications to homemaker-home health aides only upon receiving documented proof from a home health agency or health care service firm that the homemaker-home health aide is currently employed and regularly supervised by a registered professional nurse.

10. Section 11 of P.L.1997, c.100 (C.45:11-24.7) is amended to read as follows:

C.45:11-24.7 Required language on certificate.

11. The Division of Consumer Affairs shall require that a New Jersey Board of Nursing certificate issued to a homemaker-home health aide contain the following statement: "Valid only if certified homemaker-home health aide is employed by a home health agency or health care service firm and is performing delegated nursing regimen or nursing tasks delegated through the authority of a duly licensed registered professional nurse."

11. Section 12 of P.L.1997, c.100 (C.45:11-24.8) is amended to read as follows:

C.45:11-24.8 Rules, regulations.

12. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the New Jersey Board of Nursing in the Division of Consumer Affairs shall adopt rules and regulations necessary to implement the provisions of sections 7 through 9 and section 13 of P.L.1997, c.100 (C.45:11-24.3 through 24.5 and C.45:11-24.9).

12. Section 13 of P.L.1997, c.100 (C.45:11-24.9) is amended to read as follows:

C.45:11-24.9 False sworn statement; fine.

13. Any person submitting a false sworn statement pursuant to section 8 of P.L.1997, c.100 (C.45:11-24.4) shall be subject to a fine of not more than $1,000, which may be assessed by the New Jersey Board of Nursing.

13. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to read as follows:

C.53:1-20.9a Applicant background check for nurse aide, personal care assistant, homemaker-home health aide certification.

14. In accordance with the provisions of sections 2 through 6 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through 87; C.45:11-24.3 through 24.9), the Division of State Police in the Department of Law

and Public Safety shall conduct a criminal history record background check, including a name and fingerprint identification check, of each applicant for nurse aide or personal care assistant certification submitted to the Department of Health and Senior Services and of each applicant for homemaker-home health aide certification submitted to the New Jersey Board of Nursing in the Division of Consumer Affairs.

For the purpose of conducting the criminal history record background check, the Division of State Police shall examine its own files and arrange for a similar examination by federal authorities. The division shall immediately forward the information obtained as a result of conducting the check to the Commissioner of Health and Senior Services, in the case of an applicant for nurse aide or personal care assistant certification, and to the New Jersey Board of Nursing in the Division of Consumer Affairs in the Department of Law and Public Safety, in the case of an applicant for homemaker-home health aide certification.

Repealer.

14. Section 1 of P.L.1997, c.100 (C.26:2H-82) is repealed.

15. This act shall take effectimmediately.

Approved January 6, 1998.

CHAPTER 285

AN ACT concerning the "Waterfront Commission Compact," P.L.1953, c.202 (C.32:23-1 et seq.), providing for the extension of the term of the license granted to stevedores pursuant to Article VI thereof, and amending P.L.1991, c.248.

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

1. Section 1 of P.L.1991, c.248 (C.32:23-23.1) is amended to read as follows:

C.32:23-23.1 Term of stevedore's license.

1. A stevedore's license shall, notwithstanding the provisions of Article VI, paragraph 5 of P.L.1953, c.202 (C.32:23-23) be for a term of five years or fraction of such five-year period, and shall expire on the first day of December. In the event of the death of the licensee, if a natural person, or its termination or dissolution by reason of the death of a partner, if a

partnership, or if the licensee shall cease to be a party to any contract of the type required by subdivision (d) of paragraph 3 of Article VI (C.32:23-21), the license shall terminate 90 days after such event or upon its expiration date, whichever shall be sooner. A license may be renewed by the commission for successive five-year periods upon fulfilling the same requirements as are set forth in Article VI for an original application for a stevedore's license.

2. If any part or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances and the two states hereby declare that they would have entered into this act or the remainder thereof had the invalidity of such provisions or application thereof been apparent.

3. This act constitutes an agreement between the states of New Jersey and New York, supplementary to the waterfront commission compact and amendatory thereof, and shall be liberally construed to effectuate the purposes of said compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission.

4. This act shall take effect immediately but shall remain inoperative until the enactment into law by the State of New York of legislation of substantially similar substance and effect; but if such legislation already has been enacted, this act shall take effect immediately.

Approved January 6, 1998.

CHAPTER 286

AN ACT concerning the prevention of flooding, amending P.L.1993, c.376, and supplementing Title 58 of the Revised Statutes.

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

1. Section 1 of P.L.1993, c.376 (C.58:16A-67) is amended to read as follows:

C.58:16A-67 Written notice of intent to undertake a project to clean, clear, desnag stream; definitions.

1. a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

(1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural stream banks;

(4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;

(5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

(1) the applicant shall provide a statement from the engineer that the stream floods and that such flooding results or can result in property damage necessitating the proposed cleaning, clearing, or desnagging;

(2) the stream to be cleaned, cleared, or desnagged is not classified as pinelands waters or category one waters;

(3) the stream bed is 15 feet or less in average width;

(4) the stream corridor to be cleaned, cleared, or desnagged is less than 500 feet in length;

(5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetlands. Regulated activities in these municipalities shall be coordinated with federal agencies;

(6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;

(7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or desnagged and of the access points; and

(8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60 days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or desnag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall

certify that all the conditions in subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the antidegradation policies of the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 nontrout waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"FW1" means those fresh waters that originate in and are wholly within federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or pinelands waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

C.58:16A-68 Municipal plan for flood control facilities.

2. a. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, for the size and location of flood control facilities, including detention basins, in order to minimize flood damage, to reduce stormwater runoff from new or existing development, or to induce water recharge into the ground where practical. Notwithstanding any provision of this subsection to the contrary, for new development the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall apply only to municipally-owned flood control facilities, including detention basins, constructed on public property.

b. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, to maintain the water level of any lake or reservoir within its borders at a level necessary to provide an equivalent surface water safe yield established by the department for any affected water supply system and protection against flooding. Any such plan shall (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation of the quantity of storage necessary to achieve a given level of flood control protection, (3) consider the environmental impact upon aquatic resources and fish spawning, the impact upon recreational use, and the financial impact upon all users of the lake or reservoir, and (4) consider any other criteria deemed necessary by the department. The department shall hold a public hearing prior to approval of a plan to seek input on the plan from any municipality that borders the lake or reservoir, or borders a river, stream or brook that feeds into or flows from that lake or reservoir. The department shall issue its decision on the plan in writing and transmit a copy thereof to each affected municipality and water supply purveyor prior to the effective date of the decision. No plan that jeopardizes safe yield and the provision of adequate water supply or reduces current safe yield levels of any lake or reservoir shall be approved by the department. No plan within the area of jurisdiction of the New Jersey Water Supply Authority may be established without the approval of the authority.

c. Nothing in this section shall be construed to supersede any other State law that applies to the construction of flood control facilities or the regulation of water levels in lakes or reservoirs.

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 287

AN ACT concerning the responsibilities and liabilities of individuals involved in equestrian activities and supplementing Title 5 of the Revised Statutes.

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

C.5:15-1 Findings, declarations relative to equine animal activities.

1. The Legislature finds and declares that equine animal activities are practiced by a large number of citizens of this State; that equine animal activities attract large numbers of nonresidents to the State; that those activities significantly contribute to the economy of this State; and that horse farms are a major land use which preserves open space.

The Legislature further finds and declares that equine animal activities involve risks that are essentially impractical or impossible for the operator to eliminate; and that those risks must be borne by those who engage in those activities.

The Legislature therefore determines that the allocation of the risks and costs of equine animal activities is an important matter of public policy and it is appropriate to state in law those risks that the participant voluntarily assumes for which there can be no recovery.

C.5:15-2 Definitions relative to equine animal activities.

2. As used in this act:

"Equestrian area" means all of the real and personal property under the control of the operator or on the premises of the operator which are being occupied, by license, lease, fee simple or otherwise, including but not limited to designated trail areas, designated easements or rights-of-way for access to trails, and other areas utilized for equine animal activities.

"Equine animal" means a horse, pony, mule or donkey.

"Equine animal activity" means any activity that involves the use of an equine animal and shall include selling equipment and tack; transportation, including the loading and off-loading for travel to or from a horse show or trail system; inspecting, or evaluating an equine animal belonging to another person whether or not the person has received compensation; placing or

replacing shoes on an equine animal; and veterinary treatment on an equine animal.

"Inherent risk or risks of an equine animal activity" means those dangers which are an integral part of equine animal activity, which shall include but need not be limited to:

a. The propensity of an equine animal to behave in ways that result in injury, harm, or death to nearby persons;

b. The unpredictability of an equine animal's reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons or other animals;

c. Certain natural hazards, such as surface or subsurface ground conditions;

d. Collisions with other equine animals or with objects; and

e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant's ability.

"Operator" means a person or entity who owns, manages, controls or directs the operation of an area where individuals engage in equine animal activities whether or not compensation is paid. "Operator" shall also include an agency of this State, political subdivisions thereof or instrumentality of said entities, or any individual or entity acting on behalf of an operator for all or part of such activities.

"Participant" means any person, whether an amateur or professional, engaging in an equine animal activity, whether or not a fee is paid to engage in the equine animal activity or, if a minor, the natural guardian, or trainer of that person standing in loco parentis, and shall include anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration.

"Spectator" means a person who is present in an equestrian area for the purpose of observing equine animal activities whether or not an invitee.

C.5:15-3 Assumption of inherent risks of equine animal activities.

3. A participant and spectator are deemed to assume the inherent risks of equine animal activities created by equine animals , weather conditions, conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions. Each participant is assumed to know the range of his ability and it shall be the duty of each participant to conduct himself within the limits of such ability to maintain control of his equine animal and to refrain from acting in a manner which may cause or contribute to the injury

of himself or others, loss or damage to person or property, or death which results from participation in an equine animal activity.

C.5:15-4 Equine activity prohibited under certain circumstances.

4. A participant or a spectator shall not engage in, attempt to engage in, or interfere with, an equine animal activity if he is knowingly under the influence of any alcoholic beverage as defined in R.S.33:1-1 or under the influence of any prescription, legend drug or controlled dangerous substance as is defined in P.L.1970, c.226 (C.24:21-1 et seq.), or any other substance that affects the individual's ability to safely engage in the equine animal activity and abide by the posted and stated instructions. The operator may prevent a participant or a spectator who is perceptibly or apparently under the influence of drugs or alcohol, from engaging in, or interfering with, an equine animal activity or being in an equestrian area. An operator who prevents a participant or a spectator from engaging in, or interfering with, an equine animal activity, or being in an equestrian area in accordance with this section shall not be criminally or civilly liable in any manner or to any extent whatsoever if the operator has a reasonable basis for believing that the participant or spectator is under the influence of drugs or alcohol.

C.5:15-5 Complete bar of suit, defense.

5. The assumption of risk set forth in section 3 of this act shall be a complete bar of suit and shall serve as a complete defense to a suit against an operator by a participant for injuries resulting from the assumed risks, notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.) relating to comparative negligence. Failure of a participant to conduct himself within the limits of his abilities as provided in section 3 of this act shall bar suit against an operator to compensate for injuries resulting from equine animal activities, where such failure is found to be a contributory factor in the resulting injury.

C.5:15-6 Written report as precondition to suit.

6. a. As a precondition to bringing any suit in connection with a participant injury against an operator, a participant shall submit a written report to the operator setting forth all details of any accident or incident as soon as possible, but in no event longer than 180 days from the time of the accident or incident giving rise to the suit.

b. The report shall include at least the following: The participant's name and address, a brief description of the accident or incident, the location of the accident or incident, the alleged cause of the accident or incident, the names of any other persons involved in the accident or incident and witnesses, if any. If it is not practicable to submit the report within 180 days because of severe physical disability resulting from a participant

accident or incident, the report shall be submitted as soon as practicable. This section is not applicable with respect to an equestrian area unless the operator conspicuously posts notice to participants of the requirements of the section.

c. A participant who fails to submit the report within 180 days from the time of the accident or incident may be permitted to submit the report at any time within one year after the accident or incident, if in the discretion of a judge of the Superior Court the operator is not substantially prejudiced thereby. Application to the court for permission to submit a late report shall be made upon motion based on affidavits showing sufficient reasons for the participant's failure to give the report within 180 days from the time of the accident or incident

C.5:15-7 Action must be commenced within two years.

7. Notwithstanding any provision of this act, or any other law to the contrary, an action for injury or death against an operator, an equestrian area or its employees or owner, whether based upon tort or breach of contract or otherwise arising out of equine animal activities, shall be commenced no later than two years after the occurrence of the incident or earliest of incidents giving rise to the cause of action.

C.5:15-8 Time limits for action involving minor.

8. If a participant accident or incident, or an action based upon an equine animal activity or incident, involves a minor, the time limits set forth in sections 6 and 7 of this act shall not begin to run against the minor until the minor reaches the age of majority, unless there was present to approve conditions and riding ability a person standing in loco parentis, who made these decisions for the minor in activities including but not limited to horse shows, trying a horse for sale, riding lessons, trail rides, and demonstrations.

C.5:15-9 Exceptions to limitation on liability.

9. Notwithstanding any provisions of sections 3 and 4 of this act to the contrary, the following actions or lack thereof on the part of operators shall be exceptions to the limitation on liability for operators:

a. Knowingly providing equipment or tack that is faulty to the extent that it causes or contributes to injury.

b. Failure to make reasonable and prudent efforts to determine the participant's ability to safely manage the particular equine animal, based on the participant's representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor.

c. A case in which the participant is injured or killed by a known dangerous latent condition on property owned or controlled by the equine animal activity operator and for which warning signs have not been posted.

d. An act or omission on the part of the operator that constitutes negligent disregard for the participant's safety, which act or omission causes the injury, and

e. Intentional injuries to the participant caused by the operator.

C.5:15-10 Posting of sign required.

10. All operators shall post and maintain signs on all lands owned or leased thereby and used for equine activities, which signs shall be posted in a manner that makes them visible to all participants and which shall contain the following notice in large capitalized print:

"WARNING: UNDER NEW JERSEY LAW, AN EQUESTRIAN AREA OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ANIMAL ACTIVITIES, PURSUANT TO P.L.1997, c.287 (C.5:15-1 et seq.)."

Individuals or entities providing equine animal activities on behalf of an operator, and not the operator, shall be required to post and maintain signs required by this section.

C.5:15-11 Provisions of act cumulative.

11. The provisions of this act are cumulative with the defenses available to a public entity or public employee under the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

C.5:15-12 Act not applicable to racing industry.

12. This act shall not apply to the horse racing industry.

13. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 288

AN ACT concerning the duration of public contracts for the lease of fire equipment 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 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be made for a period not to exceed 12 consecutive months. Contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) (Deleted by amendment, P.L.1996, c.113.)

(b) (Deleted by amendment, P.L.1996, c.113.)

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

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

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

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than 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 ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public

Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except 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 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. s.796, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24,1991, for a term not to exceed 40 years;

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

(26) 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. s.9902 (2));

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

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

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or 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 autho-

rized 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 8, 1998.

CHAPTER 289

AN ACT concerning license plate emblems 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.39:3-27.98 Submarine veterans emblem authorized.

1. a. A person who is an active member of the United States Submarine Veterans may affix a submarine veterans emblem which has been approved by the Director of the Division of Motor Vehicles to a license plate issued to that submarine veteran pursuant to the provisions of P.L.1987, c.374 (C.39:3-27.35 et seq.) for a motor vehicle owned or leased by that member.

b. The surviving spouse of a person authorized to display an emblem pursuant to subsection a. of this section may display the emblem on a motor vehicle owned or leased by the surviving spouse.

C.39:3-27.99 Rules, regulations relative to submarine veterans emblems.

2. The Director of the Division of Motor Vehicles may promulgate rules and regulations governing the use, design, materials and placement of submarine veterans emblems on license plates issued for motor vehicles owned or leased by active members of the United States Submarine Veterans.

3. This act shall take effect 60 days after enactment except that section 2 shall take effect immediately.

Approved January 8, 1998.

CHAPTER 290

AN ACT concerning the use of "good funds" for real property mortgages and amending P.L.1996, c.157 and supplementing P.L.1975, c.106 (C.17:46B-1 et seq.).

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

1. Section 22 of P.L.1996, c.157 (C.17:11C-22) is amended to read as follows:

C.17:11C-22 Mortgage bankers, brokers; prohibited practices.

22. a. No person shall use the word "mortgage" or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that the person arranges first mortgage loans unless that person is licensed to act as a mortgage banker or mortgage broker under this act, or is exempt from licensing under section 4 of this act. No person licensed under this act shall be granted a license in a name containing such words as "insured," "bonded," "guaranteed," "secured" and the like. Notwithstanding the provisions of section 18 of P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary, a person licensed under this act to act as a mortgage banker or mortgage broker may use the terms "mortgage banker" or "mortgage broker," respectively, as part of the licensee's name.

b. No mortgage banker or mortgage broker shall, in connection with or incidental to the making of a first mortgage loan, require or permit the

mortgage instrument or bond or note to be signed by a party to the transaction if the instrument contains any blank spaces to be filled in after it has been signed, except blank spaces relating to recording.

c. No mortgage banker or mortgage broker shall charge or exact directly or indirectly from the mortgagor or any other person fees, commissions or charges not authorized by this act.

d. No person shall receive any commission, bonus or fee in connection with arranging or originating a first mortgage loan for a borrower unless that person is licensed or exempt from licensure as a mortgage banker or mortgage broker, except that a registered mortgage solicitor may receive a commission, bonus, or fee from his employer.

e. No person or licensee authorized to act as a mortgage banker or mortgage broker shall pay any commission, bonus or fee to any person not licensed or not exempt under the provisions of this act in connection with arranging for or originating a mortgage loan for a borrower, except that a registered mortgage solicitor may be paid a bonus, commission or fee by his employer.

f. No person shall obtain or attempt to obtain a license by fraud or misrepresentation.

g. No mortgage banker or mortgage broker shall misrepresent, circumvent, or conceal the nature of any material particular of any transaction to which the mortgage banker or broker is a party.

h. No mortgage banker or mortgage broker shall fail to disburse funds in accordance with the mortgage banker's or broker's agreements, unless otherwise ordered by the commissioner or a court of this State or of the United States.

i. No mortgage banker or mortgage broker shall fail without good cause to account or deliver to any person any personal property, money, fund, deposit, check, draft, mortgage, document or thing of value, which is not the mortgage banker's or broker's property, or which the mortgage banker or broker is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon, or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

j. No person or licensee shall fail to place in escrow, immediately upon receipt, any money, fund, deposit, check or draft entrusted to him by any person dealing with him as a mortgage banker or mortgage broker, in a manner approved by the commissioner, or to deposit the funds in a trust or escrow account maintained by him with a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, wherein the funds shall be kept until the disbursement thereof is properly authorized.

k. If a mortgage banker or mortgage broker provides loan proceeds to a closing agent for the purpose of closing and settling a mortgage transaction the mortgage banker or mortgage broker shall not fail (1) to present a certified check, cashier's check, teller's check or bank check for the proceeds of the first mortgage loan; (2) to arrange an electronic fund transfer for the proceeds of the loan; or (3) to provide for payment by cash to the closing agent at a reasonable time and place prior to the time of the mortgage closing transaction. The closing agent shall deposit the loan proceeds in a trust or escrow account, which shall not be commingled with the agent's own funds, and shall disburse the loan proceeds upon the closing or settlement in accordance with the settlement documents. Nothing contained in this subsection k. shall require a mortgage banker or mortgage broker to utilize a closing agent, nor prevent the mortgage banker or mortgage broker from directly disbursing loan proceeds from the account of the mortgage banker or mortgage broker to the mortgagor and other persons entitled to receive disbursements from the settlement if a closing agent is not used. Nothing contained in this subsection k. shall prevent the person or licensee from assessing a reasonable charge as set forth by regulation by the commissioner to reflect the additional cost to the person or licensee for the issuance of a certified, cashier's, teller's or bank check or for arranging an electronic fund transfer. That reasonable charge shall be fully disclosed at application or at or prior to the issuance of the loan commitment. A "bank check" means a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State. A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

C.17:46B-10.1 Maintenance of separate record of receipts, disbursements representing proceeds of real estate transaction.

2. a. Every title insurance producer licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) and every title insurance company shall maintain a separate record of all receipts and disbursements as a depository for funds representing closing or settlement proceeds of a real estate transaction, which funds shall be deposited in a separate trust or escrow account, and which shall not be commingled with a producer's or company's own funds or with funds held by a producer or company in any other capacity.

b. No title insurance producer or company shall disburse funds representing closing or settlement proceeds of a real estate transaction unless those funds shall have been deposited in a separate trust or escrow account by cash, electronic wire transfer, or certified, cashier's , teller's or

bank check, or other collected funds; provided nevertheless, that nothing contained herein shall be construed to prohibit a title insurance producer or company from disbursing against funds deposited in a separate trust or escrow account other than by cash, electronic wire transfer, or certified, cashier's, teller's or bank check, or other collected funds in an amount not to exceed $1,000. A "bank check" means a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State. A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

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

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 291

AN ACT concerning wildlife, amending R.S.23:1-1 and R.S.23:4-27, and repealing R.S.23:5-4 and R.S.23:5-25.

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

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

Definitions.

23:1-1. As used in this title:

"Assistant protector" or "assistant fish and game protector" means the Deputy Chief of the Bureau of Law Enforcement in the division;

"Closed season" means the date and time of year when wildlife may not be captured, taken, killed, or had in possession in the field;

"Code" means the State Fish and Game Code;

"Conservation officer" means any sworn, salaried member of the Bureau of Law Enforcement in the division holding the titles of Conservation Officer I, II, or III, and includes the titles of Supervising Conservation Officer and Chief of the Bureau of Law Enforcement;

"Council" means the Fish and Game Council in the Division of Fish, Game and Wildlife in the Department of Environmental Protection;

"Delaware river" means the waters of the Delaware river from the Pennsylvania shore to the New Jersey shore, or in the case of any tributaries or inland bays on the New Jersey side, to the mouths of those tributaries or bays;

"Deputy warden" or "deputy fish and game warden" means any commissioned deputy conservation officer of the Bureau of Law Enforcement in the division;

"Division," "board," or "Board of Fish and Game Commissioners" means the Division of Fish, Game and Wildlife in the Department of Environmental Protection;

"Fishing" means the possession of an instrument used to take fish in a condition that makes the instrument readily usable, while in a place or in proximity thereto where fish may be found;

"Hunting" means the possession of an instrument used to take wildlife in a condition that makes the instrument readily usable, while in a place or in proximity thereto where wildlife may be found;

"Open season" means the date and time of year when wildlife may be captured, taken, killed, or had in possession;

"Protector" or "fish and game protector" means the Chief of the Bureau of Law Enforcement in the division;

"Warden" or "fish and game warden" means a conservation officer;

"Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof.

2. R.S.23:4-27 is amended to read as follows:

Unlawful sale, purchase of wildlife; penalties.

23:4-27. a. No person shall sell or purchase wildlife, except as authorized pursuant to this section or any other law or as may be authorized by rule or regulation adopted by the division pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The provisions of subsection a. of this section shall not apply to the sale or purchase of wildlife authorized or regulated by chapter 2A or 2B of this title, R.S. 23:3-28 through R.S.23:3-39, section 4 of P.L.1970, c.247 (C.23:3-65), R.S.23:4-50, R.S.23:5-2, or Title 50 of the Revised Statutes, or any rule or regulation adopted pursuant thereto, provided that the wildlife was taken and possessed in a lawful manner.

c. Unless prohibited or restricted by rule or regulation adopted by the division, the raw or processed hide of the white-tailed deer (*Odocoileus virginianus*), the tail of the white-tailed deer, the portion of the front leg of a white-tailed deer limited to the carpal, metacarpal, and phalange bones, or the portion of the hind leg of a white-tailed deer limited to the tarsus,

metatarsus, and phalange bones may be sold or purchased, provided that those parts or products are from a white-tailed deer that was taken and possessed in a lawful manner.

d. Notwithstanding the provisions of subsection a. of this section to the contrary:

(1) the dead body or any part or product thereof of the following wildlife may be sold or purchased, provided that the wildlife was taken and possessed in a lawful manner:

Virginia Opossum	*Didelphis virginiana*
Beaver	*Castor canadensis*
Muskrat	*Ondatra zibethicus*
Nutria	*Myocaster coypus*
Coyote	*Canis latrans*
Red Fox	*Vulpes vulpes*
Gray Fox	*Urocyon cinereoargenteus*
Raccoon	*Procyon lotor*
Long Tail Weasel	*Mustela frenata*
Short Tail Weasel	*Mustela erminea*
Mink	*Mustela vison*
Striped Skunk	*Mephitis mephitis*
River Otter	*Lutra canadensis*

(2) wildlife not native to this State that originated from a state or other jurisdiction where it is legal to sell or purchase that wildlife and the wildlife was sold or purchased in accordance with the laws of that state or other jurisdiction, may be sold or purchased in this State unless prohibited by federal law, rule or regulation; provided that the wildlife is labeled with the state or other jurisdiction of origin, the name and address of the exporter, and all applicable permit numbers until the expected final retail transaction has been made.

e. The division shall 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 section and to otherwise provide for the control and regulation of the sale and purchase of wildlife, including but not limited to wildlife not specifically listed in this section.

f. In addition to any penalties that may be prescribed by any other applicable law:

(1) a person who violates this section shall be:

(a) subject to a civil penalty of not less than $200 and not more than $1,000 for the first offense, and not less than $500 and not more than $3,000 for each subsequent offense. If the violation involves the sale or purchase of a black bear (*Ursus americanus*), turkey (*Meleagris gallapavo*), white-

tailed deer (*Odocoileus virginianus*), bobcat (*Felis rufus*), or illegally taken river otter (*Lutra canadensis*), the civil penalty shall be not less than $1,000 and not more than $2,000 for the first offense, and not less than $1,500 and not more than $3,000 for each subsequent offense; and

(b) assessed the replacement value of the animal, as prescribed by section 10 of P.L.1990, c.29 (C.23:3-22.2); and

(2) a person who purposely violates this section when the total value of the sale or purchase is:

(a) less than $200 shall be guilty of a disorderly persons offense;

(b) $200 or more, but less than $500, shall be guilty of a crime of the fourth degree;

(c) $500 or more shall be guilty of a crime of the third degree.

g. For the purposes of this section, "sell or purchase" means to sell or offer for sale, possess for sale, purchase or agree to purchase, receive compensation, barter or offer to barter, trade or offer to trade, or transfer or offer to transfer, or conspire for any of those purposes.

Repealer.

3. R.S.23:5-4 and R.S.23:5-25 are repealed.

4. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 292

AN ACT concerning State college contracts and amending P.L.1986, c.43.

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

1. Section 3 of P.L.1986, c.43 (C.18A:64-54) is amended to read as follows:

C.18A:64-54 Bid threshold.

3. a. Any purchase, contract or agreement for the performance of any work or the furnishing or hiring of materials or supplies, the cost or price of which, together with any sums expended for the performance of any work or services in connection with the same project or the furnishing of similar materials or supplies during the same fiscal year, paid with or out of college funds, does not exceed the total sum of $17,700 or, commencing January 1, 1997, the amount determined pursuant to subsection b. of this section, in any fiscal year may be made, negotiated and awarded by a contracting agent,

when so authorized by resolution of the board of trustees of the State college without public advertising for bids and bidding therefor.

b. 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 subsection a. of this section in direct proportion to the rise or fall of the Consumer Price Index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which it is reported.

c. Any purchase, contract or agreement made pursuant to this section may be awarded for a period of 12 consecutive months, notwithstanding that the 12-month period does not coincide with the fiscal year.

2. Section 4 of P.L.1986, c.43 (C.18A:64-55) is amended to read as follows:

C.18A:64-55 Public bidding required.

4. Every contract or agreement for the performance of any work or the furnishing or hiring of any materials or supplies, the cost or the contract price of which is to be paid with or out of college funds, not included within the terms of section 3 of this article, shall be made and awarded only by the State college after public advertising for bids and bidding therefor, except as provided otherwise in this article or specifically by any other law. No work, materials or supplies shall be undertaken, acquired or furnished for a sum exceeding in the aggregate $17,700 or, commencing January 1, 1997, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), except by written contract or agreement.

3. Section 6 of P.L.1986, c.43 (C.18A:64-57) is amended to read as follows:

C.18A:64-57 Emergency procedures.

6. Any purchase, contract, or agreement may be made, negotiated or awarded by a State college without public advertising for bids and bidding therefor, notwithstanding that the cost or contract price will exceed $17,700 or, commencing January 1, 1997, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), when an emergency affecting the health, safety or welfare of occupants of college property requires the immediate delivery of the materials or supplies or the performance of the work, if the purchases, contracts or agreements are awarded or made in the following manner:

a. A written requisition for the performance of the work or the furnishing of materials or supplies, certified by the employee in charge of the building, facility or equipment where the emergency occurred, is filed with the contracting agent or his deputy in charge describing the nature of the emergency, the time of its occurrence, and the need for invoking this section. The contracting agent, or his deputy in charge, being satisfied that the emergency exists, is authorized to award a contract for the work, materials or supplies.

b. Upon the furnishing of the work, materials or supplies in accordance with the terms of the contract or agreement, the contractor furnishing the work, materials or supplies is entitled to be paid therefor and the State college is obligated for the payment.

c. The board of trustees may prescribe rules and procedures to implement the requirements of this section.

4. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to read as follows:

C.18A:64-78 Sale of personal property.

27. Any college may, by resolution of its board of trustees, authorize the sale in the following manner of its personal property not needed for college purposes:

a. If the estimated fair value of the property to be sold exceeds $17,700 or, commencing January 1,1997, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), in any one sale and the property does not consist of perishable goods, it shall be sold at public sale to the highest bidder.

b. Notice of the date, time and place of the public sale, together with a description of the items to be sold and the conditions of sale, shall be published once in a legal newspaper. Sales shall be held not less than seven nor more than 14 days after the publication of the notice thereof.

c. Personal property may be sold to the United States, the State of New Jersey, another college or to any body politic by private sale without advertising for bids.

d. If no bids are received, the property may then be sold at private sale without further publication or notice thereof but in no event at less than the estimated fair value; or the State college may, if it so elects, reoffer the property at public sale. As used herein, "estimated fair value" means the market value of the property if sold by a willing seller to a willing buyer less the cost to the college of continuing to store or maintain the property.

e. A State college may reject all bids if it determines a rejection to be in the public interest. In any case in which the college has rejected all bids, it may readvertise the personal property for a subsequent public sale. If it

elects to reject all bids at a second public sale pursuant to this section, it may then sell the personal property without further publication or notice thereof at private sale, but in no event shall the negotiated price at the private sale be less than the amount of the highest bid rejected at the preceding two public sales, nor shall the terms or conditions of sale be changed or amended.

f. If the estimated fair value of the property to be sold does not exceed $17,700 or, commencing January 1, 1997, the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), in any one sale or the property consists of perishable goods, it may be sold at private sale without advertising for bids.

5. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 293

AN ACT concerning the "Sales and Use Tax Act," and amending and supplementing P.L.1980, c.105.

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

1. Section 28 of P.L.1980, c.105 (C.54:32B-8.16) is amended to read as follows:

C.54:32B-8.16 Tangible personal property for use on farms, exceptions.

28. Receipts from sales of tangible personal property (except automobiles, except property incorporated in a building or structure and except energy) for use and consumption directly and primarily in the production for sale of tangible personal property on farms, including stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, ranches, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards are exempt from the tax imposed under the Sales and Use Tax Act.

C.54:32B-8.16a Rules, regulations.

2. The director shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq), regulations concerning the implementation of section 28 of P.L.1980, c.105, as amended by section 1 of P.L.1997, c.293(C.54:32B-8.16).

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 294

AN ACT concerning the Great Seal of the State of New Jersey and amending P.L.1955, c.155.

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

1. Section 1 of P.L.1955, c.155 (C.52:2-3) is amended to read as follows:

C.52:2-3 Persons authorized to use the Great Seal.

1. The Governor of the State, the head of any principal executive department of the State, the members of the Legislature of the State, the Justices of the Supreme Court, the judges of the Superior Court, the county prosecutors, county clerks, surrogates and sheriffs, the Secretary of the Senate, the Clerk of the General Assembly and members of the Congress of the United States and each of them, are authorized to use, exhibit and display the Great Seal of the State of New Jersey, in whole or in part, including such use, exhibition and display on their motor vehicle license plates.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 295

AN ACT concerning certain itinerant vendors 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.56:8-2.24 Items prohibited from sale by itinerant vendor.

1. It shall be an unlawful practice for an itinerant vendor to sell or offer to sell any of the following items:

a. Food manufactured and packaged for sale for consumption by a minor under the age of two years;

b. Any non-prescription drug subject to expiration dating requirements issued by the federal Food and Drug Administration; or

c. Any cosmetic as defined in subsection h. of R.S.24:1-1.

For purposes of this section, "itinerant vendor" means any merchant other than a merchant with an established retail store, who transports merchandise to a building, vacant lot or other location where it is sold or offered for sale, including a location where a fee is charged for the privilege of offering or displaying merchandise for sale or where a fee is charged to prospective buyers for admission to the area where merchandise is offered or displayed for sale, but shall not include persons who: sell by sample, catalog or brochure for future delivery; make sale presentations pursuant to a prior invitation issued by the owner or legal occupant; or are an authorized manufacturer's representative or authorized distributor.

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

Approved January 8, 1998.

CHAPTER 296

AN ACT concerning PACE programs and supplementing Title 26 of the Revised Statutes.

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

C.26:2H-88 Definitions relative to PACE programs.

1. As used in this act:

"Medicaid" means the program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

"Medicare" means the program established pursuant to Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

"PACE" means the "Program for All-Inclusive Care for the Elderly," operated by a public, private, nonprofit or proprietary entity, as permitted by federal law. The program is a comprehensive health and social services delivery system that integrates acute and long-term care services. PACE is a capitated program which provides services to disabled and frail elderly persons who are certified by the State as nursing home eligible to maximize their autonomy and continued independence.

"Pre-PACE" means a PACE program in its initial start-up phase and includes the same comprehensive scope of services as a PACE program. A Pre-PACE program may contract with the State to provide services to Medicaid-eligible persons on a capitated basis for a limited scope of the PACE service package, with the remaining services reimbursed directly to the service providers by the Medicaid and Medicare programs.

C.26:2H-89 PACE, pre-PACE program operation.

2. A PACE or Pre-PACE program shall operate in the State only in accordance with a contract with the Department of Health and Senior Services, which shall be prepared in consultation with the Department of Human Services, and pursuant to the provisions of this act.

The programs shall not be subject to the requirements of P.L.1973, c.337 (C.26:2J-1 et seq.).

C.26:2H-90 Cash reserves, demonstration.

3. A PACE or Pre-PACE program shall, at the time of entering into the initial contract and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

a. The cash reserves, at a minimum, shall equal the sum of:

(1) One month's total capitation revenue; and

(2) One month's average payment to subcontractors.

b. The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: reasonable and sufficient net worth, insolvency insurance, letters of credit or parental guarantees.

C.26:2H-91 Enrollment, disenrollment terms.

4. A PACE or Pre-PACE program shall provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or are participants in the program.

5. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 297

AN ACT appropriating$3.8 million from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act

of 1996," P.L.1996, c.70, for the dredging of various navigation channels not located in the port region.

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 "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, the sum of $3.8 million for the cost of dredging the following navigation channels not located in the port region, in accordance with the provisions of section 7 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L.1996, c.70, and for the cost of any necessary chemical testing and boring in connection with the dredging:

Project Name	County	Municipality	Amount
St. George's Thoroughfare	Atlantic	Brigantine	$350,000
Forked River	Ocean	Lacey	$700,000
Will's Hole Thoroughfare	Monmouth	Manasquan	$950,000
Spicer's Creek	Cape May	Cape May	$500,000
Middle Thoroughfare	Cape May	Lower Township	$950,000
Fortescue Creek	Cumberland County	Downe Township	$350,000

Any amount of the monies appropriated pursuant to this section which is not expended for the projects set forth in this section shall be returned by the department for deposit into the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996."

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 298

AN ACT concerning the organization of the General Assembly and a joint session of the 208th Legislature to be held outside of Trenton.

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 13, 1998 or as soon thereafter as is practicable, the General Assembly may meet and organize for the first annual session of the 208th Legislature at a suitable location on the campus of the College of New Jersey in Ewing Township, Mercer County.

2. Notwithstanding the provisions of Chapter 1 of Title 52 of the Revised Statutes to the contrary, on January 20, 1998 or as soon thereafter as is practicable, the Senate and General Assembly of the 208th Legislature may meet in joint session for the inaugural ceremony of the Governor at a suitable location at the New Jersey Performing Arts Center in Newark, Essex County.

3. This act shall take effect immediately and shall expire at the termination of the inaugural ceremony of the Governor.

Approved January 8, 1998.

CHAPTER 299

AN ACT concerning divorce and revising various sections of the statutory law.

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

1. Section 22 of P.L.1981, c.243 (C.2A:4-30.45) is amended to read as follows:

C.2A:4-30.45 Rules of evidence.

22. Rules of evidence. In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the Superior Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 26) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any

interference by another obligee with rights of custody or parenting time granted by a court.

2. Section 2 of P.L.1990, c.104 (C.2A:34-31.1) is amended to read as follows:

C.2A:34-31.1 Protective custody of child; reasonablecause.

2. After the issuance of any temporary or permanent order determining custody or parenting time of a minor child, a law enforcement officer having reasonable cause to believe that a person is likely to flee the State with the child or otherwise by flight or concealment evade the jurisdiction of the courts of this State may take a child into protective custody and return the child to the parent having lawful custody, or to a court in which a custody hearing concerning the child is pending.

3. Section 3 of P.L.1990, c.104 (C.2A:34-31.2) is amended to read as follows:

C.2A:34-31.2 Court orders to advise of penalties for custody interference.

3. Every order of a court involving custody or parenting time shall include a written notice, in both English and Spanish, advising the persons affected as to the penalties provided in N.J.S.2C:13-4 for violating that order.

4. Section 9 of P.L.1979, c.124 (C.2A:34-36) is amended to read as follows:

C.2A:34-36 Jurisdiction declined under certain circumstances.

9. a. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

b. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after the scheduled parenting time has elapsed or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

c. In appropriate cases a court dismissing a petition under this section may assess, and if not paid enter a judgment against the petitioner for

necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment shall be made to the clerk of the court for remittance to the proper party, or in the event of a judgment shall be collected in accordance with the normal procedures for the collection of judgments.

5. Section 10 of P.L.1979, c.124 (C.2A:34-37) is amended to read as follows:

C.2A:34-37 Information under oath submitted to court.

10. a. Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) He has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or parenting time rights with respect to the child.

b. If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

c. Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

6. Section 11 of P.L.1979, c.124 (C.2A:34-38) is amended to read as follows:

C.2A:34-38 Additional parties to custody proceedings.

11. If the court learns from information furnished by the parties pursuant to section 10 of P.L.1979, c.124 (C.2A:34-37), or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or parenting time rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a

party. If the person joined as a party is outside that State he shall be served with process or otherwise notified in accordance with the provisions of section 6 of P.L.1979, c.124 (C.2A:34-33).

7. N.J.S.2C:13-4 is amended to read as follows:

Interference with custody.

2C:13-4. Interference with custody. a. Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of this State;

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices or conceals a minor child from the other parent in violation of the custody or parenting time order.

Interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, interference with custody is a crime of the second degree.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

(1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent having the right of custody reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

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

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

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

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

(2) The existence of immediate danger to person or property;

(3) The financial circumstances of the plaintiff and defendant;

(4) The best interests of the victim and any child;

(5) In determining custody and parenting time the protection of the victim's safety; and

(6) The existence of a verifiable order of protection from another jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) (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.

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

Custody of child; rights of both parents considered.

9:2-4. The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;

b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or

c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

10. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read as follows:

C.9:3-46 Objection to adoption.

10. a. A person who is entitled to notice pursuant to section 9 of P.L.1977, c.367 (C.9:3-45) shall have the right to object to the adoption of his child. A judgment of adoption shall not be entered over an objection of a parent communicated to the court by personal appearance or by letter unless the court finds:

(1) that the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so, or

(2) that the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future.

The regular and expected functions of care and support of a child shall include the following:

(a) the maintenance of a relationship with the child such that the child perceives the person as his parent;

(b) communicating with the child or person having legal custody of the child and parenting time rights unless having parenting time is impossible because of the parent's confinement in an institution, or unless prevented from so doing by the custodial parent or other custodian of the child or a social service agency over the birth parent's objection; or

(c) providing financial support for the child unless prevented from doing so by the custodial parent or other custodian of the child or a social service agency.

A parent shall be presumed to have failed to perform the regular and expected parental functions of care and support of the child if the court finds that the situation set forth in paragraph (1) or (2) has occurred for six or more months.

b. The guardian of a child to be adopted who has not executed a surrender pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any other person who has provided care and supervision in his home for the child for a period of six months or one half of the life of the child, whichever is less, in the two years prior to the complaint shall be given notice of the action and in accordance with the Rules of Court shall have standing to object to the adoption, which objection shall be given due consideration by the court in determining whether the best interests of the child would be promoted by the adoption.

11. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read as follows:

C.9:17-53 Judgment, order on parent and child relationship; amendment of birth record; amount of support.

16. a. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

b. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amendment to the original birth record be made under section 22.

c. The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, the repayment of any public assistance grant, or any other matter in the best interests of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and postpartum disability, including repayment to an agency which provided public assistance funds for those expenses.

d. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interests of the child, the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit a parent's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

e. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including the:

(1) Needs of the child;

(2) Standard of living and economic circumstances of each parent;

(3) Income and assets of each parent, including any public assistance grant received by a parent;

(4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children and the length of time and cost for each parent to obtain training or experience for appropriate employment;

(5) Need and capacity of the child for education, including higher education;

(6) Age and health of the child and each parent;

(7) Income, assets and earning ability of the child;

(8) Responsibility of the parents for the support of others; and

(9) Debts and liabilities of each child and parent.

The factors set forth herein are not intended to be exhaustive. The court may consider such other factors as may be appropriate under the circumstances.

12. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 300

AN ACT concerning sanctions against parties who violate visitation orders 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:34-23.2 Findings, declarations relative to violation of visitation orders.

1. The Legislature finds and declares that:

a. There has been an increase in the filings of dissolutions of marriages in the recent years; and

b. The best interests of the children of these marriages in maintaining close relationships with both parents regardless of which parent has the physical custody of the child is paramount; and

c. Proceeding criminally in cases where the terms of an order of visitation with a child has failed to be honored may be both difficult and inappropriate; and

d. Bolstering the statutory civil remedies available to a judge hearing these types of matters may provide an indication of legislative intent to promote the enforcement of these matters.

C.2A:34-23.3 Available remedies.

2. A judge who sanctions a party for failure to comply with an order of visitation shall have these remedies available:

a. The awarding of counsel fees of the aggrieved party against the party who violated the terms of the order;

b. Community service;

c. The awarding of compensatory time for the time with the child for which the party was deprived;

d. The awarding of monetary compensation for additional costs incurred when a parent fails to appear for scheduled visitation; and

e. Other economic sanctions which may be decided on a case-by-case basis.

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 301

AN ACT concerning alimony and amending N.J.S.2A:34-25.

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

1. N.J.S.2A:34-25 is amended to read as follows:

Termination of alimony.

2A:34-25. If after the judgment of divorce a former spouse shall remarry, permanent alimony shall terminate as of the date of remarriage except that any arrearages that have accrued prior to the date of remarriage shall not be vacated or annulled. A former spouse who remarries shall promptly so inform the spouse paying permanent alimony as well as the collecting agency, if any. The court may order such alimony recipient who fails to comply with the notification provision of this act to pay any reasonable attorney fees and court costs incurred by the recipient's former spouse as a result of such non-compliance.

The remarriage of a former spouse receiving rehabilitative alimony shall not be cause for termination of the rehabilitative alimony by the court unless the court finds that the circumstances upon which the award was based have not occurred or unless the payer spouse demonstrates an agreement or good cause to the contrary.

Alimony shall terminate upon the death of the payer spouse, except that any arrearages that have accrued prior to the date of the payer spouse's death shall not be vacated or annulled.

Nothing in this act shall be construed to prohibit a court from ordering either spouse to maintain life insurance for the protection of the former spouse or the children of the marriage in the event of the payer spouse's death.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 302

AN ACT concerning alimony and amending N.J.S. 2A:34-23.

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

1. N.J.S. 2A:34-23 is amended to read as follows:

Alimony, maintenance.

2A:34-23. Pending any matrimonial action brought in this State or elsewhere, or after judgment of divorce or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and require reasonable security for the due observance of such orders, including, but not limited to, the creation of trusts or other security devices, to assure payment of reasonably foreseeable medical and educational expenses. Upon neglect or refusal to give such reasonable security, as shall be required, or upon default in complying with any such order, the court may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court. Orders so made may be revised and altered by the court from time to time as circumstances may require.

The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule. Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party.

a. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the court in those cases not governed by court rule shall consider, but not be limited to, the following factors:

(1) Needs of the child;

(2) Standard of living and economic circumstances of each parent;

(3) All sources of income and assets of each parent;

(4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;

(5) Need and capacity of the child for education, including higher education;

(6) Age and health of the child and each parent;

(7) Income, assets and earning ability of the child;

(8) Responsibility of the parents for the court-ordered support of others;

(9) Reasonable debts and liabilities of each child and parent; and

(10) Any other factors the court may deem relevant.

b. In all actions brought for divorce, divorce from bed and board, or nullity the court may award permanent or rehabilitative alimony or both to either party, and in so doing shall consider, but not be limited to, the following factors:

(1) The actual need and ability of the parties to pay;

(2) The duration of the marriage;

(3) The age, physical and emotional health of the parties;

(4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;

(5) The earning capacities, educational levels, vocational skills, and employability of the parties;

(6) The length of absence from the job market of the party seeking maintenance;

(7) The parental responsibilities for the children;

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

(9) The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair; and

(11) Any other factors which the court may deem relevant.

When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

In any case in which there is a request for an award of rehabilitative or permanent alimony, the court shall consider and make specific findings on the evidence about the above factors.

An award of rehabilitative alimony may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award. This section is not intended to preclude a court from modifying permanent alimony awards based upon the law. In all actions for divorce other than those where judgment is granted solely on the ground of separation the court may consider also the proofs made in establishing such ground in determining an amount of alimony or maintenance that is fit, reasonable and just. In all actions for divorce or divorce from bed and board where judgment is granted on the ground of institutionalization for mental illness the court may consider the possible burden upon the taxpayers of the State as well as the ability of the party to pay in determining an amount of maintenance to be awarded.

In all actions where a judgment of divorce or divorce from bed and board is entered the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage. However, all such property, real, personal or otherwise, legally or beneficially acquired during the marriage by either party by way of gift, devise, or intestate succession shall not be subject to equitable distribution, except that interspousal gifts shall be subject to equitable distribution.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 303

AN ACT concerning directors of State chartered savings and loan associations and amending P.L.1963, c.144.

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

1. Section 62 of P.L.1963, c.144 (C.17:12B-62) is amended to read as follows:

C.17:12B-62 Directors, number, powers.

62. Directors, number, powers. The business and affairs of every State association shall be managed and directed by a board of directors. The board shall consist of such number as the bylaws provide, but not less than five. Each director shall be a citizen of the United States and shall be either a member of the mutual association or a stockholder of the capital stock association, as the case may be. He shall have such other qualifications and meet such eligibility requirements, as this act and the bylaws provide. The board may exercise any and all powers of a State association not expressly reserved to the members of the mutual association or the stockholders of the capital stock association by the provisions of this act and the bylaws. All checks, notes and drafts of the State association shall be executed in a manner and form determined by resolution of the board of the State association. If the bylaws so provide, the board may delegate any of its powers to any committee composed of members of the board.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 304

AN ACT concerning payments by health service corporations for certain health services and amending P.L.1971, c.136.

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

1. Section 18 of P.L.1971, c.136 (C.26:2H-18) is amended to read as follows:

C.26:2H-18 License, authorization required for receipt of reimbursement, grant-in-aid.

18. a. No government agency and no health service corporation organized under the laws of the State and no other purchasers of health care services shall purchase, pay for or make reimbursement or grant-in-aid for any health care service provided by a health care facility unless at the time

the service was provided, the health care facility possessed a valid license or was otherwise authorized to provide such service.

b. (Deleted by amendment, P.L.1992, c.160).

c. Payment by government agencies other than those made through the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.) for health services provided by health care facilities other than hospitals shall be at reasonable rates set by the commissioner based on financial elements approved by him; provided, however, that nothing herein shall be construed to prohibit the Commissioner of Human Services from contracting with the commissioner for the setting of rates by which health care facilities other than hospitals are reimbursed pursuant to the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.).

d. (Deleted by amendment, P.L.1992, c.160).

e. To establish and maintain a fair and equitable system for determining such payments, the commissioner shall require each health care facility to report such financial, statistical and patient information as may be required, in accordance with a uniform system of reporting established by him. The commissioner may propose regulations for approval by the board which assess penalties for failure to report such information within such time as may be prescribed therein.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 305

AN ACT providing for the licensure of locksmiths and burglar alarm, fire alarm, and electronic security businesses, and amending and supplementing P.L.1962, c.162.

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

1. Section 2 of P.L.1962, c.162 (C.45:5A-2) is amended to read as follows:

C.45:5A-2 Definitions.

2. For the purpose of this act, unless otherwise indicated by the context:

(a) "Act" means this act and the rules and regulations adopted under it;

(b) "Board" means the Board of Examiners of Electrical Contractors created by section 3 of this act;

(c) "Department" means the Department of Law and Public Safety;

(d) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy;

(e) "Person" means a person, firm, corporation or other legal entity;

(f) "Alarm business" means the installation, servicing or maintenance of burglar alarm, fire alarm or electronic security systems, or the monitoring or responding to alarm signals when provided in conjunction therewith. "Installation," as used in this definition, includes the survey of a premises, the design and preparation of the specifications for the equipment or system to be installed pursuant to a survey, the installation of the equipment or system, or the demonstration of the equipment or system after the installation is completed, but does not include any survey, design or preparation of specifications for equipment or for a system that is prepared by an engineer licensed pursuant to the provisions of P.L.1938, c.342 (C.45:8-27 et seq.), or an architect licensed pursuant to the provisions of chapter 3 of Title 45 of the Revised Statutes, if the survey, design, or preparation of specifications is part of a design for construction of a new building or premises or a renovation of an existing building or premises, which renovation includes components other than the installation of a burglar alarm, fire alarm or electronic security system, and further does not include the design or preparation of specifications for the equipment or system to be installed that are within the practice of professional engineering as defined in subsection (b) of section 2 of P.L.1938, c.342 (C.45:8-28);

(g) "Burglar alarm" means a security system comprised of an interconnected series of alarm devices or components, including systems interconnected with radio frequency signals, which emits an audible, visual or electronic signal indicating an alarm condition and providing a warning of intrusion, which is designed to discourage crime;

(h) "Business firm" means a partnership, corporation or other business entity engaged in the alarm business or locksmithing services;

(i) "Committee" means the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee created by section 3 of P.L.1997, c.305 (C.45:5A-23);

(j) "Electronic security system" means a security system comprised of an interconnected series of devices or components, including systems with audio and video signals or other electronic systems, which emits or transmits an audible, visual or electronic signal warning of intrusion and provides notification of authorized entry or exit, which is designed to discourage crime;

(k) "Fire alarm" means a security system comprised of an interconnected series of alarm devices or components, including systems interconnected with radio frequency signals, which emits an audible, visual or electronic signal indicating an alarm condition and which provides a warning of the presence of smoke or fire. "Fire alarm" does not mean a system whose primary purpose is telecommunications with energy control, the monitoring of the interior environment being an incidental feature thereto;

(l) "Licensed locksmith" means a person who is licensed pursuant to the provisions of section 7 of P.L.1997, c.305 (C.45:5A-27);

(m) "Licensee" means a person licensed to engage in the alarm business or provide locksmithing services pursuant to the provisions of section 7 of P.L.1997, c.305 (C.45:5A-27);

(n) "Locksmithing services" means the modification, recombination, repair or installation of mechanical locking devices and electronic security systems for any type of compensation and includes the following: repairing, rebuilding, recoding, servicing, adjusting, installing, manipulating or bypassing of a mechanical or electronic locking device, for controlled access or egress to premises, vehicles, safes, vaults, safe doors, lock boxes, automatic teller machines or other devices for safeguarding areas where access is meant to be limited; operating a mechanical or electronic locking device, safe or vault by means other than those intended by the manufacturer of such locking devices, safes or vaults; or consulting and providing technical advice regarding selection of hardware and locking systems of mechanical or electronic locking devices and electronic security systems; except that "locksmithing services" shall not include the installation of a prefabricated lock set and door knob into a door of a residence.

2. Section 18 of P.L.1962, c.162 (C.45:5A-18) is amended to read as follows:

C.45:5A-18 Exempt work or construction.

18. Electrical work or construction which is performed on the following facilities or which is by or for the following agencies shall not be included within the business of electrical contracting so as to require the securing of a business permit under this act:

(a) Minor repair work such as the replacement of lamps and fuses.

(b) The connection of portable electrical appliances to suitable permanently installed receptacles.

(c) The testing, servicing or repairing of electrical equipment or apparatus.

(d) Electrical work in mines, on ships, railway cars, elevators, escalators or automotive equipment.

(e) Municipal plants or any public utility as defined in R.S.48:2-13, organized for the purpose of constructing, maintaining and operating works for the generation, supplying, transmission and distribution of electricity for electric light, heat, or power.

(f) A public utility subject to regulation, supervision or control by a federal regulatory body, or a public utility operating under the authority granted by the State of New Jersey, and engaged in the furnishing of communication or signal service, or both, to a public utility, or to the public, as an integral part of a communication or signal system, and any agency associated or affiliated with any public utility and engaged in research and development in the communications field.

(g) A railway utility in the exercise of its functions as a utility and located in or on buildings or premises used exclusively by such an agency.

(h) Commercial radio and television transmission equipment.

(i) Construction by any branch of the federal government.

(j) Any work with a potential of less than 10 volts.

(k) Repair, manufacturing and maintenance work on premises occupied by a firm or corporation, and installation work on premises occupied by a firm or corporation and performed by a regular employee who is a qualified journeyman electrician.

(l) Installation, repair or maintenance performed by regular employees of the State or of a municipality, county, or school district on the premises or property owned or occupied by the State, a municipality, county, or school district.

(m) The maintaining, installing or connecting of automatic oil, gas or coal burning equipment, gasoline or diesel oil dispensing equipment and the lighting in connection therewith to a supply of adequate size at the load side of the distribution board.

(n) Work performed by a person on a dwelling that is occupied solely as a residence for himself or for a member or members of his immediate family.

(o) (Deleted by amendment, P.L.1997, c.305).

(p) Any work performed by a landscape irrigation contractor which has the potential of not more than 30 volts involving the installation, servicing, or maintenance of a landscape irrigation system as this term is defined by section 2 of this amendatory and supplementary act. Nothing in this act shall be deemed to exempt work covered by this subsection from inspection required by the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or regulations adopted pursuant thereto.

The board may also exempt from the business permit provisions of this act such other electrical activities of like character which in the board's opinion warrant exclusion from the provisions of this act.

C.45:5A-23 "Fire Alarm, Burglar Alarm and Locksmith Advisory Committee."

3. a. There is created within the Division of Consumer Affairs in the Department of Law and Public Safety, under the Board of Examiners of Electrical Contractors, a "Fire Alarm, Burglar Alarm and Locksmith Advisory Committee." The committee shall consist of 15 members who are residents of this State as follows:

(1) Two members shall have been engaged in the alarm business in this State on a full-time basis for at least five consecutive years immediately preceding their appointments, shall be members of the New Jersey Burglar and Fire Alarm Association and, except for the members first appointed, shall be licensed under the provisions of section 7 of this act;

(2) Five members shall be municipal officials, and shall include (a) a fire prevention officer; (b) a crime prevention officer; (c) a fire sub-code official; (d) a building inspector; and (e) a chief of police who is a member of the New Jersey Association of Chiefs of Police;

(3) One member shall be a representative of the Division of State Police;

(4) One member shall have been engaged in the alarm business in this State on a full-time basis for at least five consecutive years immediately preceding appointment, shall be a member of the Automatic Fire Alarm Association of New Jersey and, except for the member first appointed, shall be licensed under the provisions of section 7 of this act;

(5) Two members shall have been engaged as practicing locksmiths on a full-time basis for at least five consecutive years immediately preceding appointment, shall be members of a duly recognized professional locksmith association in New Jersey and, except for the members first appointed, shall be licensed as locksmiths under the provisions of section 7 of this act;

(6) One member shall have been engaged in the alarm business in this State on a full-time basis, shall be a member of both the New Jersey Burglar and Fire Alarm Association and a duly recognized professional locksmith association and, except for the member first appointed, be licensed under the provisions of section 7 of this act;

(7) One member shall have been engaged as a practicing locksmith in this State on a full-time basis for at least five consecutive years immediately preceding appointment, shall be a member of both the New Jersey Burglar and Fire Alarm Association and a duly recognized professional locksmith association and, except for the member first appointed, be licensed under the provisions of section 7 of this act;

(8) One member shall be a member of the International Brotherhood of Electrical Workers, A.F.L.-C.I.O; and

(9) One member shall be a public member who meets the requirements pertaining to public members set forth in subsection b. of section 2 of P.L.1971, c.60 (C.45:1-2.2).

b. The Governor shall appoint each member for a term of three years, except that of the members first appointed, five shall serve for terms of three years, five shall serve for terms of two years, and five shall serve for terms of one year.

c. Any vacancy in the membership of the committee shall be filled for the unexpired term in the manner provided for the original appointment. No member of the committee may serve more than two successive terms in addition to any unexpired term to which he has been appointed.

d. The committee shall annually elect from among its members a chair and vice-chair. The committee shall meet at least four times a year and may hold additional meetings as necessary to discharge its duties. In addition to such meetings, the committee shall meet at the call of the chair, the board, or the Attorney General.

e. Members of the committee shall be compensated and reimbursed for actual expenses reasonably incurred in the performance of their official duties and reimbursed for expenses and provided with office and meeting facilities and personnel required for the proper conduct of the committee's business.

f. The committee shall make recommendations to the board regarding rules and regulations pertaining to professional training, standards, identification and record-keeping procedures for licensees and their employees, classifications of licensure necessary to regulate the work of licensees, and other matters as necessary to effectuate the purposes of this act.

C.45:5A-24 Powers, duties of board.

4. The board shall have the following powers and duties, or may delegate them to the committee:

a. To set standards and approve examinations for applicants for a fire alarm, burglar alarm or locksmith license and issue a license to each qualified applicant;

b. To administer the examination to be taken by applicants for licensure;

c. To determine the form and contents of applications for licensure, licenses and identification cards;

d. To adopt a code of ethics for licensees;

e. To issue and renew licenses and identification cards;

f. To set the amount of fees for fire alarm, burglar alarm and locksmith licenses, license renewal, applications, examinations and other

services provided by the board and committee, within the limits provided in subsection b. of section 11 of this act;

g. To refuse to admit a person to an examination or refuse to issue or suspend, revoke, or fail to renew the license of a fire alarm, burglar alarm, or locksmith licensee pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);

h. To maintain a record of all applicants for a license;

i. To maintain and annually publish a record of every licensee, his place of business, place of residence and the date and number of his license;

j. To take disciplinary action, in accordance with P.L.1978, c.73 (C.45:1-14 et seq.) against a licensee or employee who violates any provision of this act or any rule or regulation promulgated pursuant to this act;

k. To adopt standards and requirements for and approve continuing education programs and courses of study for licensees and their employees;

l. To review advertising by licensees; and

m. To perform such other duties as may be necessary to effectuate the purposes of this act.

C.45:5A-25 Requirements for advertising alarm business.

5. a. No person shall advertise that he is authorized to engage in, or engage in the alarm business, or otherwise engage in the installation, service or maintenance of burglar alarm, fire alarm or electronic security systems unless he satisfies the requirements of this act.

b. No person shall represent himself as qualified to provide, or otherwise provide locksmithing services unless he is licensed as a locksmith in accordance with the provisions of this act.

C.45:5A-26 Application for license as alarm business, locksmithing.

6. a. Application for a license to engage in the alarm business or to provide locksmithing services, as the case may be, shall be made to the board in the manner and on the forms as the board, in consultation with the committee may prescribe.

(1) An application to engage in the alarm business shall include the name, age, residence, present and previous occupations of the applicant and, in the case of a business firm engaged in the alarm business, of each member, officer or director thereof, the name of the municipality and the location therein by street number or other appropriate description of the principal place of business and the location of each branch office.

(2) An application to engage in locksmithing services shall include the name, residence and principal business address of the applicant, or in the case of an employee, the principal business address of his employer.

b. Every applicant shall submit to the board, together with the application, his photograph, in passport size, a list of all criminal offenses of which

he has been convicted, setting forth the date and place of each conviction and the name under which he was convicted, if other than that on the application, and fingerprints of his two hands taken on standard fingerprint cards by a State or municipal law enforcement agency. Before approving an application, the board shall submit the fingerprints of the applicant to the Division of State Police in the Department of Law and Public Safety, for comparative analysis. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Division of State Police and the Federal Bureau of Investigation for use in making the determinations required by this act. The applicant shall bear the cost for the criminal history record check. No license shall be issued to any applicant whose license has been revoked under the provisions of this act within five years of the date of filing of an application.

c. If an applicant files with the board fingerprints of a person other than the applicant, he shall be guilty of a crime of the fourth degree and shall have his license application denied or license revoked.

d. The board may require other information of the applicant and, if the applicant is proposing to qualify a business firm, of the business firm to determine the professional competence and integrity of the concerned parties.

C.45:5A-27 Requirements for licensure.

7. a. An applicant seeking licensure to engage in the alarm business shall:

(1) Be at least 18 years of age;

(2) Be of good moral character, and not have been convicted of a crime of the first, second or third degree within 10 years prior to the filing of the application;

(3) Meet qualifications established by the board, in consultation with the committee, regarding experience, continuing education, financial responsibility and integrity; and

(4) Establish his qualifications to perform and supervise various phases of alarm installation, service and maintenance as evidenced by successful completion of an examination approved by the board, in consultation with the committee, except that any person engaged in the alarm business on the effective date of this act and filing an application within 120 days following the effective date of this act, shall not be required to submit evidence of the successful completion of the examination requirement if that person shows proof of having completed 40 hours of technical training prior to the effective date of this act, which training has been approved by the board, in consultation with the committee. No examination or training requirement shall apply to any person providing evidence of having been engaged in the alarm business for at least one year prior to the effective date of this act.

b. An applicant seeking licensure as a locksmith shall:

(1) Be at least 18 years of age;

(2) Be of good moral character, and not have been convicted of a crime of the first, second or third degree within 10 years prior to the filing of the application;

(3) Present evidence to the board of having successfully completed any training and continuing education requirements established by the board, in consultation with the committee; and

(4) Successfully complete a written examination approved by the board, in consultation with the committee to determine the applicant's competence to engage in locksmithing services, except that no examination requirement shall apply to any person engaged in locksmithing services who has practiced locksmithing services for at least one year prior to the effective date of this act and who files an application within 120 days following the effective date of this act.

C.45:5A-28 Nonapplicability of act.

8. The provisions of this act regarding the practice of locksmithing services shall not apply to:

a. The activities of any person performing public emergency services for a governmental entity if that person is operating under the direction or control of the organization by which he is employed;

b. The activities of any sales representative who is offering a sales demonstration to licensed locksmiths;

c. The activities of any automotive service dealer or lock manufacturer, or their agent or employee, while servicing, installing, repairing, or rebuilding locks from a product line utilized by that dealer or lock manufacturer;

d. The activities of any member of a trade union hired to install any mechanical locking device as part of a new building construction or renovation project; and

e. The activities of any person using any key duplicating machine or key blanks, except for keys marked "do not duplicate" or "master key."

C.45:5A-29 Exemptions from licensing requirement.

9. a. Telephone utilities and cable television companies regulated by the Board of Regulatory Commissioners pursuant to Title 48 of the Revised Statutes and persons in their employ while performing the duties of their employment are exempt from the requirement of obtaining a license to engage in the alarm business pursuant to this act.

b. Electrical contractors regulated by the Board of Examiners of Electrical Contractors pursuant to P.L.1962, c.162 (C.45:5A-1 et seq.) and persons in their employ while performing the duties of their employment are

exempt from the requirement of obtaining a license to engage in the alarm business pursuant to this act.

C.45:5A-30 Issuance of locksmith license.

10. Notwithstanding any other provision of this act to the contrary, the board shall, upon application with submission of satisfactory proof and payment of the prescribed fee, within six months following the effective date of this act, issue a locksmith license to:

a. Any person who has successfully completed a locksmith apprentice program which has been approved by the Bureau of Apprenticeship and Training of the United States Department of Labor; or

b. Any person who has been engaged full-time in the practice of locksmithing services for at least three years immediately prior to the date of his application for a locksmith's license.

C.45:5A-31 Issuance of license to persons engaged in alarm business, locksmithing; duration; renewal; fees.

11. a. Licenses shall be issued to qualified applicants seeking licensure to engage in the alarm business or as a locksmith for a three-year period, upon payment of a licensing fee. License renewals shall be issued for a three-year period upon the payment of a renewal fee. A renewal application shall be filed with the board at least 45 days prior to expiration of a license. A license issued pursuant to this act shall not be transferable.

b. Fees shall be established, prescribed or changed by the board, in consultation with the committee, to the extent necessary to defray all proper expenses incurred by the committee, the board and any staff employed to administer the provisions of this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required. All fees and any fines imposed under this act shall be paid to the board and shall be forwarded to the State Treasurer and become part of the General Fund.

C.45:5A-32 Requirements for licensee.

12. a. No licensee qualified under the provisions of this act shall engage in the alarm business or in the practice of locksmithing services, unless the licensee:

(1) Maintains at least one business office within the State or files with the board a statement, duly executed and sworn to before a person authorized by the laws of this State to administer oaths, containing a power of attorney constituting the board the true and lawful attorney of the licensee upon whom all original process in an action or legal proceeding against the licensee may be served and in which the licensee agrees that the original process that may be served upon the board shall be of the same force and

validity as if served upon the licensee and that the authority thereof shall continue in force so long as the licensee engages in the alarm business or in the practice of locksmithing services, as the case may be, in this State;

(2) Clearly marks the outside of each installation and service vehicle to be used in conjunction with the alarm business with the alarm business name or the outside of each installation and service vehicle to be used in conjunction with locksmithing services with the locksmithing service's name;

(3) Maintains an emergency service number attended to on a 24-hour basis and responds appropriately to emergencies on a 24-hour basis when engaged in the alarm business; and

(4) Retains at all times general liability insurance in an amount determined by the board, in consultation with the committee, and insurance coverage or a surety bond in favor of the State of New Jersey in the sum of $10,000, executed by a surety company authorized to transact business in the State of New Jersey and which is approved by the Department of Banking and Insurance, and which is to be conditioned on the faithful performance of the provisions of this act. The board shall by rule or regulation provide who shall be eligible to receive the financial protection afforded by that bond and the bond shall be in full force and effect for the term of the license issued.

b. Except in the case of an employee licensed as a locksmith, no licensed locksmith shall engage in locksmithing services unless that licensee maintains at least one business office within the State.

C.45:5A-33 Display of identification card.

13. a. Every licensee and every employee or other person engaged in the unsupervised installation, servicing or maintenance of burglar alarm, fire alarm or electronic security systems shall, at all times during working hours, display an identification card issued by the board. The identification card shall contain the following information:

(1) the name, photograph and signature of the person to whom the card has been issued;

(2) the business name and address and license number of the licensee;

(3) the expiration date of the card; and

(4) that other information the board deems appropriate for identification purposes.

b. Identification cards shall be issued for a three-year period which, in the case of a licensee, shall correspond to the term of the license period of the licensee. Application for renewal of an identification card for other than a licensee shall be made by the person named on the card at least 45 days prior to the expiration date of the card. The information provided on the

identification card shall at all times be current, and the named holder of the card shall advise the board of any changes and file for issuance of an updated card within five days following occurrence of a change, which card shall be issued for the unexpired term of the original card.

c. Identification cards shall not be transferable in the event of a change in employment.

C.45:5A-34 Requirements for employees of licensee.

14. No person shall be employed by a licensee to install, service or maintain a burglar alarm, fire alarm or electronic security system or, except in the case of a licensee, shall otherwise engage in the installation, service or maintenance thereof:

a. unless the person is of good moral character; and

b. where the work is to be performed other than under the field supervision of a licensee or a person qualified pursuant to the provisions of this section, unless the person shall have at least three years of practical experience and shall have successfully completed a course of study or a competency examination prescribed by the board, in consultation with the committee; except that an employee employed in the installation, servicing or maintenance of burglar alarm, fire alarm or electronic security systems by a license applicant filing an application within 120 days of the effective date of this act and identified as an employee on the application, shall not be required to satisfy the competency requirements of this subsection, until the first renewal of the employee's identification card.

C.45:5A-35 Responsibilities of licensee relative to employees.

15. a. A licensee shall be responsible for any unlawful or unprofessional conduct by an employee, except that the conduct shall not be a cause for suspension or revocation of a license, unless the board determines that the licensee had knowledge thereof, or there is shown to have existed a pattern of unlawful or unprofessional conduct.

b. Within 30 days of employing a person in connection with an alarm business or as a locksmith, a licensee shall notify the board and shall provide the board with the employee's photograph, in passport size, fingerprints of the employee's two hands taken on standard fingerprint cards by a State or municipal law enforcement agency, a list of all criminal offenses, supplied by the employee, of which the employee has been convicted, setting forth the date and place of each conviction, and the name under which the employee was convicted, if other than that given in the written notification to the board and, if the work of the employee is not to be directly supervised, evidence of practical experience and professional competence in accordance with the requirements of subsection b. of section 14 of this act.

c. If a licensee knowingly falsifies any information required by the board, the licensee shall be guilty of a crime of the fourth degree and shall have his license revoked.

d. After confirming the information provided on an employee with the Division of State Police in the Department of Law and Public Safety and conducting other investigations as necessary, if the board determines that an employee is subject to the requirements of section 14 of this act and fails to satisfy those requirements, the board shall advise the licensee immediately of the employee's unfitness. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Division of State Police and the Federal Bureau of Investigation for use in making the determinations required by this act. The employer shall bear the cost for the criminal history record check pursuant to this section. Employees hired by an alarm business through a recognized trade union on a temporary basis not to exceed six months or one project, whichever is greater, are exempt from the requirements of this act.

C.45:5A-36 Municipality, county prohibited from regulating locksmiths, alarm businesses.

16. No municipality or county shall enact an ordinance or resolution or promulgate any rules or regulations relating to the licensing or registration of locksmiths or alarm businesses. The provisions of any ordinance or resolution or rules or regulations of any municipality or county relating to the licensing or registration of locksmiths or alarm businesses are superseded by the provisions of this act. Nothing in this section shall be construed, however, to prohibit municipal regulation of door-to-door vendors or salespersons of burglar alarm, fire alarm or electronic security systems nor shall anything in this section be construed to prohibit or restrict municipal consideration of alarm business service proposals in consent proceedings under the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.).

C.45:5A-37 Licenses from other jurisdictions.

17. If the board, after consultation with the committee, determines that an applicant holds a valid license from another jurisdiction which requires equal or greater experience and knowledge requirements, the board may accept evidence of that license as meeting the experience and knowledge requirements of this act for a person engaged in the alarm business or in the practice of locksmithing services.

C.45:5A-38 Rules, regulations.

18. The board, after consultation with the committee, 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.

19. This act shall take effect on the 180th day following the date of enactment, except that section 2 shall take effect on the date regulations promulgated under this act have taken effect.

Approved January 8, 1998.

CHAPTER 306

AN ACT concerning lottery prizes and the repayment of student loans and supplementing Title 5 of the Revised Statutes.

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

C.5:9-13.10 Ongoing data exchange on student assistance.

1. The Director of the Division of the State Lottery in the Department of the Treasury and the Executive Director of the Office of Student Assistance in, but not of, the Department of the Treasury 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.

C.5:9-13.11 List of individuals in default of student loan.

2. The Executive Director of the Office of Student Assistance shall periodically supply the Office of Telecommunications and Information Systems with a list of those individuals in default of student loan repayments to the Office of Student Assistance.

C.5:9-13.12 Provision of list of lottery prize winners.

3. The Director of the Division of the State Lottery shall promptly provide the Office of Telecommunications and Information Systems with a prize winners list, which shall include the prize claimant's name, address and social security number and the amount of the pending payment.

C.5:9-13.13 Cross-checking of lottery list.

4. The Office of Telecommunications and Information Systems shall cross check the lottery list with the data supplied by the Executive Director of the Office of Student Assistance for a social security number match. If a match is made, the Office of Telecommunications and Information Systems shall notify the Office of Student Assistance.

C.5:9-13.14 Notification; withholding of lottery prize.

5. If a lottery prize claimant is on the list of individuals in default of a student loan as reported pursuant to section 2 of P.L.1997, c.306 (C.5:9-13.11), the Office of Student Assistance shall promptly notify the Department of the Treasury and the Division of the State Lottery of the claimant's name, address, social security number and the outstanding amount of the student loan. The Department of the Treasury shall withhold this amount from the pending lottery payment and transmit same to the Office of Student Assistance after withholding any appropriate amounts for State or federal income taxes or for such other withholdings as may be required under State or federal law . If the amount of the student loan outstanding is greater than the amount available from the lottery payment, the entire amount available shall be transmitted to the Office of Student Assistance.

C.5:9-13.15 Payment of remainder of prize to claimant.

6. Any of the claimant's lottery prize funds remaining after withholding pursuant to section 5 of P.L.1997, c.306 (C.5:9-13.14) shall be paid to the claimant in accordance with lottery procedures.

C.5:9-13.16 Rules, regulations, safeguards against disclosure, inappropriate use of information.

7. The State Treasurer, in consultation with the Office of Student Assistance, shall promulgate, 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 effectuate the purposes of this act including, but not limited to, regulations providing for prompt notice to any prize winner from whose award the Department of the Treasury seeks to withhold funds, of the amount to be withheld and the reason therefor and providing the prize winners with the opportunity for a hearing upon request prior to the disposition of any funds. For the purposes of this act, "prompt notice" shall mean notice within 14 days or less.

The State Treasurer shall also provide by regulation, safeguards against the disclosure or inappropriate use of any personally identifiable information regarding any person obtained pursuant to this act.

8. This act shall take effect on the 90th day after enactment.

Approved January 8, 1998.

CHAPTER 307

AN ACT concerning the use of certain toxic substances in packaging, and amending P.L.1991, c.520 (C.13:1E-99.44 et seq.).

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

1. Section 3 of P.L.1991, c.520 (C.13:1E-99.46) is amended to read as follows:

C.13:1E-99.46 Definitions.

3. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Distribution" means the practice of taking title to packages or packaging components for promotional purposes or resale.

"Distributor" means any person who distributes packaged products intended for retail sale in packages or packaging components, but shall not include any person involved solely in delivering packages or packaging components on behalf of third parties.

"Manufacturing" means the physical or chemical modification of a material to produce packaging or packaging components.

"Package" means a container specifically manufactured for the purposes of marketing, protecting or handling a product and shall include a unit package, an intermediate package and a shipping container as defined by the American Society for Testing and Materials in ASTM D996; "package" shall also mean and include such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

"Package manufacturer" means any person who manufactures packages or packaging components.

"Packaging component" means any individual assembled part of a package including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, label, dye, pigment, adhesive, stabilizer or any other additive; except that a "coating" shall not include a thin tin or zinc layer applied to base steel or sheet steel during manufacturing of the steel or package; except that tin-plated steel that meets ASTM specification A-623 shall be considered as a single package component, and electro-galvanized coated steel and hot dipped coated galvanized steel that meets the ASTM specification A-525 and A-879 shall be treated in the same manner as tin-plated steel.

"Product manufacturer" means any person who purchases packages or packaging components from a package manufacturer for the purposes of marketing, protecting or handling the contents of the package or packaging component, including a product intended for retail sale.

"Retailer" means any person who engages in the sale within the State of packaged products intended for retail sale in packages or packaging components to a consumer at retail for off-premises use or consumption.

2. Section 4 of P.L.1991, c.520 (C.13:1E-99.47) is amended to read as follows:

C.13:1E-99.47 Sale of certain packages, components, packaged products, restricted; terms defined.

4. a. On or after January 1, 1993, no person shall sell, offer for sale, or offer for promotional purposes in this State any package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives containing any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as a chemical element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

b. On or after January 1, 1993, no person shall sell, offer for sale, or offer for promotional purposes in this State any product contained in a package which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives containing any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as a chemical element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

c. The sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium present in any package or packaging component, which shall constitute an incidental presence, shall not exceed the following levels:

(1) Not more than 600 parts per million by weight (0.06%) after January 1, 1993;

(2) Not more than 250 parts per million by weight (0.025%) after January 1, 1994;

(3) Not more than 100 parts per million by weight (0.01%) after January 1, 1995.

As used in this section, "incidental presence" means the presence or a regulated metal as an unintended or undesired ingredient of a package or packaging component.

As used in this section, "intentionally introduced" means the deliberate use of a regulated heavy metal to provide a desired characteristic, appearance, or quality.

"Intentionally introduced" shall not include:

(1) Using a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of a regulated metal in the final package or packaging component is neither desired nor deliberate, if the final package or packaging component is in compliance with this act; or

(2) Using recycled materials as feed stock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of the regulated metals if the new package or packaging component is in compliance with this act.

3. Section 5 of P.L.1991, c.520 (C.13:1E-99.48) is amended to read as follows:

C.13:1E-99.48 Exemptions, criteria.

5. a. Any package manufacturer, product manufacturer or distributor may, in accordance with rules or regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), claim an exemption from the provisions of section 4 of this act for any package or packaging component meeting any of the following criteria:

(1) Those packages or packaging components labeled with a code indicating a date of manufacture prior to January 1, 1993; except that the labeling requirement may be waived by the department in those instances where it is not feasible or practical to label individual packages or packaging components provided that suitable alternative evidence of date of manufacture is furnished to the department;

(2) Those packages or packaging components used to contain alcoholic beverages, including liquor, wine, vermouth and sparkling wine, bottled prior to January 1, 1993;

(3) Those packages or packaging components which are glass containers with ceramic labeling used to contain pharmaceutical preparations; except that the exemption provided in this paragraph shall expire on January 1, 1995;

(4) Those packages or packaging components which are glass containers with ceramic labeling used to contain cosmetics; except that the exemption provided in this paragraph shall expire on January 1, 1995;

(5) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that the package manufacturers of such package or packaging component shall petition the department for an exemption and receive approval from the department based upon a satisfactory demonstration that the criterion is met; provided that an exemption under this paragraph shall be for a period of no more than two years, except that the package manufacturer may apply to the department for renewals of the exemption for periods of no more than two years;

(6) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing,

forming, printing or distribution process for the use of which there is no feasible or practical alternative, provided that the package manufacturers of such package or packaging component shall petition the department for an exemption and receive approval from the department based upon a satisfactory demonstration that the criterion is met; provided that an exemption under this paragraph shall be for a period of no more than two years, except that the package manufacturer may apply to the department for renewals of the exemption for periods of no more than two years;

(7) Those packages or packaging components that would not exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act but for the addition of recycled materials; except that the exemption provided in this paragraph shall expire on January 1, 2000;

(8) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain food or food products intended for human consumption and that may exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act due to the incidental presence of lead as a naturally occurring chemical element in the metal that is unrelated to the manufacturing process;

(9) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain paint, chemicals or other nonfood products, to which lead has been added in the manufacturing process for the purposes of forming, soldering or sealing the can, or that may exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act due to the incidental presence of lead as a naturally occurring chemical element in the metal that is unrelated to the manufacturing process;

(10) Those packages or packaging components that are reused, provided that the related product is regulated under federal or State health or safety requirements and that the transportation of the related product is regulated under federal or State transportation requirements, and the disposal of the related product is performed according to federal or State radioactive or hazardous waste disposal requirements; provided that an exemption under this paragraph shall expire on January 1, 2000;

(11) Those packages or packaging components having a controlled distribution and reuse, provided that the manufacturers or distributors of such package or packaging component shall petition the department for an exemption and receive approval from the department, based on satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater as compared to the same package manufactured in compliance with the contaminant levels; provided that an exemption under this paragraph shall expire on January 1, 2000.

The manufacturer shall submit with the petition a plan that shall include:

(a) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought;

(b) A method of regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to other persons are not discarded by those persons after use but are returned to the manufacturer or designee;

(c) A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service;

(d) A means of transforming returned entities, that are no longer reusable, into recycled materials for manufacturing or into manufacturing waste that are subject to existing federal or State laws or regulations governing manufacturing waste to ensure that these wastes do not enter the commercial or municipal waste stream; and

(e) A system of annually reporting to the commissioner changes to the system and changes in designees; or

(12) Those packages or packaging components that are glass or ceramic that have a vitrified decoration and when tested in accordance with the toxicity characteristic leaching procedure (TCLP) of the United States Environmental Protection Agency Test Method SW-846 does not exceed 1.0 ppm for cadmium and 5.0 ppm for lead; provided that an exemption under this paragraph shall expire on January 1, 2000.

The exemptions provided in paragraphs (8) and (9) shall expire on January 1, 1997, except that any exemption provided in paragraph (8) or (9) may be renewed by the department after this date for periods not to exceed two years. Any renewal granted by the department for the exemption provided in paragraph (8) or (9) shall be based on evidence furnished to the department that there is no feasible method to reduce the concentration levels of lead for the specified package or packaging component.

For the purposes of this subsection, a use for which there is "no feasible or practical alternative or substitute" means one in which the use of lead, cadmium, mercury or hexavalent chromium is essential to the protection, safe handling, or function of the contents of the package.

b. Any package manufacturer, product manufacturer or distributor claiming an exemption pursuant to subsection a. of this section shall maintain on file a written declaration of exemption for each specified package or packaging component for which an exemption is claimed. Copies of each declaration of exemption shall be furnished to the department upon its request and to members of the public in accordance with the provisions of section 14 of this act.

c. Any product contained in a package or packaging component for which an exemption is claimed may be sold by a retailer provided that the

declaration of exemption claimed is valid and in accordance with the criteria provided in subsection a. of this section, as may be verified by the department pursuant to section 9 of this act.

4. Section 13 of P.L.1991, c.520 (C.13:1E-99.56) is amended to read as follows:

C.13:1E-99.56 Review, report.

13. The department, in consultation with the Source Reduction Task Force of the Coalition of Northeastern Governors (CONEG), shall review the effectiveness of this act no later than 42 months after its effective date and shall provide to the Governor and the Legislature a written report based upon that review.

a. The report shall include:

(1) a recommendation whether to continue the exemptions provided in paragraphs (7), (8) and (9) of subsection a. of section 5 of this act; and

(2) a description of the nature of the substitute elements used in lieu of lead, cadmium, mercury or hexavalent chromium during the manufacturing or distribution of a package or packaging component.

b. The report may contain recommendations to include additional toxic substances contained in packages or packaging components on the list set forth in section 4 of this act in order to further reduce the toxicity of packaging waste.

Any recommendation to include an additional toxic substance on the list set forth in section 4 of this act shall include:

(1) a determination as to whether the continued use of the proposed substance presents or will present an unreasonable risk to health or the environment, which determination shall utilize a nationally recognized risk assessment protocol taking into account the magnitude and severity of the environmental harm against the benefits of the substance to product manufacturers and the general public;

(2) a determination as to the availability of a substitute element to be used in lieu of the proposed substance; and

(3) a description of other adverse effects which the addition of the proposed substance to the list set forth in section 4 of this act may have on product manufacturers or the general public.

5. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 308

AN ACT granting jurisdiction to park police to enforce laws throughout the State and amending R.S.40:37-155, R.S.40:37-203, P.L.1960, c.135 and P.L.1962, c.120.

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

1. Section 1 of P.L.1962, c.120 (C.40:37-95.41) is amended to read as follows:

C.40:37-95.41 Powers of park police.

1. The chief and officers of the park police may arrest on view and without warrant, and conduct before the municipal court of the municipality in which the arrest is made, or the municipal court of a neighboring municipality, any person found violating the rules and regulations enacted by the commission for the protection, preservation, regulation and control of the park, parkways, playgrounds and recreation places and all property therein, and in addition while on or off duty anywhere within the territorial limits of the State, shall have the same powers for the enforcement of the laws of this State and the apprehension of violators thereof as are conferred by law upon police officers or constables.

2. R.S.40:37-155 is amended to read as follows:

Powers of park police.

40:37-155. The members and officers of the park police may arrest on view and without warrant, and take before a court having local criminal jurisdictions of the municipality in which the arrest is made, or of a neighboring municipality, any person found violating the rules and regulations enacted by the commission for the protection, preservation, regulation and control of the parks and parkways, and all property and other things therein. Such members and officers while on or off duty anywhere within the territorial limits of the State, shall have the same powers for the enforcement of the laws of this State and the apprehension of violators thereof as are conferred by law upon police officers or constables.

3. R.S.40:37-203 is amended to read as follows:

Powers of park police.

40:37-203. The members and officers of the park police may arrest on view and without warrant, and conduct before the nearest police magistrate

of the municipality in which the arrest is made, or a police magistrate of a neighboring municipality, any persons found violating the rules and regulations enacted by the commission for the protection, preservation, regulation and control of the parks and parkways, and all property and other things therein, and in addition while on or off duty anywhere within the territorial limits of the State, shall have the same powers for the enforcement of the laws of this State and the apprehension of violators thereof as are conferred by law upon police officers or constables.

4. Section 2 of P.L.1960, c.135 (C.40:37-262) is amended to read as follows:

C.40:37-262 Powers of park police.

2. The members and officers of the park police may arrest on view and without warrant, and conduct before the municipal court of the municipality in which the arrest is made, or the municipal court of a neighboring municipality, any persons found violating the rules and regulations adopted by the board of chosen freeholders for the protection, preservation, regulation and control of the parks and parkways, and all property and other things therein, and in addition while on or off duty anywhere within the territorial limits of the State, shall have the same powers for the enforcement of the laws of this State and the apprehension of violators thereof as are conferred by law upon police officers or constables.

5. This act shall take effect six months after enactment.

Approved January 8, 1998.

CHAPTER 309

AN ACT concerning railroads and amending R.S.48:12-152 and P.L.1979, c.150.

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

1. R.S.48:12-152 is amended to read as follows:

Trespassing on property prohibited; recovery barred in certain cases.

48:12-152. a. No person other than those connected with or employed upon the railroad who are acting within the scope of their employment shall enter upon the right of way of any railroad or come into contact with any

equipment, machinery, wires or rolling stock of any railroad. This section shall not prohibit a passenger for hire from utilizing those parts of a railroad particularly intended for passenger use nor shall it prohibit a person from using a crossing established by the railroad.

b. No person shall recover from the company owning or operating the railroad or from any officer or employee of the railroad, any damages for death or injury to person or property as a result of contact with any equipment, machinery, wires or rolling stock of any railroad, if death or injury occurred while that person was:

(1) under the influence of alcohol as evidenced by a blood alcohol concentration of 0.10% or higher by weight of alcohol in the person's blood; or

(2) under the influence of drugs, other than drugs medically prescribed for use by that person and used in the manner prescribed; or

(3) engaging in conduct intended to result in personal bodily injury or death; or

(4) engaging in conduct proscribed by subsection a. of this section; or

(5) using the property of any railroad in a manner in which it was not intended to be used or in violation of posted regulations.

In the absence of proof to the contrary, any person injured while attempting to board or disembark from a moving train shall be presumed to have used the property in a manner in which it was not intended to be used.

This subsection shall apply notwithstanding the provisions of P.L.1973, c.146 (C.2A:15-5.1 et seq.).

c. This section shall not preclude recovery for injury or death of a person who was, at the time of the injury, less than 18 years of age.

2. Section 8 of P.L.1979, c.150 (C.27:25-8) is amended to read as follows:

C.27:25-8 Corporation not public utility; inapplicability of Title 48; fares and services; jurisdiction; notice and hearing on changes in rates.

8. a. The corporation or any subsidiary thereof shall not be considered a public utility as defined in R.S.48:2-13 and except with regard to subsection c. of this section, subsection b. of R.S.48:3-38, section 2 of P.L.1989, c.291 (C.27:25-15.1) and R.S.48:12-152 the provisions of Title 48 of the Revised Statutes shall not apply to the corporation or any subsidiary thereof.

b. The authority hereby given the corporation pursuant to section 6 of this act with respect to fares and service, shall be exercised without regard or reference to the jurisdiction vested in the Department of Transportation by R.S.48:2-21, 48:2-24 and 48:4-3. The Department of Transportation shall resume jurisdiction over service and fares upon the termination and

discontinuance of a contractual relationship between the corporation and a private or public entity relating to the provision of public transportation services operated under the authority of certificates of public convenience and necessity previously issued by the department or its predecessors; provided, however, that no private entity shall be required to restore any service discontinued or any fare changed during the existence of a contractual relationship with the corporation, unless the Department of Transportation shall determine, after notice and hearing, that the service or fare is required by public convenience and necessity.

c. Notwithstanding any other provisions of this act, all vehicles used by any public or private entity pursuant to contract authorized by this act, and all vehicles operated by the corporation directly, shall be subject to the jurisdiction of the Department of Transportation with respect to maintenance, specifications and safety to the same extent such jurisdiction is conferred upon the department by Title 48 of the Revised Statutes.

d. Before implementing any fare increase for any motorbus regular route or rail passenger services, or the substantial curtailment or abandonment of any such services, the corporation shall hold a public hearing in the area affected during evening hours. Notice of such hearing shall be given by the corporation at least 15 days prior to such hearing to the governing body of each county whose residents will be affected and to the clerk of each municipality in the county or counties whose residents will be affected; such notice shall also be posted at least 15 days prior to such hearing in prominent places on the railroad cars and buses serving the routes to be affected.

3. This act shall take effect immediately and shall apply to causes of action which accrue on or after the effective date of this act.

Approved January 8, 1998.

CHAPTER 310

AN ACT concerning security deposits on seasonal rentals and amending P.L.1967, c.265.

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

1. Section 1 of P.L.1967, c.265 (C.46:8-19) is amended to read as follows:

C.46:8-19 Security deposits; investment, deposit, disposition.

1. Whenever money or other form of security shall be deposited or advanced on a contract, lease or license agreement for the use or rental of real property as security for performance of the contract, lease or agreement or to be applied to payments upon such contract, lease or agreement when due, such money or other form of security, until repaid or so applied including the tenant's portion of the interest or earnings accumulated thereon as hereinafter provided, shall continue to be the property of the person making such deposit or advance and shall be held in trust by the person with whom such deposit or advance shall be made for the use in accordance with the terms of the contract, lease or agreement and shall not be mingled with the personal property or become an asset of the person receiving the same.

The person receiving money so deposited or advanced shall:

a. (1) Invest that money in shares of an insured money market fund established by an investment company based in this State and registered under the "Investment Company Act of 1940," 54 Stat. 789 (15 U.S.C. s.80a-1 et seq.) whose shares are registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. s.77a. et seq.) and the only investments of which fund are instruments maturing in one year or less, or (2) deposit that money in a State or federally chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing a variable rate of interest, which shall be established at least quarterly, which is similar to the average rate of interest on active interest-bearing money market transaction accounts paid by the bank or association under 12 C.F.R. Part 1204.108, or equal to similar accounts of an investment company described in paragraph (1) of this subsection, less an amount not to exceed 1% per annum of the amount so invested or deposited for the costs of servicing and processing the account.

This subsection shall not apply to persons receiving money for less than 10 rental units except where required by the Commissioner of Banking and Insurance by rule or regulation. The commissioner shall apply the provisions of this subsection to some or all persons receiving money for less than 10 rental units where the commissioner finds that it is practicable to deposit or invest the money received with an investment company or State or federally chartered bank, savings bank or savings and loan association in accordance with this subsection. Except as expressly provided herein, nothing in this subsection shall affect or modify the rights or obligations of persons receiving money for rental premises or units, tenants, licensees or contractees under any other law.

b. Persons not required to invest or deposit money in accordance with subsection a. of this section shall deposit such money in a State or federally

chartered bank, savings bank or savings and loan association in this State insured by an agency of the federal government in an account bearing interest at the rate currently paid by such institutions and associations on time or savings deposits.

The person investing the security deposit pursuant to subsection a. or b. of this section shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of security money is made, and the amount of such deposit or investment.

All of the money so deposited or advanced may be deposited or invested by the person receiving the same in one interest-bearing or dividend yielding account as long as he complies with all the other requirements of this act.

The person receiving money so deposited or so advanced shall be entitled to receive as administrative expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, less the amount of any service fee charged by an investment company, a State or federally chartered bank, savings bank or savings and loan association for money deposited pursuant to this section, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest or earnings paid thereon by the investment company, State or federally chartered bank, savings bank or savings and loan association, hereinafter referred to as tenant's portion, shall belong to the person making the deposit or advance and shall be permitted to compound to the benefit of the tenant, or be paid to the tenant in cash, or be credited toward the payment of rent due on the renewal or anniversary of said tenant's lease.

In the event the person receiving a security deposit fails to invest or deposit the security money in the manner required under this section or notify the tenant of the name and address of the investment company, State or federally chartered bank, savings bank or savings and loan association in which the deposit or investment of such security is made, and the amount thereof, within 30 days after receipt of same from the tenant, or within 30 days after the effective date of this 1990 amendatory act, whichever occurs later, the tenant may give written notice to the person receiving the same that such security money be applied on account of rent payment or payments due or to become due from the tenant, and thereafter the tenant shall be without obligation to make any further security deposit and the person receiving the money so deposited shall not be entitled to make further demand for a security deposit.

The provisions of this section requiring that the security advanced be deposited or invested in a money market fund, or in an interest bearing

account in a State or federally chartered bank, savings bank or savings and loan association shall not apply to any security advanced on a contract, lease or license agreement for the seasonal use or rental of real property. For purposes of this paragraph "seasonal use or rental" means use or rental for a term of not more than 125 consecutive days for residential purposes by a person having a permanent place of residence elsewhere. "Seasonal use or rental" does not mean use or rental of living quarters for seasonal, temporary or migrant farm workers in connection with any work or place where work is being performed. The landlord shall have the burden of proving that the use or rental of the residential property is seasonal.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 311

AN ACT concerning multiple dwellings and amending P.L.1967, c.76.

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

1. Section 3 of P.L.1967, c.76 (C.55:13A-3) is amended to read as follows:

C.55:13A-3 Definitions.

3. The following terms whenever used or referred to in this act shall have the following respective meanings for the purposes of this act, except in those instances where the context clearly indicates otherwise:

(a) The term "act" shall mean this act, any amendments or supplements thereto, and any rules and regulations promulgated thereunder.

(b) The term "accessory building" shall mean any building which is used in conjunction with the main building of a hotel, whether separate therefrom or adjoining thereto.

(c) The term "board" shall mean the Hotel and Multiple Dwelling Health and Safety Board created by subsection (a) of section 5 of this act in the Division of Housing and Development of the Department of Community Affairs.

(d) The term "bureau" shall mean the Bureau of Housing Inspection in the Department of Community Affairs.

(e) (Deleted by amendment.)

(f) The term "commissioner" shall mean the Commissioner of the Department of Community Affairs.

(g) The term "department" shall mean the Department of Community Affairs.

(h) The term "unit of dwelling space" or the term "dwelling unit" shall mean any room or rooms, or suite or apartment thereof, whether furnished or unfurnished, which is occupied, or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons, including but not limited to the owner thereof, or any of his servants, agents or employees, and shall include all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy thereof.

(i) The term "protective equipment" shall mean any equipment, device, system or apparatus, whether manual, mechanical, electrical or otherwise, permitted or required by the commissioner to be constructed or installed in any hotel or multiple dwelling for the protection of the occupants or intended occupants thereof, or of the public generally.

(j) The term "hotel" shall mean any building, including but not limited to any related structure, accessory building, and land appurtenant thereto, and any part thereof, which contains 10 or more units of dwelling space or has sleeping facilities for 25 or more persons and is kept, used, maintained, advertised as, or held out to be, a place where sleeping or dwelling accommodations are available to transient or permanent guests.

This definition shall also mean and include any hotel, motor hotel, motel, or established guesthouse, which is commonly regarded as a hotel, motor hotel, motel, or established guesthouse, as the case may be, in the community in which it is located; provided, that this definition shall not be construed to include any building or structure defined as a multiple dwelling in this act, registered as a multiple dwelling with the Commissioner of Community Affairs as hereinafter provided, and occupied or intended to be occupied as such nor shall this definition be construed to include a rooming house or a boarding house as defined in the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) or, except as otherwise set forth in P.L.1987, c.270 (C.55:13A-7.5, 55:13A-7.6, 55:13A-12.1, 55:13A-13.2), any retreat lodging facility, as defined in this section.

(k) The term "multiple dwelling" shall mean any building or structure of one or more stories and any land appurtenant thereto, and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to be occupied by three or more persons who live independently of each other. This definition shall also mean any group of ten or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two units of dwelling space are occupied or

intended to be occupied by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. This definition shall not include:

(1) any building or structure defined as a hotel in this act, or registered as a hotel with the Commissioner of Community Affairs as hereinafter provided, or occupied or intended to be occupied exclusively as such;

(2) a building section containing not more than four dwelling units, provided the building has at least two exterior walls unattached to any adjoining building section and the dwelling units are separated exclusively by walls of such fire-resistant rating as comports with the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) at the time of their construction or with a rating as shall be established by the bureau in conformity with recognized standards and the building is held under a condominium or cooperative form of ownership, or by a mutual housing corporation, and all the occupied dwelling units in that building are occupied by their owners, if a condominium, or by shareholders in the cooperative or mutual housing corporation; or

(3) any building of three stories or less, owned or controlled by a nonprofit corporation organized under any law of this State for the primary purpose to provide for its shareholders or members housing in a retirement community as same is defined under the provisions of the "Retirement Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.), provided that the corporation meets the requirements of section 2 of P.L.1983, c.154 (C.55:13A-13.1).

(l) The term "owner" shall mean the person who owns, purports to own, or exercises control of any hotel or multiple dwelling.

(m) The term "person" shall mean any individual, corporation, association, or other entity, as defined in R.S.1:1-2.

(n) The term "continuing violation" shall mean any violation of this act or any regulation promulgated thereunder, where notice is served within two years of the date of service of a previous notice and where violation, premise and person cited in both notices are substantially identical.

(o) The term "project" shall mean a group of buildings subject to the provisions of this act, which are or are represented to be under common or substantially common ownership and which stand on a single parcel of land or parcels of land which are contiguous and which group of buildings is named, designated or advertised as a common entity. The contiguity of such parcels shall not be adversely affected by public rights-of-way incidental to such buildings.

(p) The term "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 Title VI, s.607 of the "Lanham Public

War Housing Act," 54 Stat. 1125, 42 U.S.C. s.1501 et seq., as amended, which acquired a National Defense Housing Project pursuant to said act.

(q) "Condominium" means the form of ownership so defined in the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

(r) "Cooperative" means a housing corporation or association which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by said corporation or association, or to lease or purchase a dwelling constructed or to be constructed by said corporation or association.

(s) "Retreat lodging facility" means a building or structure, including but not limited to any related structure, accessory building, and land appurtenant thereto, and any part thereof, owned by a nonprofit corporation or association which has tax-exempt charitable status under the federal Internal Revenue Code and which has sleeping facilities used exclusively on a transient basis by persons participating in programs of a religious, cultural or educational nature, conducted under the sole auspices of one or more corporations or associations having tax-exempt charitable status under the federal Internal Revenue Code, which are made available without any mandatory charge to such participants.

2. This act shall take effect immediately, and apply to inspections occurring after that date

Approved January 8, 1998.

CHAPTER 312

AN ACT concerning the delegates to the annual State agricultural convention, and amending R.S.4:1-6.

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

1. R.S.4:1-6 is amended to read as follows:

Agricultural convention delegates.

4:1-6. Each county board of agriculture shall be entitled to be represented in the annual convention by two delegates.

Each of the following organizations shall be entitled to be represented in the annual convention by one delegate: American Cranberry Growers' Association, Board of Managers of the New Jersey Agricultural Experiment

Station, Cook College of Rutgers, The State University, The Cooperative Marketing Associations in New Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden State Dairy Goat Association, Inc., Garden State Milk Council, Garden State Service Cooperative Association, Inc., Horse Park of New Jersey at Store Tavern Inc., Morgan Horse Association of New Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural Society, Inc., New Jersey Apple Institute, Inc., New Jersey Aquaculture Association, New Jersey Association of Agricultural Fairs, New Jersey Beekeepers' Association, Inc., New Jersey Christmas Tree Growers' Association, New Jersey Commercial Fisherman's Association, New Jersey Farmers Direct Marketing Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA Alumni Association, Grain and Forage Producers' Association of New Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New Jersey Hereford Association, New Jersey Holstein-Friesian Association, Inc., New Jersey Horse Council, New Jersey Livestock Cooperative Association, Inc., New Jersey Nursery and Landscape Association, New Jersey Nursery and Landscape Association -- Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach Promotion Council, Inc., New Jersey Plant and Flower Growers Association, Inc., New Jersey Pony Breeders and Owners, Inc., New Jersey Quarter Horse Association, New Jersey Sheep and Wool Cooperative Association, Inc., New Jersey State Florists' Association, Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New Jersey State Horticultural Society, Inc., New Jersey State Potato Association, Inc., New Jersey State Poultry Association, Inc., New Jersey State Sweet Potato Industry Association, Inc., New Jersey Turkey Association, New Jersey Veterinary Medical Association, New Jersey Vocational Agriculture Teachers Association, each Pomona Grange, Patrons of Husbandry, Standardbred Breeders and Owners Association of New Jersey, Inc., Thoroughbred Breeders' Association of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey Flower Growers Association, Inc., and the Vegetable Growers Association of New Jersey, Inc.

The State Board of Agriculture may designate additional organizations that shall be entitled to be represented by one delegate each at the annual convention.

Prior to the time fixed for the holding of the annual convention each of the organizations entitled to representation shall choose from its members the authorized number of delegates and certify to the convention their qualifications as such. The credentials shall be filed with the proper convention officer or committee, and upon the acceptance thereof by the convention such persons shall have all the rights and powers of delegates.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 313

AN ACT concerning the operation of certain commercial vehicles and amending R.S.39:3-20.

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

1. R.S.39:3-20 is amended to read as follows:

Commercial motor vehicle registrations; fees.

39:3-20. For the purpose of this section, gross weight means the weight of the vehicle or combination of vehicles, including load or contents.

a. The director is authorized to issue registrations for commercial motor vehicles other than omnibuses or motor-drawn vehicles upon application therefor and payment of a fee based on the gross weight of the vehicle, including the gross weight of all vehicles in any combination of vehicles of which the commercial motor vehicle is the drawing vehicle. The gross weight of a disabled commercial vehicle or combination of disabled commercial vehicles being removed from a highway shall not be included in the calculation of the registration fee for the drawing vehicle.

Except as otherwise provided in this subsection, every registration for a commercial motor vehicle other than an omnibus or motor-drawn vehicle shall expire and the certificate thereof shall become void on the last day of the eleventh calendar month following the month in which the certificate was issued; provided, however, that the director may require registrations which shall expire, and issue certificates thereof which shall become void, on a date fixed by the director, which shall not be sooner than three months or later than 26 months after the date of issuance of such certificates, and the fees for such registrations or registration applications, including any other fees or charges collected in connection with the registration fee, shall be fixed by the director in amounts proportionately less or greater than the fees established by law. The director may fix the expiration date for registration certificates at a date other than 11 months if the director determines that such change is necessary, appropriate or convenient in order to aid in implementing the vehicle inspection requirements of chapter 8 of Title 39 or for other good cause. The minimum registration fee shall be as follows:

For vehicles not in excess of 5,000 pounds, $53.50.

For vehicles in excess of 5,000 pounds and not in excess of 18,000 pounds, $53.50 plus $11.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

For vehicles in excess of 18,000 pounds and not in excess of 50,000 pounds, $53.50 plus $12.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

For vehicles in excess of 50,000 pounds, $53.50 plus $13.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

b. The director is also authorized to issue registrations for commercial motor vehicles having three or more axles and a gross weight over 40,000 pounds but not exceeding 70,000 pounds, upon application therefor and proof to the satisfaction of the director that the applicant is actually engaged in construction work or in the business of supplying material, transporting material, or using such registered vehicle for construction work.

Except as otherwise provided in this subsection, every registration for these commercial motor vehicles shall expire and the certificate thereof shall become void on the last day of the eleventh calendar month following the month in which the certificate was issued; provided, however, that the director may require registrations which shall expire, and issue certificates thereof which shall become void on a date fixed by the director, which shall not be sooner than three months or later than 26 months after the date of issuance of such certificates, and the fees for such registrations or registration applications, including any other fees or charges collected in connection with the registration fee, shall be fixed by the director in amounts proportionately less or greater than the fees established by law. The director may fix the expiration date for registration certificates at a date other than 11 months if the director determines that such change is necessary, appropriate or convenient in order to aid in implementing the vehicle inspection requirements of chapter 8 of Title 39 or for other good cause.

The registration fee shall be $22.50 for each 1,000 pounds or portion thereof.

For purposes of calculating this fee, weight means the gross weight, including the gross weight of all vehicles in any combination of which such commercial motor vehicle is the drawing vehicle.

Such commercial motor vehicle shall be operated in compliance with the speed limitations of Title 39 of the Revised Statutes and shall not be operated at a speed greater than 45 miles per hour when one or more of its axles has a load which exceeds the limitations prescribed in R.S.39:3-84.

c. The director is also authorized to issue registrations for each of the following solid waste vehicles: two-axle vehicles having a gross weight not exceeding 42,000 pounds; tandem three-axle and four-axle vehicles having

a gross weight not exceeding 60,000 pounds; four-axle tractor-trailer combination vehicles having a gross weight not exceeding 60,000 pounds. Registration is based upon application to the director and proof to his satisfaction that the applicant is actually engaged in the performance of solid waste disposal or collection functions and holds a certificate of convenience and necessity therefor issued by the Department of Environmental Protection.

Except as otherwise provided in this subsection, every registration for a solid waste vehicle shall expire and the certificate thereof shall become void on the last day of the eleventh calendar month following the month in which the certificate was issued.

The registration fee shall be $50 plus $11.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds.

d. The director is also authorized to issue registrations for commercial motor-drawn vehicles upon application therefor. The registration year for commercial motor-drawn vehicles shall be April 1 to the following March 31 and the fee therefor shall be $18 for each such vehicle.

At the discretion of the director, an applicant for registration for a commercial motor-drawn vehicle may be provided the option of registering such vehicle for a period of four years. In the event that the applicant for registration exercises the four-year option, a fee of $64 for each such vehicle shall be paid to the director in advance.

If any commercial motor-drawn vehicle registered for a four-year period is sold or withdrawn from use on the highways, the director may, upon surrender of the vehicle registration and plate, refund $16 for each full year of unused prepaid registration.

e. It shall be unlawful for any vehicle or combination of vehicles registered under this act, having a gross weight, including load or contents, in excess of the gross weight provided on the registration certificate to be operated on the highways of this State.

The owner, lessee, bailee or any one of the aforesaid of a vehicle or combination of vehicles, including load or contents, found or operated on any public road, street or highway or on any public or quasi-public property in this State with a gross weight of that vehicle or combination of vehicles, including load or contents, in excess of the weight limitation permitted by the certificate of registration for the vehicle or combination of vehicles, pursuant to the provisions of this section, shall be assessed a penalty of $500 plus an amount equal to $100 for each 1,000 pounds or fractional portion of 1,000 pounds of weight in excess of the weight limitation permitted by the certificate of registration for that vehicle or combination of vehicles. A vehicle or combination of vehicles for which there is no valid certificate of registration is deemed to have been registered for zero pounds for the

purposes of the enforcement of this act, in addition to any other violation of this Title, but is not deemed to be lawfully or validly registered pursuant to the provisions of this Title.

This section shall not be construed to supersede or repeal the provisions of section 39:3-84, 39:4-75, or 39:4-76 of this Title.

f. Of the registration fees collected by the director pursuant to this section for vehicles with gross vehicle weights in excess of 5,000 pounds, an amount equal to $3 per 1,000 pounds or portion thereof in excess of 5,000 pounds for each registration shall be forwarded to the State Treasurer for deposit in the Commercial Vehicle Enforcement Fund established pursuant to section 17 of this act (C.39:8-75). Moneys in the fund shall be used by the Department of Law and Public Safety and the Department of Transportation for enforcement of laws and regulations governing commercial motor vehicles.

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

Approved January 8, 1998.

CHAPTER 314

AN ACT concerning the testing of drinking water and supplementing P.L.1977, c.224 (C.58:12A-1 et seq.).

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

C.58:12A-8.1 Annual notification to customers of results of water testing.

1. Any supplier of water required to test the water supplied from a public water system pursuant to federal or State law shall annually notify in writing by mail each of the customers that receive water from the supplier of the results of the required water testing. The document reporting the results of the tests shall also include a list of contaminants found in the water and acceptable levels of these contaminants.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 315

AN ACT concerning the Community Financial Services Advisory Board and amending P.L.1991, c.294.

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

1. Section 3 of P.L.1991, c.294 (C.17:16Q-3) is amended to read as follows:

C.17:16Q-3 Community Financial Services Advisory Board.

3. There is created in the Department of Banking and Insurance a Community Financial Services Advisory Board. The board shall consist of the commissioner or his designee, who shall be ex officio the chair of the board, the Commissioner of Community Affairs or his designee, who shall be ex officio the vice-chair of the board, the Commissioner of Commerce and Economic Development or his designee, who shall serve ex officio, and 11 members to be appointed by the Governor with the advice and consent of the Senate for a term of three years, except that of the 11 members initially appointed by the Governor, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Each member shall hold office for the term of appointment and until his successor is appointed and qualified. A member is eligible to be reappointed to the board. A member appointed to fill a vacancy occurring in the membership of the board for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. All vacancies shall be filled in the same manner as the original appointment. Any appointed member of the board may be removed from office by the Governor, for cause, after a hearing and may be suspended by the Governor pending the completion of the hearing. Members of the board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members. Action may be taken and motions and resolutions may be adopted by the board at a board meeting by an affirmative vote of not less than eight members. Of the 11 appointed members, five shall each have had, at the time of appointment, not less than five years of practical experience as an active executive officer in a depository institution located in the State of New Jersey; and six shall be public members who are not salaried officers, directors or employees of any depository institution, at least four of whom shall be selected from nonprofit organizations which have had experience in developing low and moderate income housing programs, assisting low and moderate income

consumers in securing credit from depository institutions in this State, or developing programs to educate consumers regarding the credit and lending practices of depository institutions in this State. At no time shall there be more than one representative on the board from any one depository institution or group of depository institutions which form a holding company. Of the five members specified to have had practical executive experience, at least three shall have had responsibility for a depository institution's community reinvestment activities and, at least one each shall be appointed from the following groups: savings banks; banks located in the Second Federal Reserve District; banks located in the Third Federal Reserve District; and savings and loan associations.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 316

AN ACT concerning the designation of certain birds as agricultural livestock and supplementing Title 4 of the Revised Statutes.

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

C.4:2-17 Ostrich, emu, rhea designated agricultured livestock.

1. Notwithstanding any law, rule or regulation to the contrary, the ostrich, emu, and rhea, shall be designated as agricultural livestock and shall be subject to the laws, rules and regulations governing the importation, care and breeding of that type of animal in the State. Nothing in this section or in any other law, rule or regulation, including the "Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.) shall be construed to classify the ostrich, emu, and rhea as exotic animals or wildlife.

2. The Secretary of Agriculture may 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 act.

3. This act shall take effect on the 60th day following enactment.

Approved January 8, 1998.

CHAPTER 317

AN ACT concerning municipal licenses and amending R.S.40:52-1.

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 purposes wherein the lease is for a term less than 175 consecutive days. No ordinance adopted pursuant to this subsection shall apply to any lease or occupancy which results from a tenant holding over at the expiration or early termination of a lease with an original term in excess of 175 consecutive days, regardless of whether the holdover is month-to-month or for some other term of less than 175 consecutive days.

n. The rental of real property for a term less than 175 consecutive days for residential purposes by a person having a permanent place of residence elsewhere.

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. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 318

AN ACT providing for the repayment of certain temporary disability insurance benefit overpayments and amending and supplementing P.L.1948, c.110.

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

1. Section 31 of P.L.1948, c.110 (C.43:21-55) is amended to read as follows:

C.43:21-55 Penalties.

31. Penalties. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, and each such false statement or representation or failure to disclose a material fact

shall constitute a separate offense, to obtain or increase any benefit under the State plan or an approved private plan, or for a disability during unemployment, either for himself or for any other person, shall be liable for a fine of twenty dollars ($20.00) to be paid to the division. Upon refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey. If in any case liability for the payment of a fine as aforesaid shall be determined, any person who shall have received any benefits hereunder by reason of the making of such false statements or representations or failure to disclose a material fact, shall not be entitled to any benefits under this act for any disability occurring prior to the time he shall have discharged his liability hereunder to pay such fine.

(b) Any employer or any officer or agent of any employer or any other person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to prevent or reduce the benefits to any person entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employer under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be liable for a fine of twenty dollars ($20.00) to be paid to the division. Upon refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey.

(c) Any person who shall willfully violate any provision hereof or any rule or regulation made hereunder, for which a fine is neither prescribed herein nor provided by any other applicable statute, shall be liable to a fine of fifty dollars ($50.00) to be paid to the division. Upon the refusal to pay such fine, the same shall be recovered in a civil action by the division in the name of the State of New Jersey.

(d) Any person, employing unit, employer or entity violating any of the provisions of the above subsections with intent to defraud the division shall in addition to the penalties hereinbefore described, be liable for each offense upon conviction before the Superior Court or any municipal court for a fine not to exceed two hundred fifty dollars ($250.00) or by imprisonment for a term not to exceed ninety days, or both, at the discretion of the court. The fine upon conviction shall be payable to the State disability benefits fund of the division. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

C.43:21-55.1 Liability for repayment of disability benefits overpayments.

2. (a) If it is determined by the division that an individual for any reason has received, under the State plan, an approved private plan or for a

disability during unemployment, any sum of disability benefits to which the individual was not entitled, the individual shall, except as provided in subsection (b) of this section, be liable to repay the sum in full. Except as provided in subsection (b) of this section, the sum that the individual is liable to repay shall be deducted from future benefits payable to the individual under this act (C.43:21-25 et seq.) or subsection (f) of R.S.43:21-4, or shall be repaid by the individual to the division, the employer or the insurer, and that sum shall be collectible in the manner provided for by law, including, but not limited to, the filing of a certificate of debt with the Clerk of the Superior Court of New Jersey; except that no individual who does not knowingly misrepresent or withhold any material fact to obtain benefits shall be liable for any repayments or deductions against future benefits unless notified before four years have elapsed from the time the benefits in question were paid. The division shall promptly notify the individual by mail of the determination and the reasons for the determination. Unless the individual files an appeal of the determination within 20 calendar days following the receipt of the notice, or, within 24 days after the notice was mailed to the individual's last known address, the determination shall be final.

(b) If the individual received the overpayment of benefits because of error made by the division, the employer or the physician, and if the individual did not knowingly misrepresent or withhold any material fact to obtain the benefits, the following limits shall apply:

(1) The amount withheld from any subsequent benefit check shall be an amount not greater than 50%f the amount of the check; and

(2) All repayments of the overpayments by the individual or the estate of the individual shall be waived if the individual is deceased or permanently disabled.

Any demand for repayment from an individual pursuant to this subsection shall include an explanation of the provisions of this subsection.

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 319

AN ACT concerning shoplifting and amending N.J.S.2C:20-11.

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

1. N.J.S.2C:20-11 is amended to read as follows:

Shoplifting.

2C:20-11. Shoplifting.

a. Definitions. The following definitions apply to this section:

(1) "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store;

(2) "Store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale;

(3) "Merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof;

(4) "Merchant" means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or proprietor;

(5) "Person" means any individual or individuals, including an agent, servant or employee of a merchant where the facts of the situation so require;

(6) "Conceal" means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation;

(7) "Full retail value" means the merchant's stated or advertised price of the merchandise;

(8) "Premises of a store or retail mercantile establishment" means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment;

(9) "Under-ring" means to cause the cash register or other sale recording device to reflect less than the full retail value of the merchandise;

(10) "Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

b. Shoplifting. Shoplifting shall consist of any one or more of the following acts:

(1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establish-

ment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

(2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

(3) For any person purposely to alter, transfer or remove any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the value thereof.

(4) For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof.

(5) For any person purposely to under-ring with the intention of depriving the merchant of the full retail value thereof.

(6) For any person purposely to remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

c. Gradation. Any person found guilty of an offense under subsection b. is a disorderly person, except that notwithstanding the fine provided under 2C:43-3, such person shall be sentenced to pay a fine of not more than $500.00 for a first offense; to pay a fine of not less than $100.00, nor more than $500.00 for a second offense and to pay a fine of not less than $250.00, nor more than $1,000.00 for a third and any subsequent offense. Additionally, notwithstanding the term of imprisonment provided in 2C:43-8, any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of not less than 30 days.

d. Presumptions. Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value

thereof, and the finding of such merchandise concealed upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

e. A law enforcement officer, or a special officer, or a merchant, who has probable cause for believing that a person has willfully concealed unpurchased merchandise and that he can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section.

A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

f. Any person who possesses or uses any antishoplifting or inventory control device countermeasure within any store or other retail mercantile establishment is guilty of a disorderly persons offense.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 320

AN ACT concerning the regulation of gypsies and amending R.S.40:52-1.

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. (Deleted by amendment, P.L.1997, c.320.)

l. (Deleted by amendment, P.L.1984, c.205.)

m. The rental of real property for commercial purposes wherein the lease is for a term less than 175 consecutive days. No ordinance adopted pursuant to this subsection shall apply to any lease or occupancy which results from a tenant holding over at the expiration or early termination of a lease with an original term in excess of 175 consecutive days, regardless of whether the holdover is month-to-month or for some other term of less than 175 consecutive days; and

n. The rental of real property for a term less than 175 consecutive days for residential purposes by a person having a permanent place of residence elsewhere.

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. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 321

AN ACT concerning zoning and amending P.L.1978, c.159.

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

1. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to read as follows:

C.40:55D-66.1 Comunity residences, shelters; permitted use in residential districts.

1. Community residences for the developmentally disabled, community shelters for victims of domestic violence, community residences for the terminally ill and community residences for persons with head injuries shall be a permitted use in all residential districts of a municipality, and the requirements therefor shall be the same as for single family dwelling units located within such districts.

2. Section 2 of P.L.1978, c.159 (C.40:55D-66.2) is amended to read as follows:

C.40:55D-66.2 Definitions.

2. As used in this act:

a. "Community residence for the developmentally disabled" means any community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.). In the case of such a community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by regulation of the Division of Mental Health and Hospitals of the Department of Human Services. As used in this act, "developmentally disabled person" means a person who is developmentally disabled as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), and "mentally ill person" means a person who is afflicted with a mental illness as defined in R.S.30:4-23, but shall not include a person who has been committed after having been found not guilty of a criminal offense by reason of insanity or having been found unfit to be tried on a criminal charge.

b. "Community shelter for victims of domestic violence" means any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulation of the Department of Human Services pursuant to P.L.1979, c.337 (C.30:14-1 et seq.), providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

c. "Community residence for persons with head injuries" means a community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter and personal guidance, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.).

d. "Person with head injury" means a person who has sustained an injury, illness or traumatic changes to the skull, the brain contents or its coverings which results in a temporary or permanent physiobiological

decrease of mental, cognitive, behavioral, social or physical functioning which causes partial or total disability.

e. "Community residence for the terminally ill" means any community residential facility operated as a hospice program providing food, shelter, personal guidance and health care services, under such supervision as required, to not more than 15 terminally ill persons.

3. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 322

AN ACT concerning fraternal benefit societies, amending P.L.1987, c.293, supplementing Title 17 of the Revised Statutes and repealing P.L.1959, c.167.

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

C.17:44B-1 Definitions relative to fraternal benefit societies.

1. As used in this act:

"Benefit contract" means an agreement for provision of benefits authorized by section 16 of this act, as that agreement is described in subsection a. of section 18 of this act.

"Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

"Certificate" means the document issued as written evidence of a benefit contract.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Laws" means the society's articles of incorporation, constitution and bylaws, however designated.

"Lodge" means a subordinate member unit of the society, known as a camp, court, council, branch or by any other designation.

"Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

"Rules" means all rules, regulations or resolutions adopted by the assembly or board of directors which are intended to have general application to the members of the society.

"Society" means fraternal benefit society, unless otherwise indicated.

C.17:44B-2 Fraternal benefit society.

2. Any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of section 35 of this act, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this act, is declared to be a fraternal benefit society.

C.17:44B-3 Lodge system.

3. a. A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated or admitted in accordance with its laws, rules and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

b. A society may, at its option, organize and operate lodges for minors under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of children, nor shall they have a voice or vote in the management of the society.

C.17:44B-4 Representative form of government for society.

4. A society has a representative form of government when:

a. It has a supreme governing body constituted in one of the following ways:

(1) Assembly. The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than 2/3 of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(2) Direct Election. The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's

laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

b. The officers of the society are elected either by the assembly or board of directors;

c. Only benefit members are eligible for election to the assembly or board of directors; and

d. Each voting member shall have one vote; no vote may be cast by proxy.

C.17:44B-5 Purposes of society.

5. a. A society shall operate for the benefit of members and their beneficiaries by:

(1) providing benefits as specified in section 16 of this act; and

(2) operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal or religious purposes for the benefit of its members, which may also be extended to others.

These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

b. Every society shall have the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It shall have the power to change, alter, add to or amend those laws and rules and shall have those other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

C.17:44B-6 Specification of eligibility, admission, rights, etc.

6. a. A society shall specify in its laws or rules:

(1) eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of minors, the minimum age for adult membership shall be set at not less than age 15 and not greater than age 21;

(2) the process for admission to membership for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

b. A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

c. Membership rights in the society are personal to the member and are not assignable.

C.17:44B-7 Location of principal office; reports.

7. a. The principal office of any domestic society shall be located in this State. The meetings of its supreme governing body may be held in any state, district, province or territory wherein such society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at those meetings shall be as valid in all respects as if those meetings were held in this State. The minutes of the proceedings of the assembly or board of directors shall be in the English language.

b. (1) A society may provide in its laws for an official publication in which any notice, report or statement required by law to be given to members, including notice of election, may be published. These required reports, notices and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(2) Not later than June 1 of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society disclosed in the statement shall be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the society's official publication.

c. A society may provide in its laws or rules for grievance or complaint procedures for members.

C.17:44B-8 Immunity of officers, members from personal liability.

8. a. The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

b. Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, that person in connection with or arising out of any action, suit or proceeding, whether civil, criminal, administrative or investigative, or threat thereof, in which the person may be involved by reason of the fact that he is or was a commissioner, officer, employee or agent of the society or of any firm, corporation or organization which he served in any capacity at the request of the society. A person shall not be indemnified or reimbursed: (1) in relation to any matter in an action, suit or proceeding which he is finally adjudged to be or have been guilty of breach of a duty as a director, officer, employee or agent of the society or (2) in relation to any matter in an action, suit or proceeding, or threat thereof, which results in a compromise settlement; unless in either case the person acted in good faith for a purpose

the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful. The determination whether the conduct of that person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in paragraph (1) or (2) of this subsection may only be made by the assembly or board of directors by a majority vote of a quorum consisting of persons who were not parties to that action, suit or proceeding or by a court of competent jurisdiction. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to that person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The right of indemnification and reimbursement shall not be exclusive of other rights to which that person may be entitled as a matter of law and shall inure to the benefit of his heirs, executors and administrators.

c. A society shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the society, or who is or was serving at the request of the society as a director, officer, employee or agent of any other firm, corporation or organization against any liability asserted against that person and incurred by him in that capacity or arising out of his status in that capacity whether or not the society would have the power to indemnify the person against that liability under this section.

d. No director, officer, employee, member or volunteer of a society serving without compensation, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of that person for the society unless the act or omission involved willful or wanton misconduct.

C.17:44B-9 Waiver of society's laws by subordinates prohibited.

9. The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws of the society. This provision shall be binding on the society and every member and beneficiary of a member.

C.17:44B-10 Formation of domestic society.

10. A domestic society organized on or after the effective date of this act shall be formed as follows:

a. Seven or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society, may make, sign and acknowledge, before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(1) the proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(2) the purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Those purposes shall not include more liberal powers than are granted by this act;

(3) the names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors and other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all the officers are elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

b. The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require further information that he deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than $300,000, as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this act and all provisions of the law have been complied with, the commissioner shall certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members pursuant to this act.

c. No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after a further period, not exceeding one year, authorized by the commissioner upon cause shown, unless the 500 applicants required pursuant to paragraph (4) of subsection d. of this section have been secured and the organization has been completed pursuant to this section. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business pursuant to this section.

d. Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount of premium collected. No society shall incur any liability other than for the return of an advance

premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(1) actual bona fide applications for benefits have been secured on 500 applicants and any necessary evidence of insurability has been furnished to and approved by the society;

(2) at least 10 subordinate lodges have been established into which the 500 applicants have been admitted;

(3) there has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

(4) it shall have been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that 500 applicants have each paid in cash at least one regular monthly premium, which premiums in the aggregate shall amount to at least $150,000 for each kind of business specified in N.J.S. 17B:17-3, N.J.S. 17B:17-4 or N.J.S. 17B:17-5 that the society is authorized to transact. The advance premiums shall be held in trust during the period of organization and if the society does not qualify for a certificate of authority within one year, the premiums shall be returned to the applicants.

e. The commissioner may examine, and require further information of, a society as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the commissioner shall issue to the society a certificate of authority to that effect and the society is authorized to transact business pursuant to the provisions of this act. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of the certificate of authority to be made. A certified copy of that record may be given in evidence with like effect as the original certificate of authority.

f. Any incorporated society authorized to transact business in this State at the time this act becomes effective shall not be required to reincorporate.

g. No unincorporated or voluntary association shall be permitted to transact business in this State as a society.

C.17:44B-11 Amendment of laws of domestic society.

11. a. A domestic society may amend its laws in accordance with the provisions of those laws by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws

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by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of its submission, 2/3 of the members voting shall have signified their consent to an amendment by one of the methods specified in this section.

b. No amendment to the laws of any domestic society shall take effect unless approved by the commissioner who shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. If the commissioner does not disapprove an amendment within 60 days after filing it, the amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the commissioner disapproves an amendment, the reasons for the disapproval shall be stated in the written notice.

c. Within 90 days after the approval of an amendment by the commissioner, the amendment, or a synopsis thereof, shall be furnished to all members of the society either by mail or publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendment or synopsis of the amendment, stating facts which show that the amendment has been duly addressed and mailed, shall be prima facie evidence that the amendment or synopsis thereof, has been furnished the addressee.

d. Every foreign or alien society authorized to do business in this State shall file with the commissioner a duly certified copy of all amendments of, or additions to, its laws within 90 days after the enactment of same.

e. Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

C.17:44B-12 Establishment of not-for-profit institutions.

12. a. A society may create, maintain and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by paragraph (2) of subsection a. of section 5 of this act. These institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement but may not be allowed as an admitted asset of the society.

b. No society shall own or operate funeral homes or undertaking establishments.

C.17:44B-13 Reinsurance agreement to cede risks.

13. a. A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to reinsure and authorized to do business in this State, or if not so authorized, an insurer which is approved by the commissioner, but no domestic society may reinsure substantially all of its insurance in force without the written permission of the commissioner. Credit for reinsurance shall be allowed a domestic ceding society as either an asset or a reduction from liability in accordance with P.L.1993, c.243 (C.17:51B-1 et seq.). A domestic society shall also comply with all requirements of law generally applicable to reinsurance ceded or assumed by life and health insurers of this State.

b. Notwithstanding the limitation of subsection a. of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under section 14 of this act.

C.17:44B-14 Consolidation, merger.

14. a. A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(1) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(2) a sworn statement by the president and secretary, or corresponding officers of each society, showing the financial condition of the domestic society on a date fixed by the commissioner but not earlier than December 31, next preceding the date of the contract;

(3) a certificate of the officers of the societies, duly verified by their respective oaths, that the consolidation or merger has been approved by a 2/3 vote of the supreme governing body of each society, the vote being conducted at a regular or special meeting of each supreme governing body, or, if the society's laws so permit, by mail; and

(4) evidence that at least 60 days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

b. If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In that event the consolidation or merger

shall not become effective unless and until it has been approved as provided by the laws of that other state or territory and a certificate of approval from that other state is filed with the commissioner of this State or, if the laws of that other state or territory contain no like provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of that other state or territory and a certificate of approval from the commissioner of that other state is filed with the commissioner of this State.

c. Upon the consolidation or merger becoming effective, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.

d. The affidavit of any officer of the society or anyone authorized by it to mail any notice or document stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished the addressees.

C.17:44B-15 Conversion to domestic mutual insurer.

15. a. A domestic fraternal benefit society which is organized pursuant to the provisions of this act may convert to a domestic mutual insurer by complying with the provisions of this section.

b. A written plan of conversion setting forth in full the terms and conditions of conversion shall be prepared by the assembly or board of directors of the society. The plan shall include:

(1) the purpose of the conversion;

(2) the effect of conversion on existing benefit contracts issued by the society;

(3) a business plan;

(4) a provision that each holder of a benefit contract of the society shall receive any rights with respect to the domestic mutual insurer as may be prescribed by the commissioner, provided that those rights shall not exceed the rights provided to policyholders of other domestic mutual insurers authorized to transact the kind or kinds of business specified in N.J.S.17B:17-3, N.J.S.17B:17-4 and N.J.S.17B:17-5; and

(5) a provision that each member of the society shall be notified of the conversion, which notification process shall be approved by the commissioner.

c. The written plan of conversion provided for in subsection b. of this section shall be approved by an affirmative vote of 2/3 of all members of the supreme governing body at a regular or special meeting and then filed with the commissioner.

d. The commissioner shall approve or disapprove the plan. The commissioner shall approve the plan unless he finds the plan:

(1) is contrary to law;

(2) would be detrimental to the safety or soundness of the proposed domestic mutual insurer;

(3) prejudices the interests of the holders of benefit contracts of the society or treats them inequitably.

The commissioner shall set forth his decision in writing and shall state the reasons therefor. A disapproval shall be subject to judicial review.

e. Upon approval of the plan by the commissioner and the issuance of a certificate of authority to transact the business of insurance as a domestic mutual insurer, the society shall be deemed to be a domestic mutual insurer subject to the provisions of Title 17B of the New Jersey Statutes, including surplus requirements, and all other applicable law.

f. On and after the date of issuance of the certificate of authority, the society shall be a domestic mutual insurer, vested with all the powers and privileges of a domestic mutual insurer, and subject to all provisions of law applicable to those insurers, including surplus requirements, in the same manner and with the same effect as if the converted society had originally been incorporated as a domestic mutual insurer on the date of issuance of the certificate of authority, and the members of the society shall become and be members of the domestic mutual insurer.

g. The conversion of a society into a domestic mutual insurer shall not affect the right of any creditor or member of the society, but all rights of all persons against the society before its conversion shall continue unaffected and shall be enforced against the domestic mutual insurer in the same manner they could have been enforced against the society had its conversion not taken place; except that all rights of assessment or reduction in benefits in lieu of assessment, prescribed in the certificate of incorporation or bylaws of the society, or provided in any certificate, policy or contract of the society, shall be canceled. As used in this section, "assessment" means the right to require the payment of a sum in addition to the weekly or other periodical dues, contributions, premiums and fees required under the terms of any certificate, policy or contract; and "domestic mutual insurer" shall only include a domestic mutual insurer authorized to transact the kind or

kinds of business specified in N.J.S.17B:17-3, N.J.S.17B:17-4 and N.J.S.17B:17-5.

C.17:44B-16 Provision of contractual benefits.

16. a. A society may provide the following contractual benefits in any form, except in the form of group insurance:

(1) death benefits;

(2) endowment benefits;

(3) annuity benefits;

(4) temporary or permanent disability benefits;

(5) hospital, medical or nursing benefits;

(6) monument or tombstone benefits to the memory of deceased members; and

(7) other benefits as authorized for life and health insurers and which are not inconsistent with this act.

b. A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection a. of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of minors under the minimum age for adult membership upon application of an adult person.

C.17:44B-17 Right to change beneficiary.

17. a. The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

b. A society may make provision for the payment of funeral benefits to the extent of that portion of any payment under a certificate as reasonably appears to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the amount paid shall not exceed the sum of $5,000.

c. If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection b. of this section, shall be payable to the estate of the deceased insured, provided that if the owner of the certificate is other than the insured, the proceeds shall be payable to the owner.

C.17:44B-18 Issuance of certificate specifying amount of benefits.

18. a. Every society authorized to do business in this State shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the contract. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each document shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall state this requirement. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of the provisions of the subsection shall be void.

b. Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

c. Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

d. A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or assembly may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency ascertained by its board or assembly, and that if the payment is not made either: (1) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (2) in lieu of or in combination with paragraph (1), the owner may accept a proportionate reduction in benefits under benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

e. Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions of the contract.

f. No certificate shall be delivered or issued for delivery in this State unless a copy of the form has been filed with the commissioner for approval in the manner provided for like policies issued by life and health insurers in

this State. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from the effective date of this act shall meet the standard contract provision requirements, not inconsistent with this act, for like policies issued by life and health insurers in this State. Any non-complying certificate shall be deemed withdrawn one year from the effective date of this act, except that the commissioner may, for good cause shown, allow the continued use of a non-conforming certificate for an additional period not to exceed one year. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any section of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

g. Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of those certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to the transfer shall be specified in the certificate.

h. A society may specify the terms and conditions on which benefit contracts may be assigned.

C.17:44B-19 Certificates issued in 1998, compliance with prior law; after 1998 requirements.

19. a. For certificates issued prior to one year after the effective date of this act, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall comply with the provisions of law applicable immediately prior to the effective date of this act.

b. For certificates issued on or after one year after the effective date of this act, every paid-up nonforfeiture benefits and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount based on the interest rate and mortality tables authorized by the laws of this State for the calculation of those benefits by life and health insurers issuing policies containing like benefits.

C.17:44B-20 Investment of funds of society.

20. A society shall invest its funds only in investments that are authorized by the laws of this State for the investment of assets of domestic life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

C.17:44B-21 Holding, investment, disbursement of assets.

21. a. All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part of the assets, except as provided in the benefit contract.

b. A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

c. A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue separate account contracts, whether or not contracts on a variable basis, subject to the provisions of law regulating life and health insurers establishing those accounts and issuing those contracts. To the extent the society deems it necessary in order to comply with any applicable federal or State laws, or any rules or regulations issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account; may, for persons having beneficial interests in an account, provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which subsections b. and d. of section 18 of this act shall not apply.

d. Separate accounts of foreign or alien societies are subject to approval by the department, unless the society's place of domicile has adopted a substantially similar act.

C.17:44B-22 Societies governed by act.

22. Except as otherwise provided in this act, societies shall be governed by this act and shall be exempt from all other provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law enacted on or after the effective date of this act shall apply to societies unless they be expressly designated. No corporation or association which purports to be a fraternal organization but which does not

meet the requirements in this act with respect to a fraternal benefit society shall be exempt from the other provisions of the insurance laws of this State.

C.17:44B-23 Society declared charitable, benevolent institution.

23. Every society organized or licensed under this act is declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment. Every society organized or licensed under this act shall be subject to the assessment provided pursuant to section 8 of P.L.1983, c.320 (C.17:33A-8) and the apportionment provided pursuant to section 2 of P.L.1995, c.156 (C.17:1C-20).

C.17:44B-24 Standards of valuation for certificates.

24. a. Standards of valuation for certificates issued prior to one year after the effective date of this act shall be those provided by the laws applicable immediately prior to the effective date of this act.

b. The minimum standards of valuation for certificates issued on or after one year after the effective date of this act shall be the same as those for life and health insurers specified in N.J.S. 17B:19-5 and N.J.S. 17B:19-8.

C.17:44B-25 Filing of annual statement.

25. a. Every society transacting business in this State shall annually, on or before March 1, unless for cause shown the time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a filing fee established by the commissioner by regulation. The statement shall be in general form and content as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner;

b. As a part of the annual statement required by subsection a. of this section, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided the commissioner may, in his discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in section 24 of this act. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the insurance regulatory agency of the state of domicile of the society;

c. A society failing to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which the failure continues, and, upon notice by the commissioner to that effect, its authority to do business in this State shall cease while the failure continues.

C.17:44B-26 Authority to transact business, compliance with requirements of this act.

26. Societies which are now authorized to transact business in this State, and all societies licensed on or after the effective date of this act, may continue in business until June 1 next succeeding the effective date of this act. The authority of these domestic societies may thereafter be continued by satisfying the requirements set forth in this act. The authority of existing foreign or alien societies and all foreign and alien societies licensed on or after the effective date of this act, may thereafter be renewed annually, but in all cases terminate on the first day of the succeeding June. However, a license that has been issued shall continue in full force and effect until the new license is issued or specifically refused. A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this act.

C.17:44B-27 Societies subject to examination.

27. a. All societies shall be subject to examination by the commissioner in the same manner and subject to the same procedures as set forth in P.L.1993, c.236 (C.17:23-20 et seq.).

b. A summary of the report of the commissioner and the recommendations or statements of the commissioner as may accompany the report, shall be read at the first meeting of the board of directors or corresponding body of the society following their receipt, and if directed by the commissioner, shall also be read at the first meeting of the supreme governing body of the society following their receipt. A copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of the board of directors or assembly.

C.17:44B-28 Licensing of foreign, alien society.

28. No foreign or alien society shall transact business in this State without a license issued by the commissioner. Any foreign or alien society desiring admission to this State shall comply substantially with the requirements and limitations of this act applicable to domestic societies. Any foreign or alien society may be licensed to transact business in this State upon filing with the commissioner:

a. A duly certified copy of its articles of incorporation;

b. A copy of its bylaws, certified by its secretary or corresponding officer;

c. A power of attorney to the commissioner as prescribed in section 34 of this act;

d. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state, territory, province or country, satisfactory to the commissioner;

e. Certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;

f. Copies of its certificate forms;

g. A showing that its assets are invested in accordance with the provisions of this act;

h. Any other information the commissioner may deem necessary; and

i. Upon payment of a filing fee established by the commissioner by regulation.

C.17:44B-29 Domestic societies subject to C.17B:32-31 et seq.

29. Domestic societies shall be subject to the provisions of P.L.1992, c.65 (C.17B:32-31 et seq.).

C.17:44B-30 Deficiencies, notice of; corrections; remedies.

30. a. When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

(1) has exceeded its powers;

(2) has failed to comply with any of the provisions of this act;

(3) is not fulfilling its contract in good faith; or

(4) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public:

the commissioner shall notify the society in writing of the deficiency or deficiencies and state in writing the reasons for his dissatisfaction. The commissioner shall at once issue a written order to the society requiring that the deficiency or deficiencies which exist be corrected. After that order the society shall have 30 days in which to comply with the commissioner's order for correction, and if the society fails to comply, the commissioner shall notify the society of his findings of noncompliance and require the society to show cause on a date to be named why its license should not be suspended, revoked or refused. If on that date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, the commissioner may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to the commissioner that the suspension or refusal should be withdrawn, or the commissioner may revoke the authority of the society to do business in this State.

b. Nothing contained in this section shall be taken or construed as preventing any foreign or alien society from continuing in good faith all contracts made in this State during the time the society was legally authorized to transact business.

C.17:44B-31 Application, petition for injunction by State.

31. No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this State unless made by the Attorney General upon request of the commissioner.

C.17:44B-32 Licensure of individual insurance producers.

32. Individuals acting as insurance producers with respect to societies shall be licensed in accordance with the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.).

C.17:44B-33 Societies, agents subject to N.J.S.17B:30-1 et seq.

33. Every society and agent authorized to do business in this State shall be subject to the provisions of N.J.S.17B:30-1 et seq., relating to trade practices; provided, however, that nothing in those provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

C.17:44B-34 Appointment of commissioner as attorney for foreign society.

34. a. Every foreign and alien society authorized to do business in this State shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in writing that any lawful process against it which is served shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force as long as any liability remains outstanding in this State. Copies of the appointment, certified by the commissioner, shall be deemed sufficient evidence of its existence and shall be admitted in evidence with the same force and effect as the original written appointment would be admitted.

b. Service shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No service shall require a society to file its answer, pleading or defense in less than 30 days from the date of mailing the copy of the service to a society.

C.17:44B-35 Nonapplicability of act.

35. a. Nothing contained in this act shall be construed to affect or apply to:

(1) societies which do not provide benefits by contract;

(2) orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to those orders, societies or associations;

(3) domestic societies which limit their membership to employees of a particular city or town, designated firm, business or corporation which provide for a death benefit of not more than $400 or disability benefits of not more than $350 to any person in any one year, or both; or

(4) domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than $400 or a disability benefit of not more than $350 to any one person in any one year, or both.

b. Any society or association described in paragraph (3) or (4) of subsection a. of this section which provides for death or disability benefits for which benefit certificates are issued, and a society or association included in paragraph (4) of subsection a. of this section which has more than 1,000 members, shall not be exempted from the provisions of this act but shall comply with all requirements of this act.

c. No society which, by the provisions of this section, is exempt from the requirements of this act, except any society described in paragraph (2) of subsection a. of this section, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

d. Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this act, except that the provisions of this act relating to medical examinations, valuations of benefit certificates, and incontestability, shall not apply to that society.

e. The commissioner may require from any society or association, by examination or otherwise, information that will enable the commissioner to determine whether the society or association is exempt from the provisions of this act.

f. Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this State.

C.17:44B-36 Violations, penalties.

36. a. Any person who:

(1) makes a false or fraudulent statement to the commissioner, or the department, in any report or declaration required or authorized by this act, or

(2) solicits membership for, or in any manner, assists in procuring membership in any fraternal benefit society which by the terms of this act is required to be but is not licensed, or

(3) violates any of the provisions of this act, shall be liable to a penalty not exceeding $1,000 for the first offense and not exceeding $2,000 for each succeeding offense.

b. The penalties provided in this section shall be enforced and collected in a summary manner pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

C.17:44B-37 Decisions, findings subject to review.

37. All decisions and findings of the commissioner made under the provisions of this act shall be subject to review by proper proceedings in any court of competent jurisdiction in this State.

38. Section 3 of P.L.1987, c.293 (C.17:22A-3) is amended to read as follows:

C.17:22A-3 Licenses required; nonapplicability of provisions.

3. a. No person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer without first obtaining a license from the commissioner granting authority for the kind of insurance transacted. No insurance company or licensee shall pay any commission, brokerage fee, compensation or other consideration to any unlicensed person for services rendered in this State as an insurance producer except for services rendered while licensed. Engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or a licensee as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer.

b. The provisions of subsection a. of this section shall not apply to:

(1) the clerical duties of office employees nor the managerial or supervisory duties of general agents or managers who do not negotiate, solicit or effect insurance contracts;

(2) any regular salaried officer, employee or member of a fraternal benefit society licensed and authorized to transact business in this State pursuant to the provisions of P.L.1959, c.167 (C.17:44A-1 et seq.) or P.L.1997, c.322 (C.17:44B-1 et al.) who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of those contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(3) any agent, representative or member of a fraternal benefit society who devotes, or intends to devote, less than 50 percent of his time to the solicitation and procurement of insurance contracts for that fraternal benefit society and who receives or intends to receive any commission or other compensation directly dependent on the amount of insurance; provided that any person who in the preceding calendar year has solicited or procured any of the following contracts of insurance on behalf of a fraternal benefit society is presumed to have devoted, or intended to devote, 50 percent of his time to the solicitation or procurement of insurance contracts:

(a) Life insurance contracts that, in the aggregate, exceed $200,000 of coverage for all lives insured for the preceding calendar year;

(b) A permanent life insurance contract offering more than $10,000 of coverage on an individual life;

(c) A term life insurance contract offering more than $50,000 of coverage on an individual life;

(d) An insurance contract, other than a life insurance contract, that the fraternal benefit society may write that insures the individual lives of more than 25 persons; or

(e) Any variable life insurance or variable annuity contract.

Repealer.

39 P.L.1959, c.167 (C.17:44A-1 et seq.) is repealed.

40. This act shall take effect on January 1, 1998.

Approved January 8, 1998.

CHAPTER 323

AN ACT providing for the licensing and regulation of home inspectors and supplementing chapter 8 of Title 45 of the Revised Statutes.

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

C.45:8-61 Short title.

1. This act shall be known and may be cited as the "Home Inspection Professional Licensing Act."

C.45:8-62 Definitions relative to home inspectors.

2. As used in this act:

"Associate home inspector" means a person who is employed by a licensed home inspector to conduct a home inspection of a residential building under the direct supervision of the licensed home inspector and is licensed pursuant to the provisions of this act.

"Board" means the State Board of Professional Engineers and Land Surveyors.

"Client" means any person who engages, or seeks to engage, the services of a home inspector for the purpose of obtaining inspection of and written report upon the condition of a residential building.

"Committee" means the Home Inspection Advisory Committee established pursuant to section 3 of this act.

"Home inspector" means any person licensed as a home inspector pursuant to the provisions of this act.

"Home inspection" means an inspection and written evaluation of the following components of a residential building: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components or any other related residential housing component as determined by the board by regulation.

"Residential building" means a structure consisting of from one to four family dwelling units that has been occupied as such prior to the time when a home inspection is requested or contracted for in accordance with this act, but shall not include any such structure newly constructed and not previously occupied.

C.45:8-63 Home Inspection Advisory Committee.

3. a. There is created within the Division of Consumer Affairs in the Department of Law and Public Safety, under the State Board of Professional Engineers and Land Surveyors, a Home Inspection Advisory Committee. The committee shall consist of five members who are residents of the State and are licensed home inspectors who have been actively engaged in the practice of home inspection in this State for at least five years immediately preceding their appointment.

b. For a period of one year after the effective date of this act, and notwithstanding any other provisions of this act to the contrary, the first five home inspectors appointed as members of the committee shall not be required, at the time of their first appointment, to be licensed to practice home inspection.

c. The Governor shall appoint each committee member for a term of three years, except that of the members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and one shall serve for a term of one year. Each member shall hold office until his successor has been qualified. Any vacancy in the membership of the

committee shall be filled for the unexpired term in the manner provided for the original appointment. No member of the committee may serve more than two successive terms in addition to any unexpired term to which he has been appointed.

C.45:8-64 Compensation, reimbursement of members.

4. Members of the committee shall be compensated and reimbursed for expenses and provided with office and meeting facilities and personnel required for the proper conduct of the committee's business.

C.45:8-65 Elections of officers of committee.

5. The committee shall annually elect from among its members a chairman and a vice-chairman and may appoint a secretary, who need not be a member of the committee. The committee shall meet at least twice a year and may hold additional meetings as necessary to discharge its duties.

C.45:8-66 Powers, duties of committee.

6. The committee shall have the following powers and duties:

a. Administer and enforce the provisions of this act;

b. Issue and renew licenses to home inspectors and associate home inspectors pursuant to the provisions of this act;

c. Suspend, revoke or fail to renew the license of a home inspector or an associate home inspector pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);

d. Establish standards for the continuing education of home inspectors;

e. Adopt and publish a code of ethics and standards of practice for licensed home inspectors; and

f. Prescribe or change the charges for examinations, licensures, renewals and other services performed pursuant to P.L.1974, c.46 (C.45:1-3.1 et seq.).

C.45:8-67 Licensing required for home inspectors.

7. No person shall provide, nor present, call or represent himself as able to provide a home inspection for compensation unless licensed in accordance with the provisions of this act.

C.45:8-68 Requirements for licensure as home inspector.

8. To be eligible for licensure as a home inspector, an applicant shall fulfill the following requirements:

a. Be of good moral character;

b. Have successfully completed high school or its equivalent;

c. Have been engaged as a licensed associate home inspector for no less then one year, and have performed not less than 250 home inspections for compensation; and

d. Have passed the examination offered by the American Society of Home Inspectors (ASHI). The examination may have been passed before the effective date of this act.

C.45:8-69 Eligibility for licensure as associate home inspector.

9. To be eligible for licensure as an associate home inspector, an applicant shall fulfill the following requirements:

a. Be of good moral character;

b. Have successfully completed high school or its equivalent;

c. Have passed an approved course of study, as prescribed by the board;

d. Have performed not less than 50 home inspections in the presence of a licensed home inspector; and

e. Have passed the examination offered by the American Society of Home Inspectors (ASHI). The examination may have been passed before the effective date of this act.

C.45:8-70 Noapplicability of act.

10. The provisions of this act shall not apply to:

a. Any person who is employed as a code enforcement official by the State or a political subdivision thereof when acting within the scope of that government employment;

b. Any person regulated by the State as an architect, professional engineer, electrical contractor or master plumber, who is acting within the scope of practice of his profession or occupation;

c. Any real estate broker, broker-salesperson, or salesperson who is licensed by the State when acting within the scope of his profession;

d. Any State licensed real estate appraiser or certified general or residential real estate appraiser, who is acting within the scope of his profession;

e. Any person regulated by the State as an insurance adjuster, who is acting within the scope of his profession;

f. Any person certified or registered as a pesticide applicator pursuant to subchapter 6 or 8 of chapter 30 of Title 7 of the New Jersey Administrative Code who is acting within the scope of the practice for which he is certified or registered; or

g. Any person making home inspections under the supervision of a licensed home inspector for the purpose of meeting the requirements of subsection d. of section 9 of this act to qualify for licensure as an associate home inspector.

C.45:8-71 Issuance of reciprocal home inspector license; fee.

11. Upon payment to the board of a fee and the submission of a written application provided by the board, the committee shall issue a home inspector license to any person who holds a valid license issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this State, as determined by the committee.

C.45:8-72 Licensing of individuals currently engaged in practice of home inspection.

12. During the first 360 days after the effective date of this act, the committee shall issue to any individual upon application a home inspector license, provided that the applicant meets the requirements of subsections a., b., and d. of section 8 of this act and has been engaged in the practice of home inspections for compensation for not less than three years prior to the effective date of this act and has performed not less than 300 home inspections for compensation.

C.45:8-73 Establishment, prescription, change of fees for licenses.

13. a. The board shall by rule or regulation establish, prescribe or change the fees for licenses, renewals of licenses or other services provided by the board or the committee pursuant to the provisions of this act. Licenses shall be issued for a period of two years and be biennially renewable, except that the board may, in order to stagger the expiration dates thereof, provide that those licenses first issued or renewed after the effective date of this act shall expire or become void on a date fixed by the board, not sooner than six months nor later than 29 months after the date of issue.

b. Fees shall be established, prescribed or changed by the committee to the extent necessary to defray all proper expenses incurred by the board or the committee, and any staff employed to administer this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

c. All fees and any fines imposed by the board shall be paid to the board and shall be forwarded to the State Treasurer and become part of the General Fund.

C.45:8-74 Refusal to grant, suspension, revocation of license.

14. In addition to the provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the committee may refuse to grant or may suspend or revoke a home inspector license or an associate home inspector license upon proof to the satisfaction of the committee that the holder thereof has:

a. Disclosed any information concerning the results of the home inspection without the approval of a client or the client's representatives;

b. Accepted compensation from more than one interested party for the same service without the consent of all interested parties;

c. Accepted commissions or allowances, directly or indirectly, from other parties dealing with their client in connection with work for which the licensee is responsible; or

d. Failed to disclose promptly to a client information about any business interest of the licensee which may affect the client in connection with the home inspection.

C.45:8-75 Licensees limited to home inspection.

15. No person licensed as a home inspector pursuant to this act shall engage in the practice of architecture or the practice of professional engineering.

C.45:8-76 Requirement of error and omissions policy.

16. a. Every licensed home inspector and associate home inspector who is engaged in home inspection shall secure, maintain and file with the board proof of a certificate of an error and omissions policy, which shall be in a minimum amount of $500,000 per occurrence.

b. Every proof of an errors and omissions policy required to be filed with the board shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least 10 days' notice of intention to cancel or nonrenew has been received in writing by the board.

C.45:8-77 Rules, regulations.

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

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

Approved January 8, 1998.

CHAPTER 324

AN ACT concerning impounded animals and amending P.L.1941, c.151.

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

1. Section 16 of P.L.1941, c.151 (C.4:19-15.16) is amended to read as follows:

C.4:9-15.16 Unclaimed dogs or other animals to be destroyed, offered for adoption.

16. Any person appointed for the purpose by the governing body of the municipality shall take into custody and impound or cause to be taken into custody and impounded, and thereafter destroyed or offered for adoption as provided in this section:

(a) Any dog off the premises of the owner or of the person keeping or harboring said dog which said official or his agent or agents have reason to believe is a stray dog;

(b) Any dog off the premises of the owner or of the person keeping or harboring said dog without a current registration tag on his collar;

(c) Any female dog in season off the premises of the owner or of the person keeping or harboring said dog;

(d) Any dog or other animal which is suspected to be rabid;

(e) Any dog or other animal off the premises of the owner reported to, or observed by, a certified animal control officer to be ill, injured or creating a threat to public health, safety or welfare, or otherwise interfering with the enjoyment of property.

If any animal so seized wears a collar or harness having inscribed thereon or attached thereto the name and address of any person or a registration tag, or the owner or the person keeping or harboring said animal is known, any person authorized by the governing body shall forthwith serve on the person whose address is given on the collar, or on the owner or the person keeping or harboring said animal, if known, a notice in writing stating that the animal has been seized and will be liable to be offered for adoption or destroyed if not claimed within seven days after the service of the notice.

A notice under this section may be served either by delivering it to the person on whom it is to be served, or by leaving it at the person's usual or last known place of abode, or at the address given on the collar, or by forwarding it by post in a prepaid letter addressed to that person at his usual or last known place of abode, or to the address given on the collar.

Any person authorized by the governing body may cause an animal to be destroyed in a manner causing as little pain as possible and consistent with the provisions of R.S.4:22-19 or to be offered for adoption seven days after seizure; provided that:

(1) Notice is given as set forth above and the animal remains unclaimed; or

(2) The owner or person keeping or harboring the animal has not claimed the animal and paid all expenses incurred by reason of its detention, including maintenance costs not exceeding $4.00 per day; or

(3) The owner or person keeping or harboring a dog which was unlicensed at the time of seizure does not produce a license and registration tag for the dog.

At the time of adoption, the right of ownership in the animal shall transfer to the new owner. No dog or other animal so caught and detained or procured, obtained, sent or brought to a pound or shelter shall be sold or otherwise made available for the purpose of experimentation. Any person who sells or otherwise makes available any such dog or other animal for the purpose of experimentation shall be guilty of a crime of the fourth degree.

After observation, any animal seized under this section suspected of being rabid shall be immediately reported to the executive officer of the local board of health and to the Department of Health and Senior Services.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 325

AN ACT concerning the statute of limitations for certain environmental criminal offenses and amending N.J.S.2C:1-6, N.J.S.2C:17-2, P.L.1970, c.39, P.L.1989, c.34, and P.L.1984, c.173.

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

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

Time limitations.

2C:1-6. Time Limitations. a. A prosecution for any offense set forth in N.J.S.2C:11-3, N.J.S.2C:11-4 or N.J.S.2C:14-2 may be commenced at any time.

b. Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitations:

(1) A prosecution for a crime must be commenced within five years after it is committed;

(2) A prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed;

(3) A prosecution for any offense set forth in N.J.S.2C:27-2, N.J.S.2C:27-4, N.J.S.2C:27-6, N.J.S.2C:27-7, N.J.S.2C:29-4, N.J.S.2C:30-2, N.J.S.2C:30-3, or any attempt or conspiracy to commit such

an offense, must be commenced within seven years after the commission of the offense;

(4) A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later;

(5) A prosecution for any offense set forth in paragraph (2) of subsection a. of N.J.S.2C:17-2, section 9 of P.L.1970, c.39 (C.13:1E-9), section 20 of P.L.1989, c.34 (C.13:1E-48.20), section 19 of P.L.1954, c.212 (C.26:2C-19), section 10 of P.L.1984, c.173 (C.34:5A-41), or section 10 of P.L.1977, c.74 (C.58:10A-10) must be commenced within 10 years after the date of discovery of the offense by a local law enforcement agency, a county prosecutor, or the Department of Environmental Protection either directly by any of those entities or indirectly by notice given to any of those entities.

c. An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

d. A prosecution is commenced for a crime when an indictment is found and for a nonindictable offense when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. Nothing contained in this section, however, shall be deemed to prohibit the downgrading of an indictable offense to a nonindictable offense at any time if the indictable offense was filed within the statute of limitations applicable to indictable offenses.

e. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.

f. The limitations in this section shall not apply to any person fleeing from justice.

g. Except as otherwise provided in this code, no civil action shall be brought pursuant to this code more than five years after such action accrues.

2. N.J.S. 2C:17-2 is amended to read as follows:

Causing or risking widespread injury or damage.

2C:17-2. Causing or Risking Widespread Injury or Damage.

a. (1) A person who, purposely or knowingly, unlawfully causes an explosion, flood, avalanche, collapse of a building, release or abandonment of poison gas, radioactive material or any other harmful or destructive substance commits a crime of the second degree. A person who, purposely

or knowingly, unlawfully causes widespread injury or damage in any manner commits a crime of the second degree.

(2) A person who, purposely or knowingly, unlawfully causes a hazardous discharge required to be reported pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.) or any rules and regulations adopted pursuant thereto, or who, purposely or knowingly, unlawfully causes a release or abandonment of hazardous waste as defined in section 1 of P.L.1976, c.99 (C.13:1E-38) or a toxic pollutant as defined in section 3 of P.L.1977, c.74 (C.58:10A-3) commits a crime of the second degree. Any person who recklessly violates the provisions of this paragraph is guilty of a crime of the third degree.

b. A person who recklessly causes widespread injury or damage is guilty of a crime of the third degree.

c. A person who recklessly creates a risk of widespread injury or damage commits a crime of the fourth degree, even if no such injury or damage occurs.

d. A person who knowingly or recklessly fails to take reasonable measures to prevent or mitigate widespread injury or damage commits a crime of the fourth degree, if:

(1) He knows that he is under an official, contractual or other legal duty to take such measures; or

(2) He did or assented to the act causing or threatening the injury or damage.

e. For purposes of this section, widespread injury or damage means serious bodily injury to 10 or more people or damage to 10 or more habitations or to a building which would normally have contained 50 or more persons at the time of the offense.

3. Section 9 of P.L.1970, c.39 (C.13:1E-9) is amended to read as follows:

C.13:1E-9 Codes, rules and regulations; enforcement; penalties.

9. a. All codes, rules and regulations adopted by the department related to solid waste collection and disposal shall have the force and effect of law. These codes, rules and regulations shall be observed throughout the State and shall be enforced by the department and by every local board of health, or county health department, as the case may be.

The department and the local board of health, or the county health department, as the case may be, shall have the right to enter a solid waste facility at any time in order to determine compliance with the registration statement and engineering design required pursuant to section 5 of

P.L.1970, c.39 (C.13:1E-5), and with the provisions of all applicable laws or rules and regulations adopted pursuant thereto.

The municipal attorney or an attorney retained by a municipality in which a violation of such laws or rules and regulations adopted pursuant thereto is alleged to have occurred shall act as counsel to a local board of health.

The county counsel or an attorney retained by a county in which a violation of such laws or rules and regulations adopted pursuant thereto is alleged to have occurred shall act as counsel to the county health department.

Any county health department may charge and collect from the owner or operator of any sanitary landfill facility within its jurisdiction such fees for enforcement activities as may be established by ordinance or resolution adopted by the governing body of any such county. The fees shall be established in accordance with a fee schedule regulation adopted by the department, pursuant to law, and shall be utilized exclusively to fund such enforcement activities.

All enforcement activities undertaken by county health departments pursuant to this subsection shall conform to all applicable performance and administrative standards adopted pursuant to section 10 of the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

b. Whenever the commissioner finds that a person has violated any provision of P.L.1970, c.39 (C.13:1E-1 et seq.), or any rule or regulation adopted, permit issued, or district solid waste management plan adopted pursuant to P.L.1970, c.39, he shall:

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

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

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

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

(5) Petition the Attorney General to bring a criminal action in accordance with subsection g. of this section.

c. Whenever the commissioner finds that a person has violated any provision of P.L.1970, c.39, or any rule or regulation adopted, permit issued, or district solid waste management plan adopted pursuant to P.L.1970, c.39, he may issue an order specifying the provision or provisions of P.L.1970, c.39, or the rule, regulation, permit or district solid waste management plan of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. The ordered party shall have 20 calendar days from receipt of the order within which to deliver to the commissioner 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.

d. The commissioner, a local board of health or county health department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver for any violation of this act, or of any code, rule or regulation adopted, permit issued, district solid waste management plan adopted or order issued pursuant to this act and said court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;

(3) Assessment of the violator for any cost incurred by the State in removing, correcting or terminating the adverse effects upon water and air quality resulting from any violation of any provision of this act or any rule, regulation or condition of approval for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act or any rule, regulation or condition of approval established pursuant to this act for which the action under this subsection may have been brought. Assessments under this subsection shall be paid to the State Treasurer, or to the local board of health, or to the county health department, as the case may be, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

If a proceeding is instituted by a local board of health or county health department, notice thereof shall be served upon the commissioner in the same manner as if the commissioner were a named party to the action or proceeding. The department may intervene as a matter of right in any proceeding brought by a local board of health or county health department.

e. The commissioner is authorized to assess a civil administrative penalty of not more than $50,000.00 for each violation provided that each day during which the violation continues shall constitute an additional, separate and distinct offense. The commission shall not assess a civil administrative penalty in excess of $25,000.00 for a single violation, or in excess of $2,500.00 for each day during which a violation continues, until

the department has adopted, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations requiring the commissioner, in assessing a civil administrative penalty, to consider the operational history of the solid waste facility at which the violation occurred, the severity of the violation, the measures taken to mitigate or prevent further violations, and whether the penalty will maintain an appropriate deterrent. No assessment shall be levied pursuant to this section 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, order, permit condition or district solid waste management plan 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 ordered party shall have 20 calendar days from 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 commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in P.L.1970, c.39, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

f. Any person who violates the provisions of P.L.1970, c.39, or any code, rule or regulation adopted pursuant thereto shall be liable to a penalty of not more than $50,000.00 per day, to be collected in a civil action commenced by a local board of health, a county health department, or the commissioner.

Any person who violates an administrative order issued pursuant to subsection c. of this section, or a court order issued pursuant to subsection d. of this section, or who fails to pay an administrative assessment in full pursuant to subsection e. of this section is subject upon order of a court to a civil penalty not to exceed $100,000.00 per day of such violations.

Of the penalty imposed pursuant to this subsection, 10% or $250.00, whichever is greater, shall be paid to the department from the General Fund if the Attorney General determines that a person is entitled to a reward pursuant to section 2 of P.L.1987, c.158 (C.13:1E-9.2).

Any penalty imposed pursuant to this subsection 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 and the municipal court shall

have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

g. Any person who knowingly:

(1) Transports any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;

(2) Generates and causes or permits to be transported any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;

(3) Disposes, treats, stores or transports hazardous waste without authorization from the department;

(4) Makes any false or misleading statement to any person who prepares any hazardous waste application, label, manifest, record, report, design or other document required to be submitted to the department; or

(5) Makes any false or misleading statement on any hazardous waste application, label, manifest, record, report, design or other document required to be submitted to the department shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than $50,000.00 for the first offense and not more than $100,000.00 for the second and each subsequent offense and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

h. Any person who recklessly:

(1) Transports any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;

(2) Generates and causes or permits to be transported any hazardous waste to a facility or any other place which does not have authorization from the department to accept such waste;

(3) Disposes, treats, stores or transports hazardous waste without authorization from the department;

(4) Makes any false or misleading statement to any person who prepares any hazardous waste application, label, manifest, record, report, design or other document required to be submitted to the department; or

(5) Makes any false or misleading statement on any hazardous waste application, label, manifest, record, report, design or other document required to be submitted to the department, shall, upon conviction, be guilty of a crime of the fourth degree.

i. Any person who, regardless of intent, generates and causes or permits any hazardous waste to be transported, transports, or receives transported hazardous waste without completing and submitting to the department a hazardous waste manifest in accordance with the provisions

of this act or any rule or regulation adopted pursuant hereto shall, upon conviction, be guilty of a crime of the fourth degree.

j. All conveyances used or intended for use in the willful discharge, in violation of the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), of any solid waste, or hazardous waste as defined in P.L.1976, c.99 (C.13:1E-38 et seq.) are subject to forfeiture to the State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

k. (Deleted by amendment, P.L.1997, c.325.)

l. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

4. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to read as follows:

C.13:1E-48.20 Enforcement.

20. a. This act, and any rule or regulation adopted pursuant thereto, shall be enforced by the departments and by every local board of health, or county health department, as the case may be.

The departments and the local board of health, or the county health department, as the case may be, shall have the right to enter the premises of a generator, transporter, or facility at any time in order to determine compliance with this act.

The municipal attorney or an attorney retained by a municipality in which a violation of this act is alleged to have occurred shall act as counsel to a local board of health.

The county counsel or an attorney retained by a county in which a violation of this act is alleged to have occurred shall act as counsel to the county health department.

All enforcement activities undertaken by county health departments pursuant to this subsection shall conform to all applicable performance and administrative standards adopted pursuant to section 10 of the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

b. Whenever the Commissioner of Environmental Protection or the Commissioner of Health and Senior Services finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, that commissioner shall:

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

(2) bring a civil action in accordance with subsection d. of this section;

(3) levy a civil administrative penalty in accordance with subsection e. of this section;

(4) bring an action for a civil penalty in accordance with subsection f. of this section; or

(5) petition the Attorney General to bring a criminal action in accordance with subsections g. through l. of this section.

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

c. Whenever the Commissioner of Environmental Protection or the Commissioner of Health and Senior Services finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, that commissioner may issue an order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

d. The Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver for any violation of this act, or of any rule or regulation adopted pursuant thereto, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

(1) a temporary or permanent injunction;

(2) assessment of the violator for the 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;

(3) assessment of the violator for any cost incurred by the State in removing, correcting, or terminating the adverse effects upon environmental quality or public health resulting from any violation of this act, or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought;

(4) assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act, or any rule or regulation

adopted pursuant thereto, for which the action under this subsection may have been brought.

Assessments under this subsection shall be paid to the State Treasurer, or to the local board of health, or to the county health department, as the case may be, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

If a proceeding is instituted by a local board of health or county health department, notice thereof shall be served upon the commissioners in the same manner as if the commissioners were named parties to the action or proceeding. Either of the departments may intervene as a matter of right in any proceeding brought by a local board of health or county health department.

e. Either of the commissioners, as the case may be, may assess a civil administrative penalty of not more than $50,000 for each violation. Each day that a violation continues shall constitute an additional, separate, and distinct offense. A commissioner may not assess a civil administrative penalty in excess of $25,000 for a single violation, or in excess of $2,500 for each day during which a violation continues, until the departments have respectively adopted, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations requiring the appropriate commissioner, in assessing a civil administrative penalty, to consider the operational history of the violator, the severity of the violation, the measures taken to mitigate or prevent further violations, and whether the penalty will maintain an appropriate deterrent. No assessment may be levied pursuant to this section 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 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 ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the appropriate commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, that commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Each department may compromise any civil adminis-

trative penalty assessed under this section in an amount the department determines appropriate.

f. A person who violates this act, or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than $50,000 per day, to be collected in a civil action commenced by the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department.

A person who violates an administrative order issued pursuant to subsection c. of this section, or a court order issued pursuant to subsection d. of this section, or who fails to pay an administrative assessment in full pursuant to subsection e. of this section is subject upon order of a court to a civil penalty not to exceed $100,000 per day of each violation.

Of the penalty imposed pursuant to this subsection, 10% or $250, whichever is greater, shall be paid to the appropriate department from the General Fund if the Attorney General determines that a person is entitled to a reward pursuant to section 24 of this act.

Any penalty imposed pursuant to this subsection 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 and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

g. A person who purposely or knowingly:

(1) disposes or stores regulated medical waste without authorization from either the Department of Environmental Protection or the Department of Health and Senior Services, as appropriate, or in violation of this act, or any rule or regulation adopted pursuant thereto;

(2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto;

(3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto; or

(4) fails to properly treat certain types of regulated medical waste designated by the Department of Health and Senior Services in a prescribed manner; shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than $50,000 for the first offense, and not more than $100,000 for each subsequent offense, and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

h. A person who recklessly or negligently:

(1) disposes or stores regulated medical waste without authorization from either the Department of Environmental Protection or the Department of Health and Senior Services, as appropriate, or in violation of this act, or any rule or regulation adopted pursuant thereto;

(2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto;

(3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto; or

(4) fails to properly treat certain types of regulated medical waste designated by the Department of Health and Senior Services in a manner prescribed thereby; shall, upon conviction, be guilty of a crime of the fourth degree.

i. A person who, regardless of intent:

(1) transports any regulated medical waste to a facility or any other place in the State that does not have authorization from the Department of Environmental Protection and the Board of Public Utilities to accept such waste, or in violation of this act, or any rule or regulation adopted pursuant thereto; or

(2) transports, or receives transported, regulated medical waste without completing and submitting a manifest in accordance with this act, or any rule or regulation adopted pursuant thereto; shall, upon conviction, be guilty of a crime of the fourth degree.

j. A person who purposely, knowingly, or recklessly:

(1) generates and causes or permits to be transported any regulated medical waste to a facility or any other place in the State that does not have authorization from the Department of Environmental Protection and the Board of Public Utilities to accept such waste, or in violation of this act, or any rule or regulation adopted pursuant thereto; or

(2) violates any other provision of this act, or any rule or regulation adopted pursuant thereto, for which no other criminal penalty has been specifically provided for; shall, upon conviction, be guilty of a crime of the fourth degree.

k. All conveyances used or intended for use in the willful discharge, in violation of this act, or any rule or regulation adopted pursuant thereto, of regulated medical waste are subject to forfeiture to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

l. (Deleted by amendment, P.L.1997, c.325.)

m. No prosecution for a violation under this act shall be deemed to preclude a prosecution for the violation of any other applicable statute.

5. Section 10 of P.L.1984, c.173 (C.34:5A-41) is amended to read as follows:

C.34:5A-41 Violations; penalties.

10. Any person who knowingly hinders or delays the Commissioner of Labor or Health and Senior Services or the authorized representative thereof, in the performance of the duty to enforce this act, or knowingly submits false or misleading information on any license or permit application required by this act, or fails to obtain licenses or permits required by the provisions of this act, or refuses to make these licenses or permits accessible to either commissioner, or the authorized representative thereof, or otherwise violates any provision of this act or any regulation adopted under this act, shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than $25,000 in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

6. This act shall take effect immediately and shall apply to any offense committed for which the time limitation for bringing a prosecution against the person who committed the offense has not expired.

Approved January 8, 1998.

CHAPTER 326

AN ACT authorizing the Public Health Council to regulate tattoo parlors and amending P.L.1947, c.177.

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

1. Section 7 of P.L.1947, c.177 (C.26:1A-7) is amended to read as follows:

C.26:1A-7 State Sanitary Code.

7. The Public Health Council shall have power, by the affirmative vote of a majority of all its members, to establish, and from time to time amend and repeal, such reasonable sanitary regulations not inconsistent with the provisions of this act or the provisions of any other law of this State as may be necessary properly to preserve and improve the public health in this State. The regulations so established shall be called the State Sanitary Code.

The State Sanitary Code may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of

disease in the State of New Jersey, including the immunization against disease of all school children in the State of New Jersey. In addition thereto, and not in limitation thereof, said State Sanitary Code may contain sanitary regulations: (a) prohibiting nuisances hazardous to human health; (b) (deleted by amendment) (c) regulating the use of privies and cesspools; (d) regulating the disposition of excremental matter; (e) regulating the control of fly and mosquito breeding places; (f) regulating the detection, reporting, prevention and control of communicable and preventable diseases; (g) regulating the conduct of public funerals; (h) regulating the conduct of boarding homes for children; (i) regulating the conduct of maternity homes and the care of maternity and infant patients therein; (j) regulating the conduct of camps; (k) (Deleted by amendment, P.L.1987, c.302) (l) regulating the preparation, handling, transportation, burial or other disposal, disinterment and reburial of dead human bodies; (m) prescribing standards of cleanliness for public eating rooms and restaurants; (n) regulating the conduct of tattoo parlors; (o) regulating the conduct of body piercing; and (p) regulating the conduct of cosmetic tattooing.

Prior to the final adoption by the council of any sanitary regulation or amendment thereto or repealer thereof the council shall hold a public hearing thereon. The council shall cause to be published, at least once, not less than 15 days prior to such hearing, in each of the counties of the State in a newspaper published in each of said counties, or if no newspaper be published in any such county, then in a newspaper circulated in such county, a notice of such hearing, specifying the time when and the place where such hearing will be held, together with a brief summary of the proposed regulation, amendment or repealer and a statement that copies of the text thereof may be obtained from the State Commissioner of Health and Senior Services or from the board of health of any municipality in the State. The State Department of Health and Senior Services shall prepare and make available on request therefor, copies of the text of such proposed regulations and changes therein in the manner described in such public notice.

2. This act shall take effect immediately.

Approved January 8, 1998.

CHAPTER 327

AN ACT concerning distributing, dispensing, or possessing controlled dangerous substances or controlled substance analogs and supplementing chapter 35 of Title 2C of the New Jersey Statutes.

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

C.2C:35-7.1 Violations of N.J.S.2C:35-5, certain locations; degree of crime; terms defined.

1. a. Any person who violates subsection a. of N.J.S.2C:35-5 by distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog while in, on or within 500 feet of the real property comprising a public housing facility, a public park, or a public building is guilty of a crime of the second degree, except that it is a crime of the third degree if the violation involved less than one ounce of marijuana.

b. It shall be no defense to a prosecution for violation of this section that the actor was unaware that the prohibited conduct took place while on or within 500 feet of a public housing facility, a public park, or a public building.

c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other provisions of law, a conviction arising under this section shall not merge with a conviction for a violation of subsection a. of N.J.S.2C:35-5 (manufacturing, distributing or dispensing) or N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme). Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of N.J.S.2C:35-7 or any other offense defined in this chapter.

d. It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct did not involve distributing, dispensing or possessing with the intent to distribute or dispense any controlled dangerous substance or controlled substance analog for profit, and that the prohibited conduct did not involve distribution to a person 17 years of age or younger. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

e. In a prosecution under this section, a map produced or reproduced by any municipal or county engineer for the purpose of depicting the location and boundaries of the area on or within 500 feet of a public housing facility which is owned by or leased to a housing authority according to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), the area in or within 500 feet of a public park, or the area in or within 500 feet of a public building, or a true copy of such a map, shall, upon proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas, provided that the governing body of the municipality or county has adopted a resolution or ordinance approving the map as official finding and record of the location and boundaries of the area or areas on or within 500 feet of a public housing

facility, a public park, or a public building. Any map approved pursuant to this section may be changed from time to time by the governing body of the municipality or county. The original of every map approved or revised pursuant to this section, or a true copy thereof, shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. Nothing in this section shall be construed to preclude the prosecution from introducing or relying upon any other evidence or testimony to establish any element of this offense; nor shall this section be construed to preclude the use or admissibility of any map or diagram other than one which has been approved by the governing body of a municipality or county, provided that the map or diagram is otherwise admissible pursuant to the Rules of Evidence.

f. As used in this act:

"Public housing facility" means any dwelling, complex of dwellings, accommodation, building, structure or facility and real property of any nature appurtenant thereto and used in connection therewith, which is owned by or leased to a local housing authority in accordance with the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) for the purpose of providing iiving accommodations to persons of low income.

"Public park" means a park, recreation facility or area or playground owned or controlled by a State, county or local government unit.

"Public building" means any publicly owned or leased library or museum.

2. This act shall take effect immediately.

Approved January 9, 1998.

CHAPTER 328

AN ACT establishing a Sexual Assault Nurse Examiner Program, supplementing Title 52 of the Revised Statutes and making an appropriation.

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

1. The Legislature finds and declares that the Sexual Assault Nurse Examiner Model Project established pursuant to P.L.1995, c.187 and approved on July 27, 1995, will expire on July 27, 1997. The project has been successful in ensuring more timely and accurate collection of forensic evidence for use in prosecuting suspected rapists and in creating a compassionate way to treat sexual assault victims, and it is important to continue the program.

2. a. The Sexual Assault Nurse Examiner Model Project established pursuant to P.L.1995, c.187 is continued in accordance with the provisions of this act and shall be designated as the Sexual Assault Nurse Examiner Program in Monmouth county. The Chief of the Office of Victim-Witness Advocacy in the Division of Criminal Justice in the Department of Law and Public Safety shall oversee the program in consultation with an advisory committee comprised of: the person designated by the advisory committee to serve as the program coordinator, and a representative from at least each of the following: the Attorney General, the Division on Women in the Department of Community Affairs, each hospital participating in the program, the Women's Center of Monmouth County, Inc., a law enforcement agency within the county, and the county prosecutor's office. The chief may contract with any agency, organization or other entity, as appropriate, to effectuate the purposes of this act, and that agency, organization or other entity shall seek, to the maximum extent practicable, to obtain funds from nongovernmental sources as a supplement to State funds appropriated to operate the program.

b. The program shall be designed to use forensic nurse sexual assault examiners, who shall be registered professional nurses or nurse practitioners/clinical nurse specialists licensed in this State and trained in forensic science, in accordance with regulations adopted by the New Jersey Board of Nursing with the approval of the Attorney General, to perform sexual assault examinations in an area of the hospital designated solely for sexual assault examinations. The program shall work cooperatively with the rape crisis center operated by the Women's Center of Monmouth County, Inc., in providing assistance to each victim. A representative of the county prosecutor's office or the Office of Victim-Witness Advocacy shall meet with each victim, and counseling and other appropriate services pursuant to subsection c. of section 6 of P.L.1985, c.404 (C.52:4B-44) shall be provided to each victim. The program shall provide the victim with the opportunity to tend to personal hygiene needs and to obtain fresh clothing, as appropriate.

c. The program staff shall offer assistance to other counties which may be interested in establishing a similar program.

3. There is appropriated $90,000 from the General Fund to the Department of Law and Public Safety to carry out the provisions of this act.

4. The Attorney General, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations to effectuate the purposes of this act.

5. This act shall take effect immediately.

Approved January 9, 1998.

CHAPTER 329

AN ACT exempting certain timing devices from regulation by the Superintendent of Weights and Measures and amending P.L.1994, c.60.

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

1. Section 6 of P.L.1994, c.60 (C.51:1-54.2) is amended to read as follows:

C.51:1-54.2 Weighing and measuring devices; registration; fees.

6. a. All weighing and measuring devices located within the State and operated or used for commercial purposes shall be registered with the State superintendent, except for timing devices used in clothes dryers by the residents of a building in which the clothes dryers are located.

b. An applicant for registration shall submit an application on a form provided by the State superintendent and pay the appropriate registration and inspection fee established pursuant to section 7 of P.L.1994, c.60 (C.51:1-54.3) to the State superintendent.

c. A weighing and measuring device registration shall expire one year from the effective date of the registration.

d. A registration may be renewed annually for an additional one-year term upon submission of a properly completed renewal application on a form provided by the State superintendent and payment of the registration fee established pursuant to section 7 of P.L.1994, c.60 (C.51:1-54.3).

e. A registration seal shall be issued by the State superintendent for each weighing and measuring device registered in the State and shall be affixed to the instrument or device.

f. Notification shall be provided to the State superintendent if a weighing and measuring device, located within this State, is sold, transferred or moved to a new location.

2. This act shall take effect immediately.

Approved January 9, 1998.

CHAPTER 330

AN ACT concerning health benefits coverage under the State Health Benefits Program of certain retired members of the Police and Firemen's

Retirement System of New Jersey, the Public Employees' Retirement System of New Jersey and the Consolidated Police and Firemen's Pension Fund, amending P.L.1977, c.85 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.52:14-17.32i Health benefits, certain; law enforcement retirants, certain.

1. a. A qualified retiree from the Police and Firemen's Retirement System of New Jersey (C.43:16A-1 et seq.), hereinafter referred to as PFRS, the Consolidated Police and Firemen's Pension Fund (C.43:16-1 et seq.), hereinafter referred to as CPFPF, or the Public Employees' Retirement System of New Jersey (C.43:15A-1 et seq.), hereinafter referred to as PERS, and dependents, as defined in section 2 of P.L.1961, c.49 (C.52:14-17.26), of a qualified retiree, are eligible to participate in the program, in accordance with the law and rules governing the program, except as otherwise provided by this act, regardless of whether the retiree's employer participated in the program.

A qualified retiree is a retiree who:

(1) retired on a benefit based on 25 or more years of service credit in PFRS or CPFPF, or in PERS as a law enforcement officer as defined in section 1 of P.L.1955, c.257 (C.43:15A-97) or in a position eligible for participation in PFRS as provided in section 9 of P.L.1989, c.204 (C.43:16A-1.2); or

(2) retired on a disability retirement under PFRS or CPFPF, or under PERS as a law enforcement officer or in a position eligible for participation in PFRS, based on fewer years of service credit; and

(3) was eligible to receive health benefits coverage at the expense of the employer of the person immediately preceding retirement.

b. The State shall pay the amount of the premium or periodic charges for the coverage for the qualified retiree and dependents, but not including survivors, equal to 80 percent of the premium or periodic charges for the category of coverage elected by the qualified retiree under the State managed care plan or a health maintenance organization participating in the program which provides services in the 21 counties in the State, whichever provides the lower premium or periodic charge. The qualified retiree shall pay the difference between the premium or periodic charge for the coverage and the amount paid by the State.

c. The State Health Benefits Commission shall annually certify to the State the cost for providing health benefits coverage to qualified retirees and

their dependents under this section. The State shall annually remit to the commission the amount certified at a time specified by the State Treasurer.

d. The provisions of this section shall not apply to (1) a retired State employee whose premium or periodic charges for benefits under the program are paid by the State pursuant to section 8 of P.L.1961, c.49 (C.52:14-17.32) or section 6 of P.L.1996, c.8 (C.52:14-17.28b); and (2) a retiree of an employer other than the State which pays the premium or periodic charges for health care benefits for eligible retirees pursuant to section 7 of P.L.1964, c.125 (C.52:14-17.38) or N.J.S.40A:10-23 on the effective date of P.L.1997, c.330 (C.52:14-17.32i et al.).

C.52:14-17.32j Eligibility for benefits.

2. A qualified retiree shall be eligible for the benefits provided by P.L.1997, c.330 (C.52:14-17.32i et al.) at the time of retirement, or at the time the qualified retiree becomes eligible for Medicare. A qualified retiree receiving health benefits coverage from an employer after retirement shall be ineligible for the benefits under this act.

C.52:14-17.32k Existing retiree health care benefits remain intact.

3. No provision of this act shall be deemed to replace, supersede or modify retiree health care benefits provided by an employer by negotiated agreement, ordinance or resolution.

4. Section 5 of P.L.1977, c.85 (C.34:13A-18) is amended to read as follows:

C.34:13A-18 Limitations on finding, opinion, order of arbitrator.

5. The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

5. Any qualified retiree who retired prior to the effective date of this act, P.L.1997, c.330 (C.52:14-17.32i et al.) shall be eligible for the coverage

provided by section 1 of the act if the employee applies to the program for it within one year after the effective date of this act.

6. This act shall take effect on the first day of the sixth month following enactment.

Approved January 9, 1998.

CHAPTER 331

AN ACT to license and certify alcohol and drug counselors, creating an Alcohol and Drug Counselor Committee, revising various parts of the statutory law.

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

C.45:2D-1 Short title.

1. This act shall be known and may be cited as the "Alcohol and Drug Counselor Licensing and Certification Act."

C.45:2D-2 Findings, declarations relative to licensing, certification of alcohol, drug counselors.

2. The Legislature finds and declares that: the profession of alcohol and drug counseling profoundly affects the lives and public safety of the people of New Jersey; the public interest requires the establishment of professional licensing and certification standards for alcohol and drug counselors to protect the citizens of this State by setting standards of education, ethics, competencies and experience for those persons presently practicing and for those seeking to practice and be licensed or certified as alcohol and drug counselors in this State; licensing and certification will enable other professionals, health services providers, employers and the general public to recognize qualified practicing alcohol and drug counselors; and licensing and certification will provide assurances that professionals engaged in alcohol and drug counseling meet acceptable standards of education, experience, ethics and competency in practice which will encourage and promote quality treatment and rehabilitation for drug and alcohol abusers.

C.45:2D-3 Definitions relative to licensing, certification of alcohol, drug counselors.

3. As used in this act:

"Alcohol and drug counseling" means the professional application of alcohol and drug counseling methods which assist an individual or group to

develop an understanding of alcohol and drug dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities and needs as affected by alcohol and drug dependency problems.

"Alcohol and Drug Counselor Certification Board of New Jersey, Inc." means the member of the International Certification Reciprocity Consortium of Alcohol and Other Drug Abuse, Inc. which certifies alcohol and drug counselors in the State of New Jersey.

"Board" means the State Board of Marriage and Family Therapy Examiners.

"Certified alcohol and drug counselor" means a person who holds a current, valid certificate issued pursuant to section 5 of this act.

"Committee" means the Alcohol and Drug Counselor Committee established pursuant to section 12 of this act.

"Department" means the Department of Law and Public Safety.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Licensed clinical alcohol and drug counselor" means a person who holds a current, valid license issued pursuant to section 4 of this act.

"Self-help group" means a voluntary group of persons who offer peer support to each other in recovering from an addiction.

"Supervised practical training" means supervision which seeks to teach the knowledge and skills related to alcohol and drug counseling.

"Supervision" means the direct review of a supervisee for the purpose of accountability, teaching, training, administering, or clinical review by a supervisor in the same area of specialized practice.

C.45:2D-4 Requirements for licensure as licensed clinical alcohol, drug counselor.

4. a. Each person applying for licensure as a licensed clinical alcohol and drug counselor shall make application to the board on the form and in the manner the committee prescribes and the board shall immediately refer each application to the committee for appropriate action. Each applicant shall furnish evidence satisfactory to the committee that he has:

(1) Received a master's degree from an accredited institution of higher education with a minimum of 18 graduate semester hours in counseling or counseling related subjects; and

(2) Successfully completed all the requirements to be a certified alcohol and drug counselor pursuant to section 5 of this act.

b. The board shall issue a license as a licensed clinical alcohol and drug counselor to any health care provider licensed by this State who, within the scope of that provider's practice, diagnoses and treats drug or alcohol related disorders, or both, and demonstrates to the board that the person has equivalent education, training and comparable years of experience as

required pursuant to subsection a. of this section, except that the person shall be exempt from meeting the provisions of paragraphs (5) and (6) of subsection a. of section 5 of this act.

C.45:2D-5 Requirements for certification as certified alcohol, drug counselor.

5. a. Each person applying for certification as a certified alcohol and drug counselor shall make application to the board on the form and in the manner the committee prescribes and the board shall immediately refer each application to the committee for appropriate action. Each applicant shall furnish evidence satisfactory to the committee that he has received a high school diploma or a certificate of high school equivalency and that he has:

(1) Had 300 hours of supervised practical training in alcohol and drug counseling acceptable to the board. This practical training may be part of the work experience pursuant to paragraph (2) of this subsection a. and may be completed under more than one agency or supervisor;

(2) Had two years of supervised work experience acceptable to the board which may be paid or voluntary time working directly with alcohol or other drug clients. This experience may include both direct and indirect functions. Formal education or unsupervised work experience may not be substituted for the required experience;

(3) Completed 270 hours of alcohol and drug education, including formal classroom education, workshops, seminars, institutes, in-service training and college or university work. This education shall be related to the knowledge and skill base associated with the functions of an alcohol and drug counselor. All education shall be approved by the board;

(4) Attended alcohol and drug abuse self-help group meetings as prescribed by the board; and

(5) Successfully completed an oral examination on the applicant's written case presentation; and

(6) Successfully completed a written examination provided by the board, which may be a written examination administered by a nationally recognized alcohol and drug counseling certification organization.

b. The experience and education requirements in subsection a. of this section shall insure that the applicant is competent in the functions of an alcohol and drug abuse counselor, which include: screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, education and prevention, referral, consultation with other professionals in regard to client treatment and services, and reporting and recordkeeping.

C.45:2D-6 Review of qualifications.

6. The committee shall review the qualifications of each person who applies for licensure or certification. No applicant shall be licensed or

certified by the board unless a majority of the full committee first determines that the applicant has met the education and experience requirements and performed satisfactorily on the appropriate examinations required pursuant to this act. All applicants who are determined to be qualified and are recommended for licensure or certification by the committee shall be considered for licensure or certification by the board, with the final decisions to be made by the board. The board is authorized to review the actions taken by the committee with respect to the committee's evaluation and examination of applicants for licensure as licensed clinical alcohol and drug counselors or for certification as certified alcohol and drug counselors and the board may reverse, modify or fail to implement any determination by the committee with an affirmative vote of a majority of the board.

C.45:2D-7 Application fee, renewal.

7. Each initial application under this act shall be accompanied by a fee as prescribed by the committee. Licenses and certifications shall be renewed biennially upon a form provided by the board, accompanied by payment of a fee prescribed by the board. Each applicant shall apply for renewal of licensure or certification within 180 days of expiration, and shall present satisfactory evidence that the continuing education requirements have been completed. If the certificate or license is not renewed within 180 days of expiration, the license or certification shall be revoked upon notice by the board. A license or certification which has been revoked may be reinstated within three years, upon payment to the board of a prescribed reinstatement fee in addition to the renewal fee for each year or part thereof during which the license or certification was ineffective. After the three-year period, the license or certification may be reinstated only by complying with the provisions of this act regarding initial licensure or certification.

C.45:2D-8 Licensure, certification required for practice.

8. a. No person shall engage in the practice of alcohol and drug counseling as a licensed clinical alcohol and drug counselor unless licensed under this act. No person shall engage in the practice of alcohol and drug counseling as a certified alcohol and drug counselor unless certified under this act. No person shall present, call or represent himself as a licensed clinical alcohol and drug counselor unless licensed under this act. No person shall present, call or represent himself as a certified alcohol and drug counselor unless certified under this act.

b. No person shall assume, represent himself as, or use the title or designation "alcoholism counselor," "alcohol counselor," "drug counselor," "alcohol and drug counselor," "alcoholism and drug counselor," "licensed clinical alcohol and drug counselor," "certified alcohol and drug counselor," "substance abuse counselor," "chemical dependency counselor," or

"chemical dependency supervisor," or any of the abbreviations for the above titles, unless licensed or certified under this act, and unless the title or designation corresponds to the license or certification held by the person pursuant to this act.

c. No person shall engage in the independent practice of alcohol and drug counseling for a fee unless the person is licensed under this act as a licensed clinical alcohol and drug counselor or the person is a certified alcohol and drug counselor practicing under the supervision of a licensed clinical alcohol and drug counselor.

C.45:2D-9 Construction of act.

9. a. Nothing in this act shall be construed to prevent a person from engaging in or offering alcohol and drug addiction services such as self-help, sponsorship through alcoholics and narcotics anonymous groups or other uncompensated alcohol and drug addiction counseling assistance.

b. Nothing in this act shall be construed to apply to the activities and services of a designated employee or other agent of a private employer who has been designated to be involved in the evaluation or referral for counseling of employees of the private employer, or an employee or other agent of a recognized academic institution, a federal, State, county or local government institution, agency or facility, or a school district, if the individual is performing these activities solely within the company or agency, as the case may be, or under the jurisdiction of that company or agency and if a license granted under this act is not a requirement for employment.

c. Nothing in this act shall be construed to apply to the activities and services of a rabbi, priest, minister, Christian Science practitioner or clergyman of any religious denomination or sect, when engaging in activities, which are within the scope of the performance of the person's 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 the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering services remains accountable to the established authority thereof.

d. Nothing in this act shall be construed to apply to the activities and services of a student, intern or trainee in alcohol and drug addiction 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.

e. Nothing in this act shall be construed to prevent a person from doing work of an alcohol or drug counseling 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, nurses or any other profession or occupation 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 certification issued pursuant to this act.

C.45:2D-10 Granting license, certification to individual licensed, certified out-of-State.

10. The board may grant a license or certification to any person who at the time of application is licensed or certified by a governmental agency located in another state, territory or jurisdiction, if in the opinion of the committee the requirements of that licensure or certification are substantially similar to the requirements of this act.

C.45:2D-11 Disclosure of confidential information prohibited.

11. An alcohol and drug counselor or clinical alcohol and drug counselor certified or licensed pursuant to the provisions of this act, or his employee, shall not disclose any confidential information that the counselor, or his employee, may have acquired while performing alcohol and drug counseling services for a patient unless in accordance with the federal regulations regarding the confidentiality of alcohol and drug patient records pursuant to 42 C.F.R. 2.1 et seq.

C.45:2D-12 Alcohol and Drug Counselor Committee.

12. There is established a committee of the board to be known as the Alcohol and Drug Counselor Committee. The committee shall consist of five members who are residents of the State, one of whom shall be a public member appointed pursuant to the provisions of subsection b. of section 2 of P.L.1971, c.60 (C.45:1-2.2). Of the four remaining members, all shall have been actively engaged in the practice of alcohol and drug counseling for at least five years immediately preceding their appointment, have spent the major portion of time devoted to such activity, during the two years preceding appointment, in this State, and except for the members first appointed, two shall be licensed clinical alcohol and drug counselors and two shall be certified alcohol and drug counselors.

C.45:2D-13 Membership; terms; filling of vacancies; election of officers.

13. a. The Governor shall appoint each member of the committee for terms of three years, except that of the members first appointed, three shall serve for a term of three years and two shall serve for terms of two years. Any vacancy in the membership shall be filled for the unexpired term in the manner provided by the original appointment. No member of the committee may serve more than two successive terms in addition to any

unexpired term to which he has been appointed. The Governor may remove any member of the committee for cause.

The committee shall annually elect from its members a chairperson and a vice-chairperson.

Regular meetings of the committee shall be held at least once during each quarter of the year and special meetings may be held upon the call of the chairperson or the vice-chairperson in the chairperson's absence.

b. The first appointees to the committee must meet the qualifications to be licensed or certified and shall become licensed clinical alcohol and drug counselors or certified alcohol and drug counselors as soon as practical.

C.45:2D-14 Powers, duties of committee.

14. The committee shall, in addition to such other powers and duties as it may possess by law or that may be delegated to the committee by the board:

a. Administer the provisions of this act;

b. Evaluate the qualifications and make a determination of the eligibility for licensure and certification of all applicants under this act, attesting to the applicant's professional qualification to practice as a licensed clinical alcohol and drug counselor or certified alcohol and drug counselor;

c. Investigate allegations of practice violating the provisions of this act;

d. Conduct hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), except that the director 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 and records;

e. Recommend rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as it may deem necessary to enable it to perform its duties under and to enforce the provisions of this act, including, but not limited to: rules and regulations that set professional practice standards for licensed clinical alcohol and drug counselors in the independent practice of alcohol and drug counseling for a fee and for certified alcohol and drug counselors;

f. Maintain a list of the names and addresses of all licensed clinical alcohol and drug counselors and all certified alcohol and drug counselors who are licensed or certified under this act; and

g. Establish standards for the continuing education of licensed clinical alcohol and drug counselors and certified alcohol and drug counselors.

C.45:2D-15 Executive director; compensation of members; fees.

15. a. An executive director of the committee shall be appointed by the director and shall serve at the director's pleasure. The salary of the executive director shall be determined by the director within the limits of available

funds. The director shall be empowered within the limits of available funds to hire any assistants as are necessary to administer this act.

b. Each member of the committee shall be compensated on a per diem basis pursuant to subsection a. of section 2 of P.L.1977, c.285 (C.45:1-2.5), and shall be reimbursed for actual expenses reasonably incurred in the performance of the duties as a member or on behalf of the committee.

c. The committee, through its executive director, may issue subpoenas to compel the attendance of witnesses to testify before the committee and produce relevant books, records and papers before the committee and may administer oaths in taking testimony, in any matter pertaining to its duties under the 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. A 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.

d. The board shall by rule or regulation establish, prescribe or change the fees for licenses, certifications or other services provided by the board or the committee pursuant to the provisions of this act.

C.45:2D-16 Waiver of licensing, certification requirements.

16. a. On or before the 730th day following the effective date of this act, upon application to the board on the form and in the manner the committee prescribes and the board approves, any person certified in New Jersey by the Alcohol and Drug Counselor Certification Board of New Jersey, Inc. as an alcoholism counselor on the enactment date of this act who demonstrates to the board that he has successfully completed 30 classroom hours in drug education may acquire a certificate as a certified alcohol and drug counselor without meeting the requirements set forth in section 5 of this act.

b. On or before the 730th day following the effective date of this act, upon application to the board on the form and in the manner the committee prescribes and the board approves, any person certified in New Jersey by the Alcohol and Drug Counselor Certification Board of New Jersey, Inc. as a drug counselor on the enactment date of this act who demonstrates to the board that he has successfully completed 50 classroom hours in alcohol education may acquire a certificate as a certified alcohol and drug counselor without meeting the requirements set forth in section 5 of this act.

c. On or before the 730th day following the effective date of this act, upon application to the board on the form and in the manner the committee prescribes and the board approves, any person who has practiced as an alcohol and drug counselor for at least five years and is certified in New Jersey by the Alcohol and Drug Counselor Certification Board of New Jersey, Inc. as an alcohol and drug counselor on the enactment date of this

act may be licensed as a licensed clinical alcohol and drug counselor without meeting the requirements set forth in section 4 of this act.

C.45:2D-17 Applicability of C.45:1-14 et seq.

17. The provisions of P.L.1978, c.73 (C.45:1-14 et seq.) shall apply to this act. The authority of the board may be delegated to the committee at the discretion of the board.

C.45:2D-18 Grounds for refusal, revocation of license, certificate.

18. The board shall refuse to admit a person to an examination for licensure or certification and shall refuse to issue and shall revoke a license or certificate issued upon:

a. proof that the applicant or holder of the license or certificate has been convicted of a crime of the first, second, third or fourth degree in this State, or the equivalent thereof or other indictable offense in another jurisdiction; and

b. a determination by the board that the criminal conviction renders the applicant or holder of a license or certificate unfit to engage in the practice of alcohol and drug counseling. If an applicant or holder affirmatively demonstrates rehabilitation by clear and convincing evidence, the board shall not refuse to admit the applicant to an examination and shall not refuse to issue nor revoke a license or certificate to a holder thereof. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position which the convicted person would hold or has held, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

(4) the date of the offense;

(5) the age of the person when the offense was committed ;

(6) whether the offense was an isolated or repeated incident;

(7) any social conditions which may have contributed to the offense; and

(8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision .

19. 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 12 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, one of whom shall be a licensed clinical alcohol and drug counselor currently serving on the Alcohol and Drug Counselor 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.).

20. This act shall take effect 360 days following the appointment and qualification of committee members.

Approved January 9, 1998.

CHAPTER 332

AN ACT concerning deductions for payment of certain dental insurance premiums from the retirement allowances or pensions of the Teachers' Pension and Annuity Fund and the Public Employees' Retirement System and amending N.J.S.18A:66-54 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:66-54 is amended to read as follows:

Deductions from retirement allowance for TPAF members.

18A:66-54. If possible, whenever any beneficiary of the teachers' pension and annuity fund shall, in writing, request the Division of Pensions and Benefits to make deductions from the beneficiary's retirement allowance or pension for the payment of premiums for the pensioners' group health or dental insurance plan or the State Health Benefits Program, the division may make such deductions and transmit the sum so deducted to the companies carrying the policies. Any such written authorization may be withdrawn by any beneficiary upon filing notice of such withdrawal with

the division. Deductions for the payment of the premiums for a group dental insurance plan shall be made by the division only if 1,000 or more beneficiaries covered by that plan have made written requests for deductions.

2. Section 72 of P.L.1954, c.84 (C.43:15A-72) is amended to read as follows:

C.43:15A-72 Deductions from retirement allowance for PERS members.

72. If possible, whenever any beneficiary of the Public Employees' Retirement System of New Jersey shall, in writing, request the Division of Pensions and Benefits to make deductions from the beneficiary's retirement allowance or pension for the payment of premiums for the pensioners' group health or dental insurance plan or the State Health Benefits Program, the division may make such deductions and transmit the sum so deducted to the companies carrying the policies. Any such written authorization may be withdrawn by any beneficiary upon filing notice of such withdrawal with the division. Deductions for the payment of the premiums for a group dental insurance plan shall be made by the division only if 1,000 or more beneficiaries covered by that plan have made written requests for deductions.

3. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 333

AN ACT exempting certain imprinting services performed on manufacturing equipment from the sales and use tax, supplementing P.L.1966, c.30.

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

C.54:32B-8.48 Imprinting services on manufacturing equipment, exempt.

1. Receipts from the following services are exempt from the "Sales and Use Tax Act:" imprinting services performed on machinery, apparatus or equipment for use or consumption directly and primarily in the production of tangible personal property for sale by manufacturing, processing, assembling or refining and exempt from taxation pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13).

2. This act shall take effect immediately but section 1 shall remain inoperative until the first day of the second month following enactment.

Approved January 12, 1998.

CHAPTER 334

AN ACT establishing a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in this State, and supplementing P.L.1995, c.137 (C.34:1B-7.37 et seq.).

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

C.34:1B-7.42a Corporation business tax benefit certificate transfer program.

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused net operating loss carryover pursuant to subparagraph (B) of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable net operating loss carryover pursuant to paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange

for private financial assistance to be made by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 75% of the amount of the surrendered tax benefit. The private financial assistance shall be used to fund expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 75% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

d. The authority shall coordinate the applications for surrender and acquisition of unused but otherwise allowable tax benefits pursuant to this section in a manner that can best stimulate and encourage the extension of private financial assistance to new and expanding emerging technology and biotechnology companies in this State. The applications shall be submitted and the authority shall approve or disapprove the applications pursuant to the process and criteria established under section 6 of the "New Jersey Emerging Technology and Biotechnology Financial Assistance Act," P.L.1995, c.137 (C.34:1B-7.42). The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The

written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.

C.54:10A-4.2 Attachment of certificate to return for net operating loss carryover.

2. a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net operating loss carryover deduction shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply the net operating loss carryover deduction as evidenced by the certificate according to the provisions of subsection (k) of section 4 of P.L.1945, c.162 and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover deduction based upon the right to such a deduction as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).

C.54:10A-5.24a Attachment of certificate to return for research and development tax credit carryover.

3. a. Notwithstanding the provisions of section 1 of P.L.1993, c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a research and development tax credit carryover shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as evidenced by the certificate according to the provisions of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused research and development tax credit carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a research and development tax credit carryover based upon the right to such a credit carryover as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).

4. This act shall take effect immediately and sections 1 through 3 shall apply to tax years beginning on or after January 1 next following enactment.

Approved January 12, 1998.

CHAPTER 335

AN ACT concerning State-paid health benefits for certain retirees under the State Police Retirement System and amending P.L.1961, c.49.

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

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

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

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

b. Rates payable by retired employees for themselves and their dependents, by active employees for dependents covered by medicare benefits, and by the State or other employer for an active employee alone covered by medicare benefits, shall be determined on the basis of utilization experience according to classifications determined by the commission, provided, however, that the total rate payable by such retired employee for himself and his dependents, or by such active employee for his dependents and the State or other employer for such active employee alone, for coverage hereunder and for Part B of medicare, shall not exceed by more than 25%, as determined by the commission, the total amount which would have been required to have been paid by him and by the State or other

employer for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for medicare benefits. "Medicare" as used in this act means the coverage provided under Title XVIII of the Social Security Act as amended in 1965, or its successor plan or plans.

c. (1) From funds appropriated therefor, the State shall pay the premium or periodic charges for the benefits provided to a retired State employee and his dependents covered under the program, but not including survivors, if such employee retired from a State-administered retirement system on a benefit based on 25 years or more of service credited in such retirement system, excepting the employee who elected deferred retirement, but including the employee who retired on a disability pension based on fewer years of service credited in such retirement system and shall also reimburse such retired employee for his premium charges under Part B of the federal medicare program covering the retired employee and the employee's spouse. In the case of full-time employees of the Rutgers University Cooperative Extension Service, service credited in the federal Civil Service Retirement System (5 U.S.C. s.8331 et seq.) which was earned as a result of full-time employment at Rutgers University, may be considered alone or in combination with service credited in a State-administered retirement system for the purposes of establishing the minimum 25-year service requirement to qualify for the benefits provided in this section. Any full-time employee of the Rutgers University Cooperative Extension Service who meets the eligibility requirements set forth in this amendatory act shall be eligible for the benefits provided in this section, provided that at the time of retirement such employee was covered by the State Health Benefits Program and elected to continue such coverage into retirement.

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

(3) Notwithstanding the provisions of this section to the contrary, in the case of an employee of a State college, as described in chapter 64 of Title 18A of the New Jersey Statutes, or of a county college, as defined in N.J.S.18A:64A-1, service credited in a private defined contribution

retirement plan which was earned as an employee of an auxiliary organization, as defined in section 2 of P.L.1982, c.16 (C.18A:64-27), at a State or county college shall be considered in combination with service credited in a State-administered retirement system for the purposes of establishing the minimum 25-year service requirement to qualify for the benefits provided in this section, provided that the employee is covered by the program at the time of retirement.

(4) Notwithstanding the provisions of this section to the contrary, from funds appropriated therefor, the State shall pay the premium or periodic charges for the benefits provided to a retired State employee and any dependents covered under the program, but not including survivors, if the employee: (a) retired prior to the effective date of this act, P.L.1997, c.335 (C.52:14-17.32), under the State Police Retirement System, established pursuant to P.L.1965, c.89 (C.53:5A-1 et seq.), with more than 20 but less than 25 years of service credit in the retirement system; (b) was subsequently employed by the State in another position or positions not covered by the State Police Retirement System; (c) has, in the aggregate, at least 30 years of full-time employment with the State; and (d) is covered by the program at the time of terminating full-time employment with the State.

2. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 336

AN ACT concerning the testing and inspecting of elevator devices and supplementing P.L.1975, c.217 (C.52:27D-119 et seq.).

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

C.52:27D-126f Definitions relative to testing, inspecting elevator devices; alternative testing; rules, regulations; review, analysis.

1. a. As used in this section:

"Elevator device" means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure. The term includes, without limitation, elevators, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1

(Safety Standard for Belt Manlifts), except escalators and moving walks. It shall not include any conveyor devices that are process equipment.

"Qualified elevator device inspection firm" means any entity, whether a sole proprietorship, partnership, association or corporation, that is engaged in the business of inspecting, testing, installing, maintaining or repairing elevator devices, or the business of inspecting and testing elevator devices, is registered for those purposes with the Department of Community Affairs, and employs at least one qualified elevator device inspector.

"Qualified elevator device inspector" means any person who is employed by a qualified elevator device inspection firm and who is licensed by the Department of Community Affairs to conduct the routine, periodic and acceptance inspections and tests of elevator devices required pursuant to the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

b. No elevator devices which, under the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), are subject to routine, periodic and acceptance inspections and tests by the local enforcing agency or the Department of Community Affairs shall be subject to such inspections and tests, nor shall the owner of the structure be charged any fees therefor, if those elevator devices are subjected to acceptance testing and are routinely and periodically inspected and tested by a qualified elevator device inspection firm, and the owner has registered each such elevator device with the Department of Community Affairs and has indicated in the registration application form, or in a supplement to that form, the identity of the qualified elevator device inspection firm that has been given responsibility for inspection and testing of the elevator device.

The inspections and tests, including the frequency thereof, conducted by a qualified elevator device inspector shall be in accordance with such rules and regulations as the Commissioner of Community Affairs may prescribe pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and subsection e. of this section. Acceptance testing and the five-year test shall be witnessed by the local enforcing agency or the Department of Community Affairs in accordance with such rules and regulations as the Commissioner of Community Affairs may prescribe pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and subsection e. of this section. No qualified elevator device inspector shall act in that capacity when his work on the elevator device is the work being inspected.

c. If, upon inspection or test, a qualified elevator device inspector shall find that an elevator device is in a dangerous condition, or if there is an immediate hazard to persons riding on or using any such device, the inspector shall immediately prohibit any further use of the device and shall so notify in

writing the owner and the local enforcing agency or Department of Community Affairs, as the case may be. The device shall remain out of service until such time as the inspector shall certify in writing that the dangerous condition or immediate hazard has been removed or corrected and that the device is safe for public use. If the local enforcing agency or the department shall determine, in response to a complaint or otherwise, that an elevator device is in a dangerous condition or that there is an immediate hazard to persons riding on or using that device, the local enforcing agency or the department may require the owner of the elevator device to make such repairs as may be necessary, or take other corrective action, within such time as the local enforcing agency or the department, as the case may be, shall prescribe.

d. Any qualified elevator device inspector or qualified elevator device inspection firm violating the provisions of this section shall be subject to a penalty in accordance with section 20 of P.L.1975, c.217 (C.52:27D-138) and shall also be subject to suspension or revocation by the Department of Community Affairs of licensure or registration as a qualified elevator device inspector or qualified elevator device inspection firm, as the case may be.

e. The Commissioner of Community Affairs, 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. The rules and regulations shall provide for, but not be limited to, the qualifications for licensing of qualified elevator device inspectors, the registration of qualified elevator device inspection firms, the manner and form of licensure and registration, the fee for each such license or registration, the manner in which test results pursuant to this act are to be recorded, and minimum liability insurance requirements for qualified elevator device inspection firms, for which proof thereof shall be provided by the firms to the department. License and registration fees shall be designed to cover, but not exceed, the actual costs the department shall incur in administering the provisions of this act.

f. The Department of Community Affairs shall conduct a review and perform an analysis of the impact on the safety record of elevator devices in this State as a result of the implementation of this section. The review and analysis shall be performed biennially. A written report of the results of the review and analysis shall be submitted to the Governor and the Legislature, with the first report submitted within 48 months following the effective date of P.L.1997, c.336 (C.52:27D-126f).

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

Approved January 12, 1998.

CHAPTER 337

AN ACT concerning frozen desserts licenses and amending P.L.1964, c.120.

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

1. Section 5 of P.L.1964, c.120 (C.24:10-73.5) is amended to read as follows:

C.24:10-73.5 Definitions.

5. (a) "Frozen desserts plant" is hereby defined as any place, premises or establishment or any part thereof where frozen desserts are assembled, manufactured, processed, frozen or converted in form, for wholesale distribution or sale, and shall include rooms or premises wherein utensils are washed, sanitized or kept.

(b) (Deleted by amendment, P.L.1997, c.337).

(c) "Mobile unit" is hereby defined as any vehicle on which frozen desserts are manufactured, prepared, processed or converted in form and which is used in selling and dispensing such products to the consuming public.

(d) "Depot" is hereby defined as a building from which mobile units operate and where they are sanitized.

(e) (Deleted by amendment, P.L.1997, c.337).

(f) "Wholesale" means any place engaged in the production, preparation, processing, manufacture, packing, storage or handling of food for sale or distribution to a person other than the ultimate consumer.

2. Section 10 of P.L.1964, c.120 (C.24:10-73.10) is amended to read as follows:

C.24:10-73.10 License to sell, distribute frozen desserts.

10. Every person owning or operating a frozen dessert plant for the assembly, manufacturing, processing, freezing or converting in form of frozen desserts for wholesale sale or distribution or a mobile unit within this State shall, before July 1 in each year, apply to the department for a license to sell or distribute such products within this State and register with the department such information as may be required by the department to enable it to carry out its responsibilities under this act.

At the same time application for a license and registration is filed the applicant shall pay to the department an annual license fee. The fee schedule shall be adopted by regulation pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and shall be reasonable for

services performed in the licensing and inspection of a frozen dessert plant or mobile unit, except that the license fee shall not exceed $500.

3. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 338

AN ACT concerning coverage for foods and food products for inherited metabolic diseases and supplementing P.L.1938, c.366 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New Jersey Statutes, chapter 27 of Title 17B of the New Jersey Statutes, P.L.1992, c.161 (C.17B:27A-2 et seq.), P.L.1992, c.162 (C.17B:27A-17 et seq.), P.L.1973, c.337 (C.26:2J-1 et seq.) and P.L.1961, c.49 (C.52:14-17.25 et seq.).

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

C.17:48-6s Coverage for treatment of inherited metabolic diseases by hospital service corporation.

1. No group or individual hospital service corporation contract providing hospital or medical expense benefits shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional

requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7q Coverage for treatment of inherited metabolic diseases by medical service corporation.

2. No group or individual medical service corporation contract providing hospital or medical expense benefits shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.16 Coverage for treatment of inherited metabolic diseases by health service corporation.

3. No group or individual health service corporation contract providing hospital or medical expense benefits shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the contract provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein

modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the contract.

The provisions of this section shall apply to all contracts in which the health service corporation has reserved the right to change the premium.

C.17B:26-2.1o Coverage for treatment of inherited metabolic diseases by individual health insurance policy.

4. No individual health insurance policy providing hospital or medical expense benefits shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the policy provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the policy.

The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

C.17B:27-46.1r Coverage for treatment of inherited metabolic diseases by group health insurance policy.

5. No group health insurance policy providing hospital or medical expense benefits shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this act, unless the policy provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the policy.

The provisions of this section shall apply to all policies in which the insurer has reserved the right to change the premium.

C.17B:27A-7.4 Coverage for treatment of inherited metabolic diseases by individual health benefits plan.

6. No individual health benefits plan subject to the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the health benefits plan provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low

protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan.

The provisions of this section shall apply to all health benefits plans in which the carrier has reserved the right to change the premium.

C.17B:27A-19.6 Coverage for treatment of inherited metabolic diseases by small employer health benefits plan.

7. No small employer health benefits plan subject to the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the health benefits plan provides benefits to each person covered thereunder for expenses incurred in the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan.

The provisions of this section shall apply to all health benefits plans in which the carrier has reserved the right to change the premium.

C.26:2J-4.17 Coverage for treatment of inherited metabolic diseases by health maintenance organization.

8. Notwithstanding any provision of law to the contrary, a certificate of authority to establish and operate a health maintenance organization in

this State shall not be issued or continued by the Commissioner of Health and Senior Services on or after the effective date of this act unless the health maintenance organization provides health care services to each enrollee for the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the enrollee's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

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.

C.52:14-17.29c Coverage for treatment of inherited metabolic diseases by State Health Benefits Program.

9. The State Health Benefits Commission shall provide benefits to each person covered under the State Health Benefits Program for the therapeutic treatment of inherited metabolic diseases, including the purchase of medical foods and low protein modified food products, when diagnosed and determined to be medically necessary by the covered person's physician.

For the purposes of this section, "inherited metabolic disease" means a disease caused by an inherited abnormality of body chemistry for which testing is mandated pursuant to P.L.1977, c.321 (C.26:2-110 et seq.); "low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease, but does not include a natural food that is naturally low in protein; and "medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered enterally under direction of a physician.

The health care services shall be provided to the same extent as for any other medical condition under the program.

10. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 339

AN ACT concerning rentals of single rooms in residential dwellings owned by senior citizens and supplementing Title 40 of the Revised Statutes.

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

C.40:55D-68.4 Certain senior citizens permitted to rent, lease rooms.

1. Notwithstanding any law, ordinance, rule or regulation to the contrary, a municipality shall not prohibit any senior citizen, who is the owner of a single-family dwelling which is his primary residence, from renting or leasing a room or rooms within that dwelling, together with general use associated with that dwelling, to one person, except that nothing in this act shall be construed to prohibit a municipality from allowing the rental or leasing to more than one person.

C.40:55D-68.5 "Senior citizen" defined.

2. For the purposes of this act, a "senior citizen" is any person who has attained the age of 62 years on or after the effective date of this act, or the spouse of that person, or the surviving spouse of that person, if the surviving spouse is 55 years of age or older.

C.40:55D-68.6 Powers of municipality intact.

3. Nothing in this act shall be interpreted to limit the powers of a municipality to enforce applicable provisions of any laws, ordinances and regulations relating to fire safety, and public health and welfare.

4. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 340

AN ACT concerning notaries public and amending R.S.41:2-3.

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

1. R.S.41:2-3 is amended to read:

Oaths administered by notaries public in financial institution matters.

41:2-3. Oaths administered by notaries public in financial institution matters.

a. A notary public who is a stockholder, director, officer, employee or agent of a financial institution or other corporation may administer an oath to any other stockholder, director, officer, employee or agent of the corporation.

b. A notary public employed by a financial institution may follow directions or policies of the employer which provide that during the hours of the notary public's employment by the financial institution the notary public shall not administer oaths except in the course of the business of the employer.

As used in this section, "financial institution" means a State or federally chartered bank, savings bank, savings and loan association or credit union.

2. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 341

AN ACT concerning DNA testing of certain persons and amending P.L.1994, c.136.

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

1. Section 2 of P.L.1994, c.136 (C:53:1-20.18) is amended to read as follows:

C.53:1-20.18 Findings, declarations regarding DNA databanks.

2. The Legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting

recidivist acts. Several states have enacted laws requiring persons convicted of certain crimes, especially serious sexual offenses, to provide genetic samples for DNA profiling. Moreover, it is the policy of this State to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals who are the subjects of criminal investigations. It is therefore in the best interest of the State of New Jersey to establish a DNA database and a DNA databank containing blood samples submitted by certain serious sexual offenders. It is also in the best interest of the State of New Jersey to include in this DNA database and DNA databank blood samples submitted by certain juveniles adjudicated delinquent for certain acts, which if committed by an adult, would constitute serious sexual offenses and blood samples submitted by certain persons found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, of certain serious sexual offenses.

2. Section 3 of P.L.1994, c.136 (C.53:1-20.19) is amended to read as follows:

C.53:1-20.19 Definitions regarding DNA databanks.

3. As used in this act:

"CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic laboratories.

"DNA" means deoxyribonucleic acid.

"DNA Record" means DNA identification information stored in the State DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

"DNA Sample" means a blood sample provided by any person convicted of any offense enumerated in section 4 of this act or provided by any juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute any offense enumerated in section 4 of this act or submitted to the division for analysis pursuant to a criminal investigation.

"Division" means the Division of State Police in the Department of Law and Public Safety.

"FBI" means the Federal Bureau of Investigation.

"State DNA Database" means the DNA identification record system to be administered by the division which provides DNA records to the FBI for storage and maintenance in CODIS.

"State DNA Databank" means the repository of DNA samples collected under the provisions of this act.

3. Section 4 of P.L.1994, c.136 (C.53:1-20.20) is amended to read as follows:

C.53:1-20.20 DNA samples required; conditions.

4. a. On or after January 1, 1995 every person convicted of aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact and criminal sexual contact under N.J.S.2C:14-3 or any attempt to commit any of these crimes and who is sentenced to a term of imprisonment shall have a blood sample drawn for purposes of DNA testing upon commencement of the period of confinement. In addition, every person convicted on or after January 1, 1995 of these offenses, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and incarcerated as a result of a conviction of one or more of these offenses prior to January 1, 1995 shall have a DNA sample drawn before parole or release from incarceration.

b. On or after January 1, 1998 every juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual contact under N.J.S.2C:14-3, or any attempt to commit any of these crimes, shall have a blood sample drawn for purposes of DNA testing.

c. On or after January 1, 1998 every person found not guilty by reason of insanity of aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual contact under N.J.S.2C:14-3, or any attempt to commit any of these crimes, or adjudicated not delinquent by reason of insanity for an act which, if committed by an adult, would constitute one of these crimes, shall have a blood sample drawn for purposes of DNA testing.

4. Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended to read as follows:

C.53:1-20.22 Drawing of DNA samples; conditions.

6. Each DNA sample required to be drawn pursuant section 4 of this act from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn at a prison or jail unit to be specified by the sentencing court. DNA samples from persons who are adjudicated delinquent shall be drawn at a prison or jail identification and classification bureau specified by the family court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist or other health care worker with

phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample. No sample shall be drawn if the division has previously received an adequate blood sample from the convicted person or the juvenile adjudicated delinquent.

5. Section 9 of P.L.1994, c.136 (C.53:1-20.25) is amended to read as follows:

C.53:1-20.25 Expungement of records from State records; conditions.

9. a. (1) Any person whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the conviction that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecutor for the county in which the conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

(2) Any juvenile adjudicated delinquent whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the adjudication that resulted in the inclusion of the juvenile's DNA record or profile in the State database or the inclusion of the juvenile's DNA sample in the State databank has been reversed and the case dismissed. The juvenile adjudicated delinquent, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecutor for the county in which the conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the adjudication shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

(3) Any person found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, whose DNA record or profile has been

included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the judgment that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application of expungement shall be served on the prosecutor for the county in which the judgment was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the judgment shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

b. Upon receipt of an order of expungement and unless otherwise provided, the division shall purge the DNA record and all other identifiable information from the State database and the DNA sample stored in the State databank covered by the order. If the entry in the database reflects more than one conviction or adjudication, that entry shall not be expunged unless and until the person or the juvenile adjudicated delinquent has obtained an order of expungement for each conviction or adjudication on the grounds contained in subsection a. of this section. If one of the bases for inclusion in the DNA database was other than conviction or adjudication, that entry shall not be subject to expungement.

6. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 342

AN ACT creating the Rahway River Intergovernmental Cooperation Committee and supplementing Title 58 of the Revised Statutes.

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

C.58:1A-18 Short title.

1. This act shall be known, and may be cited, as the "Rahway River Intergovernmental Cooperation Committee Act."

C.58:1A-19 Findings, determinations relative to Rahway River Intergovernmental Cooperation Committee.

2. The Legislature finds and declares that the Rahway river is an important natural, recreational, and economic resource utilized and enjoyed by the citizens of the State; that the value of this resource is heavily dependent upon water quality, and poor water quality is a potential threat to the public health, safety, and welfare, and to the environment; that the river has suffered in the past, and continues to suffer, from abuse and neglect due to point and nonpoint source pollution discharges, stormwater runoff, illegal dumping of litter and other debris, and is subject to flooding conditions, creating a threat to people and property throughout the river system.

The Legislature therefore determines that it is appropriate for the municipalities and counties within which the Rahway river is located to form an intergovernmental cooperative working group to (1) develop recommended regional planning strategies and other regional policies, procedures, and model ordinances and resolutions, which would be implemented by each member municipality and county on a voluntary basis, (2) where appropriate, coordinate efforts of member municipalities and counties to clean up the Rahway river system or any tributary or watershed land thereof and to alleviate flooding conditions in that river system, (3) recommend appropriate State legislation and administrative action, and (4) advocate, and where appropriate, act as a coordinating, distributing, or recipient agency for, federal and State funding of environmental protection projects in river municipalities and river counties, all for the purpose of achieving the State goal of fully restoring, promoting, preserving, and maintaining the environmental health and water quality of the Rahway river system.

C.58:1A-20 Definitions relative to Rahway River Intergovernmental Cooperation Committee.

3. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection.

"Committee" means the "Rahway River Intergovernmental Cooperation Committee" created pursuant to section 4 of this act.

"Department" means the Department of Environmental Protection.

"Environmental protection project" means any work the purpose of which is to reduce point or nonpoint source pollution discharges, stormwater runoff, illegal dumping of litter and other debris, and other environmental and aesthetic insults to the Rahway river system, or to otherwise maintain or enhance the environmental health and water quality of the Rahway river system or any tributary or watershed land thereof.

"River counties" means Union county, Middlesex county, and Essex county.

"River municipalities" means the Union county municipalities of Clark, Cranford, Garwood, Kenilworth, Linden, Mountainside, Rahway, Scotch Plains, Springfield, Summit, Union, Westfield, and Winfield, the Middlesex county municipalities of Carteret, Edison, and Woodbridge, the Essex county municipalities of Maplewood, Millburn, Orange, South Orange, and West Orange, and any other Union, Middlesex, or Essex county municipality that chooses to participate, and is accepted, as a member of the committee as provided in section 4 of this act.

C.58:1A-21 "Rahway River Intergovernmental Cooperation Committee" created.

4. a. There is created the "Rahway River Intergovernmental Cooperation Committee," which shall be composed of: (1) a representative of each river municipality, who shall be selected by the governing body of that municipality and who shall be a voting member of the committee; (2) a representative of Union county, who shall be selected by the governing body of that county and who shall be a voting member of the committee; (3) a representative of Middlesex county, who shall be selected by the governing body of that county and shall be a voting member of the committee; (4) a representative of Essex county, who shall be selected by the county executive of that county and who shall be a voting member of the committee; and (5) the commissioner, or the commissioner's designee, who shall serve ex officio and who shall be a nonvoting member of the committee.

Any municipality in Union county, Middlesex county, or Essex county that is not a river municipality may, through its governing body, request membership, with full voting privileges, on the committee. Such membership shall be granted upon a majority vote of the voting membership of the committee.

b. Vacancies in the positions on the committee shall be filled in the same manner as the original appointments were made.

c. Members of the committee shall serve without compensation, but may, within the limits of funds appropriated or otherwise made available to the committee, be reimbursed for actual expenses necessarily incurred in the discharge of their official duties.

d. A member of the committee may be removed at any time for any reason by the municipal or county governing body, or the county executive, as the case may be, that appointed that member.

C.58:1A-22 Committee organization; quorum; meetings.

5. a. The committee shall organize as soon as may be practicable after the appointment of its members and shall select a chairperson and a vice-chairperson from among its members. The department shall provide technical and planning assistance to the committee.

b. A majority of the voting membership of the committee shall constitute a quorum for the transaction of committee business. Action may be taken and motions and resolutions adopted by the committee at any meeting thereof by the affirmative vote of a majority of the full voting membership of the committee.

c. The committee shall meet regularly as it may determine, and shall also meet at the call of the chairperson of the committee, the commissioner, or the Governor.

C.58:1A-23 Committee duties.

6. In order to facilitate achievement of the State goal, as set forth in this act, to fully restore, promote, preserve, and maintain the environmental health and water quality of the Rahway river system, the committee shall:

a. develop recommended regional planning strategies and other regional policies, procedures, and model ordinances and resolutions, which would be implemented by each member municipality and county on a voluntary basis;

b. where appropriate, coordinate efforts of member municipalities and counties to clean up the Rahway river system or any tributary or watershed land thereof and to alleviate flooding conditions in that river system;

c. recommend appropriate State legislation and administrative action; and

d. advocate, and where appropriate, act as a coordinating, distributing, or recipient agency for, federal and State funding of environmental protection projects in river municipalities and river counties, which projects may include the work of the committee.

C.58:1A-24 Assistance provided to committee.

7. The committee shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county, or municipal department, board, bureau, commission, agency, or authority as it may require and as may be available to it for the purpose of carrying out its duties under this act, and to employ such staff or experts and incur such traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for those purposes.

C.58:1A-25 Meetings, open; public.

8. The meetings of the committee shall be subject to the provisions and requirements of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

C.58:1A-26 Reports; dissolution.

9. a. The committee shall report its findings and conclusions, together with any recommendations for legislation or administrative action to abate environmental threats to the Rahway river system or to otherwise further the State goal to fully restore, promote, preserve, and maintain the environmental health and water quality of that river system, and to alleviate flooding conditions in that river system, to the Governor, the Legislature, and the commissioner within one year after the date of enactment of this act and periodically as necessary thereafter.

b. The committee shall dissolve ten years after the date of enactment of this act unless the voting membership of the committee unanimously votes to continue its existence. Thereafter, such a vote shall be held annually, and failing the receipt of a unanimous vote of the voting membership to continue the existence of the committee for another year, the committee shall thereupon dissolve.

10. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 343

AN ACT clarifying the offense of leader of narcotics trafficking network and amending N.J.S.2C:35-3.

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

1. N.J.S.2C:35-3 is amended to read as follows:

Leader of narcotics trafficking network.

2C:35-3. Leader of Narcotics Trafficking Network.

As used in this section:

"Financier" means a person who, with the intent to derive a profit, provides money or credit or other thing of value in order to purchase a controlled dangerous substance or an immediate precursor, or otherwise to finance the operations of a drug trafficking network.

A person is a leader of a narcotics trafficking network if he conspires with two or more other persons in a scheme or course of conduct to unlawfully manufacture, distribute, dispense, bring into or transport in this State methamphetamine, lysergic acid diethylamide, phencyclidine or any controlled dangerous substance classified in Schedule I or II, or any

controlled substance analog thereof as a financier, or as an organizer, supervisor or manager of at least one other person.

Leader of narcotics trafficking network is a crime of the first degree and upon conviction thereof, except as may be provided by N.J.S.2C:35-12, a person shall be sentenced to an ordinary term of life imprisonment during which the person must serve 25 years before being eligible for parole. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may also impose a fine not to exceed $750,000.00 or five times the street value of the controlled dangerous substance or controlled substance analog involved, whichever is greater.

Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of narcotics 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 under N.J.S.2C:35-4 (maintaining or operating a CDS production facility), N.J.S.2C:35-5 (manufacturing, distributing or dispensing), N.J.S.2C:35-6 (employing a juvenile in a drug distribution scheme), N.J.S.2C:35-9 (strict liability for drug induced death), 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 or purity of the specified controlled dangerous substance or controlled substance analog involved, or the amount of cash or currency involved.

It shall not be a defense to a prosecution under this section that such controlled dangerous substance or controlled substance analog was 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.

It shall not be a defense that the defendant was subject to the supervision or management of another, nor that another person or persons were also leaders of the narcotics trafficking network.

2. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 344

AN ACT concerning licensure by municipal authorities of premises for the location of rooming and boarding houses and amending P.L.1993, c.290.

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

1. Section 2 of P.L.1993, c.290 (C.40:52-10) is amended to read as follows:

C.40:52-10 Licensing of rooming, boarding houses.

2. The governing body of a municipality may, by ordinance, elect to license rooming and boarding houses located in the municipality in accordance with the provisions of this act. The governing body of a municipality that elects to license rooming and boarding houses may adopt, by ordinance, such regulations as it deems appropriate and necessary to enforce the provisions of P.L.1993, c.290; except those regulations shall not be inconsistent with the rules and regulations promulgated by the commissioner pursuant to P.L.1979, c.496 (C.55:13B-1 et seq.) to which rooming and boarding houses shall remain subject. If the governing body elects to license such facilities, the governing body shall so notify the Commissioner of Community Affairs or his designee.

2. Section 5 of P.L.1993, c.290 (C.40:52-13) is amended to read as follows:

C.40:52-13 Conditions for licensure.

5. It shall be the duty of the licensing authority to receive applications made pursuant to section 4 of this act and to conduct such investigations as may be necessary to establish:

a. With respect to the premises for which a license is sought (1) that they are in compliance with all applicable building, housing, health and safety codes and regulations. An inspection performed by a municipal enforcement agent under a contractual agreement with the Department of Community Affairs pursuant to P.L.1979, c.496 (C.55:13B-1 et seq.) may be deemed by the licensing authority to satisfy the investigation requirements of this section; (2) that the location of the premises will not, in conjunction with the proximity of other rooming and boarding houses, lead to an excessive concentration of such facilities in the municipality or a particular section thereof;

b. With respect to the owner or owners of the premises: (1) if a natural person or persons, that he or they are 21 years of age or older, and never convicted, in this State or elsewhere, of a crime involving moral turpitude, or of any crime under any law of this State licensing or regulating a rooming or boarding house, and have never had a license required pursuant to P.L.1979, c.496 (C.55:13B-1 et seq.) revoked; (2) if a corporation, that all officers and members of the board of directors, and every stockholder holding 10% or more of the stock of the corporation, directly or indirectly having a beneficial interest therein, have the same qualifications as set forth in this subsection for an applicant who is a natural person;

c. With respect to the operator or proposed operator, that he meets the requirements for licensure by the Department of Community Affairs;

d. That the owner and operator, either individually or jointly, have established sufficient guarantee of financial and other responsibility to assure appropriate relocation of the residents of the rooming or boarding house to suitable facilities in the event that the license is subsequently revoked or its renewal denied. The Department of Community Affairs shall determine, in the case of each type of rooming and boarding house under its jurisdiction, what constitutes suitable facilities for this purpose;

e. At the discretion of the licensing municipality and pursuant to an ordinance, that the owner has paid all municipal property taxes due and owing on the rooming and boarding house, or in the case of an initial application, the applicant has paid all municipal property taxes due and owing on any other rooming and boarding house located within the municipality and owned by the applicant, provided that the owner has received written notice of any payment delinquency which has remained unpaid for more than 120 days. The provisions of this subsection shall not be construed as denying or limiting the rights of any displaced residents to relocation assistance in accordance with P.L.1971, c.362 (C.20:4-1 et seq.); and

f. That the applicant has complied with regulations adopted in accordance with section 2 of P.L.1993, c.290 (C.40:52-10).

3. Section 8 of P.L.1993, c.290 (C.40:52-16) is amended to read as follows:

C.40:52-16 Revocation, non-renewal of license.

8. a. A licensing authority may revoke or refuse to renew a license granted under this act for any of the following reasons:

(1) A finding that there was any misstatement of material fact in the application upon which the license was issued.

(2) The occurrence of any fact which, had it occurred and been known to the licensing authority before issuance of the license, would have resulted in the denial of the application.

(3) Repeated violations, or prolonged failure to correct any violation, of any applicable building, housing, health or safety code or regulations, including municipal regulations adopted in accordance with section 2 of P.L.1993, c.290 (C.40:52-10).

(4) Refusal to allow access to any portion of the licensed premises at all reasonable times, with or without advance notice, in order that officers or agents of the licensing authority, or any official charged with enforcement within the municipality of any building, housing, health or safety code or regulations applicable to the premises may determine compliance with such codes or regulations.

(5) Revocation by the Department of Community Affairs of the operator's license or other authorization to operate a rooming or boarding house on the premises.

(6) Notification by the Department of Community Affairs that the premises are not, or are no longer suitable for operation of a rooming or boarding house on the premises.

(7) Failure or refusal to comply with any lawful regulation or order of the licensing authority.

(8) A determination by the municipal licensing agency that the issuance or renewal of a license to such a person would be contrary to the best interests of the residents of any rooming or boarding house or of the public generally.

b. A license shall not be revoked until five days' prior notice of the grounds therefor has been served upon the licensee, either personally or by certified mail addressed to the licensee at the licensed premises, and a reasonable opportunity given to the licensee to be heard thereon.

4. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 345

AN ACT concerning recorded telephone messages and amending P.L.1993, c.252.

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

1. Section 2 of P.L.1993, c.252 (C.48:17-28) is amended to read as follows:

C.48:17-28 Delivery of certain recorded telephone messages prohibited.

2. A caller within the State shall not use a telephone or telephone line to contact a subscriber within the State to deliver a recorded message other than for emergency purposes, unless the recorded message is introduced by an operator who shall obtain the subscriber's consent before playing the recorded message, or unless a prior or current relationship exists between the caller and the subscriber.

As used in this section, "emergency purposes" means calls made necessary in any situation affecting the immediate health and safety of consumers; and "recorded message" shall not include automated recorded telephone operator introductions for the purposes of accepting a call or message.

2. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 346

AN ACT concerning certain commercial practices 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.56:8-2.25 Transaction of business under assumed name, misrepresented geographic origin, location.

1. a. It shall be an unlawful practice for any person conducting or transacting business under an assumed name and filing a certificate pursuant to R.S.56:1-2 to intentionally misrepresent that person's geographic origin or location or the geographic origin or location of any merchandise.

b. A person engaged in the business of advertising shall be immune from liability under this section for receiving, accepting or publishing any advertisement, irrespective of the medium or format, submitted or developed for any person conducting or transacting business under an assumed name.

2. This act shall take effect immediately.

Approved January 12, 1998.

CHAPTER 347

AN ACT providing for the licensing of electrologists and supplementing chapter 9 of Title 45 of the Revised Statutes.

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

C.45:9-37.76 Short title.

1. This act shall be known and may be cited as the "Electrology Practice Act."

C.45:9-37.77 Definitions relative to practice of electrology.

2. As used in this act:

"Board" means the State Board of Medical Examiners.

"Committee" means the Electrologists Advisory Committee established pursuant to section 3 of this act.

"Electrologist" means a person who is licensed to practice electrology pursuant to the provisions of this act.

"Electrology" means the removal of hair permanently through the utilization of solid probe electrode-type epilation, including thermolysis, being of a short-wave, high frequency type, and including electrolysis, being of a galvanic type, or a combination of both, which is accomplished by a super-imposed or sequential blend.

"Electrology instructor" means a person who is licensed to teach the clinical and theoretical practice of electrology pursuant to the provisions of this act.

"Office" means any fixed establishment or place where one or more persons engage in the practice of electrology.

C.45:9-37.78 "Electrologist's Advisory Committee."

3. There is created within the Division of Consumer Affairs in the Department of Law and Public Safety, under the State Board of Medical Examiners, an "Electrologists Advisory Committee." The committee shall consist of five members who are residents of this State as follows: one physician licensed to practice medicine or surgery pursuant to chapter 9 of Title 45 of the Revised Statutes; three electrologists who have successfully passed the American Electrologist Association/International Board of Electrologist Certification Certified Professional Electrology Examination, and who shall be appointed from a list of nominees submitted by the Electrologists Association of New Jersey; and one public member to represent consumer interests. Each electrologist member shall be actively engaged in the delivery of electrology services in this State for at least four

years prior to his appointment. No electrologist member of the committee shall be affiliated as an instructor or member of the board of trustees of an electrology school; nor shall any electrologist member own any interest in any electrology school; nor shall any member engage in the business or own any interest in an entity engaged in the business of manufacturing or supplying electrology equipment or supplies.

The Governor shall appoint each committee member for a term of three years, except that of the electrologist members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and one shall serve for a term of one year. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided by the original appointment. No member of the committee may serve more than two successive terms in addition to any unexpired term to which he has been appointed.

C.45:9-37.79 Election of chairperson; meeting frequency.

4. The committee shall annually elect from among its members a chairperson. The committee shall meet at least twice a year and shall also meet upon the request of the Board of Medical Examiners or the Attorney General. The board shall provide the committee the facilities and personnel required for the proper conduct of its business.

C.45:9-37.80 Membership reimbursement.

5. The board shall authorize reimbursement of the members of the committee for their actual expenses incurred in connection with the performance of their duties as members of the committee.

C.45:9-37.81 Powers, duties.

6. The committee may have the following powers and duties, as delegated by the board:

a. evaluate and pass upon the qualifications of applicants for licensure;

b. adopt and administer the examination to be taken by applicants for licensure;

c. issue and renew biennial licenses for electrologists and electrology instructors pursuant to this act;

d. approve electrology education programs offered within the State;

e. refuse to admit a person to an examination or refuse to issue or suspend, revoke, or fail to renew the license of an electrologist or electrology instructor pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);

f. maintain a record of every electrologist and electrology instructor licensed in this State, their places of business, places of residence and the date and number of their license;

g. maintain a record of all offices licensed by the board to offer the services provided within the definition of electrology;

h. take disciplinary action, in accordance with P.L.1978, c.73 (C.45:1-14 et seq.) against an electrologist or an electrology instructor who violates any provision of this act;

i. adopt standards for and approve continuing education programs, subject to the requirements of section 11 of this act;

j. approve the types of instruments and procedures permitted in the practice and teaching of electrology;

k. review advertising by any licensee or any institution that offers a program in electrology approved by the board;

l. direct the conduct of inspections or investigations of any premises from which the board may have reason to believe that electrology services are being offered; and

m. direct the conduct of inspections or investigations of all licensed offices.

C.45:9-37.82 License required; conditions.

7. a. No person shall practice electrology or teach electrology, whether or not compensation is received or expected, unless the person holds a valid license to practice or teach electrology in this State, except nothing in this act shall be construed to:

(1) prohibit any person licensed to practice or certified to teach in this State under any other law from engaging in the practice or teaching for which he is licensed, regulated or certified; or

(2) prohibit any student enrolled in an approved clinical electrology education program from performing that which is necessary to the student's course of study.

b. No person, business entity or its employees, agents or representatives shall use the titles "licensed electrologist" or "licensed electrology instructor," or the letters "L.E." or "L.E.I.," or any other title, designation, words, letters, abbreviations or insignia indicating the practice or teaching of electrology, unless licensed to practice or teach electrology under the provisions of this act.

c. No person, firm, corporation, partnership or other legal entity shall operate, maintain or use premises for the rendering of any service provided in the definition of electrology without first having secured an office license from the board.

d. In addition to the provisions of section 8 of P.L.1978, c.73 (C.45:1-21), the board may refuse to grant or may suspend or revoke a license to practice or teach electrology upon proof to the satisfaction of the board that the holder thereof has:

(1) employed unlicensed persons to practice electrology, or supervised or aided an unlicensed person in the practice of electrology;

(2) advertised the practice of electrology so as to disseminate false, deceptive or misleading information, whether as an individual, through a professional service corporation, or through a third party;

(3) promoted the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;

(4) used instruments or procedures in the practice of electrology that are not approved by the board;

(5) maintained an office in a manner which is unsafe or unsanitary; or

(6) acted in a manner inconsistent with standards for the practice of electrology approved by the board.

C.45:9-37.83 Licensing requirements for electrologist.

8. To be eligible for licensure as an electrologist, an applicant shall fulfill the following requirements:

a. be at least 18 years of age;

b. be of good moral character;

c. have successfully completed high school or its equivalent;

d. (1) have successfully completed an electrology education program approved by the board, in consultation with the committee, including:

(a) at least 200 hours of instruction in the theory of electrology; and

(b) at least 400 hours of instruction in the clinical practice of electrology taught by an electrology instructor licensed pursuant to the provisions of this act. The clinical program shall include instruction in all modalities of electrology including galvanic, thermolysis and any other modality approved by the board; or

(2) have completed in another state an electrology education program determined by the board to be substantially equivalent to that required pursuant to this subsection; and

e. have passed an examination administered or approved by the board to determine the applicant's competence to practice electrology.

C.45:9-37.84 Licensing requirements for electrology instructor.

9. To be eligible for licensure as an electrology instructor an applicant shall fulfill the following requirements:

a. be licensed as an electrologist pursuant to the provisions of this act;

b. have been actively engaged in the practice of electrology for at least five years immediately preceding the date of application for licensure as an electrology instructor; and

c. passed an examination administered or approved by the board, after consultation with the committee, to determine the applicant's competence to teach electrology.

C.45:9-37.85 Application, fee, license issuance without written examination.

10. Upon payment to the board of a fee and the submission of a written application provided by the board, the board shall issue, without written examination, a license to any person who:

a. Holds a valid license issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this State, if the applicant has not previously failed the board examination as provided in sections 8, 9 and 12 of this act. If the applicant has failed an examination referred to in those sections, licensing shall be at the discretion of the board, in consultation with the committee;

b. Applies for licensure within 180 days of the initial meeting of the committee, is a resident of this State, has completed 120 hours of instruction in electrology at a school of electrology approved by the board, in consultation with the committee, and has been actively engaged in the practice of electrology for at least five years immediately preceding the date of application for licensure; or

c. Applies for licensure within 180 days of the effective date of this act, is a resident of this State, and presents evidence of having passed the written electrology certification examination of a nationally recognized board or agency approved by the board, in consultation with the committee.

C.45:9-37.86 Continuing professional education, programs, standards.

11. a. The board or committee, if so delegated by the board, shall:

(1) approve only such continuing professional education programs as are available to all electrologists and electrology instructors in this State on a reasonable nondiscriminatory basis. Programs may be held within or without this State, but shall be held so as to allow electrologists and electrology instructors in all areas of the State to attend;

(2) establish standards for continuing professional education programs, including the specific subject matter and contents of courses of study and the selection of instructors;

(3) accredit education programs offering credits toward the continuing education requirements; and

(4) establish the number of credits of continuing professional education required by each applicant for license renewal. Each credit shall represent or be equivalent to one hour of actual course attendance.

b. Prior to license renewal, each licensee shall submit to the board proof of completion of the required number of hours of continuing education.

c. If any applicant for renewal of registration completes a number of credit hours in excess of the number established pursuant to paragraph 4 of subsection a. of this section, the excess credits may, at the discretion of the

board, in consultation with the committee, be applicable to the continuing education requirement for the following biennial renewal period, but not thereafter.

C.45:9-37.87 Required examinations.

12. The examinations required by sections 8 and 9 of this act shall include a written practical examination which shall test the applicant's knowledge of the theory and clinical practice of electrology. Examinations shall be held within the State at least twice a year at a time and place to be determined by the board, in consultation with the committee. The board shall give adequate written notice of the examination to applicants for licensure and examination.

An applicant who fails the initial examination or a section of the examination may retake the section or the entire examination upon payment to the board of the prescribed fee. If an applicant fails the examination twice, the applicant may take a third examination only if he retakes the entire examination and completes an electrology education program as required by the board, in consultation with the committee.

C.45:9-37.88 License issuance, renewal; fees.

13. a. The board shall by rule or regulation establish, prescribe or change the fees for licenses, renewals of licenses or other services provided by the board or the committee pursuant to the provisions of this act. Licenses shall be issued for a period of two years and be biennially renewable, except that the board may, in order to stagger the expiration dates thereof, provide that those licenses first issued or renewed after the effective date of this act shall expire or become void on a date fixed by the board, not sooner than six months nor later than 29 months after the date of issue.

b. Fees shall be established, prescribed or changed by the board to the extent necessary to defray all proper expenses incurred by the committee, the board and any staff employed to administer this act, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

c. All fees and any fines imposed by the board shall be paid to the board and shall be forwarded to the State Treasurer and become part of the General Fund.

C.45:9-37.89 Licensing procedures.

14. a. The board, in consultation with the committee, shall issue a license to any applicant who in the opinion of the board has satisfactorily met all the requirements of this act. The license shall indicate whether the holder is licensed as an electrologist or an electrology instructor. The holder of an electrologist's license is authorized to practice electrology during the licensure period, and the holder of an electrology instructor's

license is authorized to practice electrology and to teach the clinical practice and theory of electrology during the licensure period.

b. The board shall, in consultation with the committee and in accordance with its rules and regulations, reinstate the license of an electrologist or electrology instructor who has failed to renew the license if the applicant is eligible for licensure pursuant to section 9 or 10 of this act and regulations of the board, and pays to the board all past due renewal fees and a reinstatement fee, to be determined by the board in consultation with the committee.

C.45:9-37.90 Office license required for premises.

15. A person, firm, corporation, partnership or other legal entity shall not operate, maintain or use premises for the rendering of any service provided in the definition of electrology without having first secured an office license. To be eligible for an office license, a person, firm, corporation, partnership or other legal entity intending to open and operate an electrologist's office shall:

a. Make application to the board on forms as it may require, demonstrating that the physical premises and the operation of the office will meet the criteria as recommended by the "Universal Precautions for Infection Control" established by the Center for Disease Control;

b. Permit inspections of the premises; and

c. Pay fees as may be required by the board.

C.45:9-37.91 Uniform enforcement law applicable.

16. The provisions of the uniform enforcement law, P.L.1978, c.73 (C.45:1-14 et seq.) shall apply to this act. The authority of the board may be delegated to the committee at the discretion of the board.

C.45:9-37.92 List of approved electrology education programs.

17. The board shall maintain a list of approved electrology education programs located within the State and of out-of-State programs recognized by the board. The board shall not approve or recognize a program unless the program consists of at least 200 hours of instruction in the theory of electrology and 400 hours of training in the clinical practice of electrology.

C.45:9-37.93 Rules, regulations.

18. The board, after consultation with the committee, 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.

19. This act shall take effect immediately, except that sections 1 through 17 shall remain inoperative for 180 days following enactment.

Approved January 12, 1998.

CHAPTER 348

AN ACT providing a homestead property tax reimbursement to certain eligible homeowners and supplementing chapter 4D of Title 30 of the Revised Statutes.

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

C.54:4-8.67 Definitions relative to homestead property tax reimbursement.

1. As used in this act:

"Base year" means, in the case of a person who is an eligible claimant on or before December 31, 1997, the tax year 1997; and in the case of a person who first becomes an eligible claimant after December 31, 1997, the tax year in which the person first becomes an eligible claimant.

"Commissioner" means the Commissioner of Health and Senior Services.

"Director" means the Director of the Division of Taxation.

"Condominium" means the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.).

"Cooperative" means a housing corporation or association which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment or other unit of housing owned or leased by the corporation or association, or to lease or purchase a unit of housing constructed or to be constructed by the corporation or association.

"Disabled person" means an individual receiving monetary payments pursuant to Title II of the federal Social Security Act (42 U.S.C. s.401 et seq.) on December 31,1998, or on December 31 in all or any part of the year for which a homestead property tax reimbursement under this act is claimed.

"Dwelling house" means any residential property assessed as real property which consists of not more than four units, of which not more than one may be used for commercial purposes, but shall not include a unit in a condominium, cooperative, horizontal property regime or mutual housing corporation.

"Eligible claimant" means a person who:

is 65 or more years of age, or who is a disabled person;

is an owner of a homestead, or the lessee of a site in a mobile home park on which site the applicant owns a manufactured or mobile home;

has an annual income of less than $17,918, if single, or, if married, whose annual income combined with that of the spouse is less than $21,970;

as a renter or homeowner, has made a long-term contribution to the fabric, social structure and finances of one or more communities in this State, as demonstrated through the payment of property taxes directly, or through rent, on any homestead or rental unit used as a principal residence in this State for at least 10 consecutive years at least three of which as owner of the homestead for which a homestead property tax reimbursement is sought prior to the date that an application for a homestead property tax reimbursement is filed.

"Homestead" means:

a dwelling house and the land on which that dwelling house is located which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence;

a site in a mobile home park equipped for the installation of manufactured or mobile homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured or mobile home for the installation thereof and such site is used by the eligible claimant as the eligible claimant's principal residence;

a dwelling house situated on land owned by a person other than the eligible claimant which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence;

a condominium unit or a unit in a horizontal property regime or a continuing care retirement community which constitutes the place of the eligible claimant's domicile and is owned and used by the eligible claimant as the eligible claimant's principal residence.

In addition to the generally accepted meaning of "owned" or "ownership," a homestead shall be deemed to be owned by a person if that person is a tenant for life or a tenant under a lease for 99 years or more, is entitled to and actually takes possession of the homestead under an executory contract for the sale thereof or under an agreement with a lending institution which holds title as security for a loan, or is a resident of a continuing care retirement community pursuant to a contract for continuing care for the life of that person which requires the resident to bear, separately from any other charges, the proportionate share of property taxes attributable to the unit that the resident occupies;

a unit in a cooperative or mutual housing corporation which constitutes the place of domicile of a residential shareholder or lessee therein, or of a lessee or shareholder who is not a residential shareholder therein, which is used by the eligible claimant as the eligible claimant's principal residence.

"Homestead property tax reimbursement" means payment of the difference between the amount of property tax or site fee constituting

property tax due and paid in any year on any homestead, exclusive of improvements not included in the assessment on the real property for the base year, and the amount of property tax or site fee constituting property tax due and paid in the base year, when the amount paid in the base year is the lower amount; but such calculations shall be reduced by any current year property tax reductions or reductions in site fees constituting property taxes resulting from judgments entered by county boards of taxation or the State Tax Court.

"Horizontal property regime" means the form of real property ownership provided for under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.).

"Manufactured home" or "mobile home" means a unit of housing which:

(1) Consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site;

(2) Is built on a permanent chassis;

(3) Is designed to be used, when connected to utilities, as a dwelling on a permanent or nonpermanent foundation; and

(4) Is manufactured in accordance with the standards promulgated for a manufactured home by the Secretary of the United States Department of Housing and Urban Development pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," Pub.L. 93-383 (42 U.S.C. s. 5401 et seq.) and the standards promulgated for a manufactured or mobile home by the commissioner pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Mobile home park" means a parcel of land, or two or more parcels of land, containing no fewer than 10 sites equipped for the installation of manufactured or mobile homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured or mobile home for the installation thereof, and where the owner or owners provide services, which are provided by the municipality in which the park is located for property owners outside the park, which services may include but shall not be limited to:

(1) The construction and maintenance of streets;

(2) Lighting of streets and other common areas;

(3) Garbage removal;

(4) Snow removal; and

(5) Provisions for the drainage of surface water from home sites and common areas.

"Mutual housing corporation" means a corporation not-for-profit, incorporated under the laws of this State on a mutual or cooperative basis

within the scope of section 607 of the Langham Act (National Defense Housing), Pub.L.849, (42 U.S.C. s.1521 et seq.), as amended, which acquired a National Defense Housing Project pursuant to that act.

"Income" means income as determined pursuant to P.L.1975, c.194 (C:30:4D-20 et seq.).

"Principal residence" means a homestead actually and continually occupied by an eligible claimant as his or her permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the claimant, and other secondary real property holdings.

"Property tax" means the general property tax due and paid as set forth in this section, on a homestead, but does not include special assessments and interest and penalties for delinquent taxes.

"Site fee constituting property tax" means 18 percent of the annual site fee paid or payable to the owner of a mobile home park.

"Tax year" means the calendar year in which a homestead is assessed and the property tax is levied thereon.

C.54:4-8.69 Annual reimbursement entitlement.

2. Every eligible claimant shall be entitled to reimbursement for each year subsequent to the base year and annually thereafter, on proper claim being made therefor to the director, to a homestead property tax reimbursement. The amount of the homestead property tax reimbursement shall be reduced by the amount of the deductions taken by the eligible claimant pursuant to P.L.1963, c.171 (C.54:4-8.10 to 54:4-8.23) and P.L.1964, c.255 (C.54:4-8.40 et al.). The surviving spouse of a deceased resident of this State who during his or her life received a homestead property tax reimbursement pursuant to P.L.1997, c.348 (C.54:4-8.67 et al.) shall be entitled, so long as he or she remains a resident in the same homestead with respect to which the homestead property tax reimbursement was granted, and so long as he or she is an eligible claimant, to the same homestead property tax reimbursement, upon the same conditions, with respect to the same homestead.

C.54:4-8.70 Filing of application for homestead property tax reimbursement.

3. An application for a homestead property tax reimbursement hereunder shall be filed with the director on or before December 31, 1998 and on or before December 31 annually thereafter and shall reflect the prerequisites for a homestead property tax reimbursement on December 31 of the year of filing; provided, however, that the director may, by rule, waive the requirement for filing an annual application for any year or years subject to any limitations and conditions the director may deem appropriate. The application shall be on a form prescribed by the director and provided for the use of applicants hereunder. Each applicant making a claim for a

homestead property tax reimbursement under this act shall provide, if required by the director, to the director a copy of his or her current year property tax bill or current year site fee bill on the homestead constituting that person's principal residence and a copy of his or her property tax bill for the base year or site fee bill for the base year on the same homestead, or other equivalent proof as permitted by the director.

It shall be the duty of every eligible claimant to inform the director of any change in his or her status or homestead which may affect his or her right to continuance of the homestead property tax reimbursement.

If an eligible claimant receives an additional homestead property tax reimbursement to which the claimant was not entitled or greater than the reimbursement to which the claimant was entitled, the director may, in addition to all other available legal remedies, offset such amount against a gross income tax refund or amount due pursuant to P.L.1990, c.61.

C.54:4-8.71 Payments mailed.

4. The director shall administer the homestead property tax reimbursement program. A payment for the homestead property tax reimbursement amount, as calculated by the director, shall be mailed to each person determined by the director to be an eligible claimant under this act on or before July 15, 1999 and July 15 annually thereafter. All payments made pursuant to this section shall be appropriated from receipts in the Casino Revenue Fund.

C.54:4-8.72 Proportionate shares, forms of ownership.

5. When title to a homestead as to which a homestead property tax reimbursement is claimed is held by an eligible claimant and another or others, either as tenants in common or as joint tenants, the eligible claimant shall not be allowed a homestead property tax reimbursement in an amount in excess of his or her proportionate share of the taxes assessed against the homestead, which proportionate share, for the purposes of this act, shall be deemed to be equal to that of each of the other tenants, unless it is shown that the interests in question are not equal, in which event the eligible claimant's proportionate share shall be as shown. Nothing herein shall preclude more than one tenant, whether title be held in common or joint tenancy, from claiming a homestead property tax reimbursement from the taxes assessed against the property so held, but no more than the equivalent of one full homestead property tax reimbursement in regard to such homestead shall be allowed in any year. In any case in which the eligible claimants cannot agree as to the apportionment thereof, such homestead property tax reimbursement shall be apportioned between or among them in proportion to their interest. Property held by husband and wife, as tenants by the entirety, shall be deemed wholly owned by each tenant, but

no more than one full homestead property tax reimbursement in regard to such homestead shall be allowed in any year. Right to claim a homestead property tax reimbursement hereunder shall extend to a homestead the title to which is held by a partnership, to the extent of the eligible claimant's interest as a partner therein, and by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim such homestead property tax reimbursement hereunder, but not to a homestead the title to which is held by a corporation; except that a residential shareholder in a cooperative or mutual housing corporation shall be entitled to claim a homestead property tax reimbursement if he or she is otherwise eligible to receive it, to the extent of the proportionate share of the taxes assessed against the homestead of the corporation, or any other entity holding title, attributable to his or her unit therein. No eligible claimant shall be entitled to payment under this act for a homestead property tax reimbursement on more than one homestead within the State in the same tax year.

C.54:4-8.73 Rules, regulations.

6. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director shall promulgate such rules and regulations and prescribe such forms as the director shall deem necessary to implement this act. The director shall also promulgate rules and regulations to implement an appeals process for aggrieved persons to use if eligibility for a homestead property tax reimbursement rebate is denied.

C.54:4-8.74 Determination of base year.

7. In the event that a previously eligible claimant ceases to be an eligible claimant for any tax year, the base year for that claimant shall be the year prior to which the claimant again becomes an eligible claimant.

8. Section 3 of P.L.1996, c.60 (C.54A:3A-17) is amended to read as follows:

C.54A:3A-17 Deduction allowed resident taxpayer whose homestead is a unit of residential rental property; limitations.

3. a. A resident taxpayer under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be allowed a deduction from gross income for property taxes not in excess of $10,000, subject to the limitations of subsection f. of this section, due and paid for the calendar year in which the taxes are due and payable on the taxpayer's homestead.

b. A deduction for property taxes shall be allowed pursuant to this section in relation to the amount of the property taxes actually paid by or allocable to a resident taxpayer who has more than one homestead, but the

aggregate amount of the property taxes claimed shall not exceed the total of the proportionate amounts of property taxes assessed and levied against or allocable to each homestead for the portion of the taxable year for which the taxpayer occupied it as the taxpayer's principal residence.

c. If title to a homestead is held by more than one individual as joint tenants or tenants in common, each individual shall be allowed a deduction pursuant to this section only in relation to the individual's proportionate share of the property taxes assessed and levied against the homestead. The proportionate share shall be equal to that of all other individuals who hold the title, but if the conveyance under which the title is held provides for unequal interests therein, a taxpayer's share of the property taxes shall be in proportion to the taxpayer's interest in the title.

d. If title to a homestead is held by a husband and wife who own the homestead as tenants by the entirety, or if that husband and wife are both residential shareholders of a cooperative or mutual housing corporation and occupy the same homestead therein, and who elect to file separate income tax returns pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that husband and wife shall each be entitled to one-half of the deduction for property taxes for which they may be jointly eligible pursuant to this section.

e. If the homestead is a dwelling house consisting of more than one unit, that taxpayer shall be allowed a deduction for property taxes only in relation to the proportionate share of the property taxes assessed and levied against the residential unit occupied by the taxpayer, as determined by the local tax assessor.

f. Notwithstanding the provisions of subsection a. of this section to the contrary: (1) a resident taxpayer shall be allowed a deduction for a taxpayer's taxable year beginning during 1996 based on 50% of the property taxes not in excess of $5,000 paid on the taxpayer's homestead; and (2) a resident taxpayer shall be allowed a deduction for a taxpayer's taxable year beginning during 1997 based on 75% of the property taxes not in excess of $7,500 paid on the taxpayer's homestead.

g. Notwithstanding any other provision of this section, the deduction allowed under this section to a resident taxpayer eligible to receive a homestead property tax reimbursement pursuant to P.L.1997, c.348 (C.54:4-8.67 et al.) shall not exceed that resident taxpayer's base year property tax liability as determined pursuant to P.L.1997, c.348 (C.54:4-8.67 et al.).

C.54:4-8.68 Income eligibility limits, adjustment.

9. The income eligibility limits provided in the definition of "eligible claimant" under section 1 of P.L.1997, c.348 (C.54:4-8.67) shall increase by the amount of the maximum Social Security benefit cost of living increase

for that year for single and married persons, respectively. The director shall adopt new income limits annually by notice or regulation.

C.54:4-8.75 Violations, penalties.

10. Any person violating any provisions of this act shall be subject to the applicable civil and criminal penalties under New Jersey law. Any person who violates any provisions of this act shall be subject to a suspension of eligibility for one year for a first offense and permanent revocation of eligibility for a second offense.

11. This act shall take effect immediately.

Approved January 14, 1998.

CHAPTER 349

AN ACT providing a credit against the corporation business tax for certain investments made in small New Jersey-based high-technology businesses, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).

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

C.54:10A-5.28 Short title.

1. This act shall be known and may be cited as the "Small New Jersey-based High-Technology Business Investment Tax Credit Act."

C.54:10A-5.29 Definitions relative to small New Jersey-based high-technology businesses.

2. As used in this act:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.267, other than paragraph (3) of subsection (c) of that section;

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80% of the voting power of all classes of stock of at least one of the other corporations;

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

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources;

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration;

"Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship;

"Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if total gross receipts, as calculated pursuant to section 6 of P.L.1945, c.162

(C.54:10A-6), from such sales of the product, service or process do not exceed $1,000,000;

"Qualified investment" means the non-refundable investment, at risk in a small New Jersey-based high-technology business, of cash that is transferred to the small New Jersey-based high-technology business by a taxpayer that is not a related person of the small New Jersey-based high-technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein;

"Qualified research expenses" means qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.41, as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology;

"Related person" means:

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

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

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

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

"Small New Jersey-based high-technology business" means a corporation doing business, employing or owning capital or property, or maintaining an office, in this State that has qualified research expenses paid or incurred for research conducted in this State or conducts pilot scale manufacturing in this State, and has fewer than 225 employees, of whom 75% are New Jersey-based employees filling a position or job in this State; and

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

C.54:10A-5.30 Taxpayer allowed credit.

3. a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10% of the qualified investment made by the taxpayer during each of the three tax years beginning on or after January 1 next following enactment of this act, in a small New Jersey-based high-technology business, up to a maximum allowed credit of $500,000 for the tax year for each qualified

investment made by the taxpayer. An unused credit may be carried forward for use in future years, subject to the $500,000 per year limitation.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

The tax imposed for a tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), then by any credit allowed under section 1 of P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the 15 tax years following a credit's tax year.

d. A taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest

proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

4. Prior to December 31, 2001, the State Treasurer shall submit a report to the Governor and the Legislature regarding the effectiveness of this act and P.L.1997, c.350 (C.54:10A-4.3), and P.L.1997, c.351 (C.54:10A-5.24b).

5. This act shall take effect immediately and sections 1 through 3 shall apply to tax years beginning on or after January 1 next following enactment.

Approved January 15, 1998.

CHAPTER 350

AN ACT extending for certain taxpayers the carryforward of the net operating loss deduction under the corporation business tax, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.).

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

C.54:10A-4.3 Carryover of net operating loss for certain taxpayers.

1. a. Notwithstanding the provisions of paragraph (6) of subsection k. of section 4 of P.L.1945, c.162 (C.54:10A-4) to the contrary, a taxpayer that has for the fiscal or calendar accounting period (referred to hereafter as the "tax year"), qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or incurred for research conducted in this State, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology, shall be allowed to carry over a net operating loss for that tax year to each of the 15 tax years following the year of the loss.

b. As used in this section:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis

technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

"Electronic device technology" means a technology involving micro-electronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources; and

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

2. This act shall take effect immediately but shall apply only to net operating losses which occur during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Approved January 15, 1998.

CHAPTER 351

AN ACT extending for certain taxpayers the carryforward of the research and development tax credit against the corporation business tax, and supplementing P.L.1993, c.175 (C.54:10A-5.24).

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

C.54:10A-5.24b Carryover of R & D tax credit for certain taxpayers.

1. a. Notwithstanding the provisions of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) to the contrary, a taxpayer that has been allowed a credit pursuant to that section for the fiscal or calendar accounting period (referred to hereafter as the "tax year") in which the qualified research expenses have been incurred, and basic research payments have been made,

for research conducted in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, shall be allowed to carry over the amount of the tax year credit which cannot be applied for the tax year to each of the 15 tax years following the credit's tax year.

b. As used in this section:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources; and

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

2. This act shall take effect immediately but shall apply only to qualified research expenses incurred and basic research payments made during privilege periods which begin on or after July 1, 1998, but no later than June 30, 2001.

Approved January 15, 1998.

CHAPTER 352

AN ACT concerning the eligibility of legal aliens for the Medicaid program and amending and supplementing 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 either a citizen of the United States or an eligible alien, and is determined to need medical care and services as provided under this act, and who:

(1) Is a dependent child or parent or caretaker relative of a dependent child and a recipient of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.) who would be, except for resources, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996;

(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 Supplemental Security Income under Title XVI of the federal Social Security Act or, using the resource standards of the Work First New Jersey program, would be eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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, using the resource standards of the Work First New Jersey program, would be eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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, using the resource standards of the Work First New Jersey program, would be, except for dependent child requirements, eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act as of July 16, 1996, 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 developmental centers for the developmentally disabled, or in psychiatric hospitals;

(7) Using the resource standards of the Work First New Jersey program, would be eligible for the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996 or the 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 under the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996; 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 under the aid to families with dependent children program under the State Plan for Title IV-A of the federal Social Security Act in effect as of July 16, 1996.

(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.s.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.s.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 and other entities designated by the commissioner 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 19 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. s.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. s.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. s.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. s.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. s.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; or

(14) (Deleted by amendment, P.L.1997, c.272).

(15) (a) Is a specified low-income Medicare beneficiary pursuant to 42 U.S.C. s.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. s.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. s.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. s.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. s.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. s.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. s.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. s.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. s.9902(2)).

q. "Eligible alien" means one of the following:

(1) an alien present in the United States prior to August 22, 1996, who is:

(a) a lawful permanent resident;

(b) a refugee pursuant to section 207 of the federal "Immigration and Nationality Act" (8 U.S.C. s.1157);

(c) an asylee pursuant to section 208 of the federal "Immigration and Nationality Act" (8 U.S.C. s.1158);

(d) an alien who has had deportation withheld pursuant to section 243(h) of the federal "Immigration and Nationality Act" (8 U.S.C. s.1253 (h));

(e) an alien who has been granted parole for less than one year by the federal Immigration and Naturalization Service pursuant to section 212(d)(5) of the federal "Immigration and Nationality Act" (8 U.S.C. s.1182(d)(5));

(f) an alien granted conditional entry pursuant to section 203(a)(7) of the federal "Immigration and Nationality Act" (8 U.S.C. s.1153(a)(7)) in effect prior to April 1, 1980; or

(g) an alien who is honorably discharged from or on active duty in the United States armed forces and the alien's spouse and unmarried dependent child.

(2) An alien who entered the United States on or after August 22, 1996, who is:

(a) an alien as described in paragraph (1)(b), (c), (d) or (g) of this subsection; or

(b) an alien as described in paragraph (1)(a), (e) or (f) of this subsection who entered the United States at least five years ago.

(3) A legal alien who is a victim of domestic violence in accordance with criteria specified for eligibility for public benefits as provided in Title V of the federal "Illegal Immigration Reform and Immigrant Responsibility Act of 1996" (8 U.S.C. s.1641).

C.30:4D-6f Eligibility of aliens for medical assistance.

2. An eligible alien as defined in section 3 of P.L.1968, c.413 (C.30:4D-1 et seq.) who otherwise meets all eligibility criteria therefor is entitled to medical assistance provided pursuant to section 6 of P.L.1968, c.413 (C.30:4D-6). An alien who does not qualify as an eligible alien but

who is a resident of New Jersey and would otherwise be eligible for medical assistance provided pursuant to section 6 of P.L.1968, c.413 is entitled only to care and services necessary for the treatment of an emergency medical condition as defined in section 1903(v)(3) of the federal Social Security Act (42 U.S.C. s.1396b(v)(3)).

3. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 353

AN ACT establishing health care claims fraud as a criminal offense and supplementing chapters 21, 51 and 52 of Title 2C of the New Jersey Statutes.

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

1. The Legislature finds and declares:

a. Billions of dollars are spent each year on health care in New Jersey. Approximately ten percent of these costs can be attributed to fraud.

b. In order to maintain the financial integrity of the health care system in this State, it is necessary to prosecute and deter the commission of fraud.

c. Under the current law, it is difficult to prosecute and deter health care claims fraud because fraudulent claims often involve small amounts that require prosecutors to prove hundreds of relatively small thefts in order to establish a second degree offense.

d. It is, therefore, necessary to establish the crime of "health care claims fraud" to enable more efficient prosecution of criminally culpable persons who knowingly, or with criminal recklessness, submit false or fraudulent claims for payment or reimbursement for health care services. It is not the intent of this act to facilitate the prosecution of those persons who may make negligent errors in the preparation of filing of bills or claims.

C.2C:21-4.2 Definitions relative to health care claims fraud.

2. As used in this act:

"Health care claims fraud" means making, or causing to be made, a false, fictitious, fraudulent, or misleading statement of material fact in, or omitting a material fact from, or causing a material fact to be omitted from, any record, bill, claim or other document, in writing, electronically or in any

other form, that a person attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted for payment or reimbursement for health care services.

"Practitioner" means a person licensed in this State to practice medicine and surgery, chiropractic, podiatry, dentistry, optometry, psychology, pharmacy, nursing, physical therapy, or law; any other person licensed, registered or certified by any State agency to practice a profession or occupation in the State of New Jersey or any person similarly licensed, registered, or certified in another jurisdiction.

C.2C:21-4.3 Health care claims fraud, degree of crime; prosecution guidelines.

3. a. A practitioner is guilty of a crime of the second degree if that person knowingly commits health care claims fraud in the course of providing professional services. In addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

b. A practitioner is guilty of a crime of the third degree if that person recklessly commits health care claims fraud in the course of providing professional services. In addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

c. A person, who is not a practitioner subject to the provisions of subsection a. or b. of this section, is guilty of a crime of the third degree if that person knowingly commits health care claims fraud. A person, who is not a practitioner subject to the provisions of subsection a. or b. of this section, is guilty of a crime of the second degree if that person knowingly commits five or more acts of health care claims fraud and the aggregate pecuniary benefit obtained or sought to be obtained is at least $1,000. In addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

d. A person, who is not a practitioner subject to the provisions of subsection a. or b. of this section, is guilty of a crime of the fourth degree if that person recklessly commits health care claims fraud. In addition to all other criminal penalties allowed by law, a person convicted under this subsection may be subject to a fine of up to five times the pecuniary benefit obtained or sought to be obtained.

e. Each act of health care claims fraud shall constitute an additional, separate and distinct offense, except that five or more separate acts may be aggregated for the purpose of establishing liability pursuant to subsection c. of this section.

f. (1) The falsity, fictitiousness, fraudulence or misleading nature of a statement may be inferred by the trier of fact in the case of a practitioner who attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted, any record, bill, claim or other document for treatment or procedure without the practitioner, or an associate of the practitioner, having performed an assessment of the physical or mental condition of the patient or client necessary to determine the appropriate course of treatment.

(2) The falsity, fictitiousness, fraudulence or misleading nature of a statement may be inferred by the trier of fact in the case of a person who attempts to submit, submits, causes to be submitted, or attempts to cause to be submitted any record, bill, claim or other document for more treatments or procedures than can be performed during the time in which the treatments or procedures were represented to have been performed.

(3) Proof that a practitioner has signed or initialed a record, bill, claim or other document gives rise to an inference that the practitioner has read and reviewed that record, bill, claim or other document.

g. In order to promote the uniform enforcement of this act, the Attorney General shall develop health care claims fraud prosecution guidelines and disseminate them to the county prosecutors within 120 days of the effective date of this act.

h. For the purposes of this section, a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

i. (1)Nothing in this act shall preclude an indictment and conviction for any other offense defined by the laws of this State.

(2) Nothing in this act shall preclude an assignment judge from dismissing a prosecution of health care claims fraud if the assignment judge determines, pursuant to N.J.S. 2C:2-11, the conduct charged to be a de minimis infraction.

C.2C:51-5 Forfeiture, suspension of license; exceptions.

4. a. (1) A practitioner convicted of health care claims fraud pursuant to subsection a. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a substantially similar crime under the laws of another state or the United States shall forfeit his license and be forever barred from the practice of the profession unless the court finds that such license forfeiture would be a serious

injustice which overrides the need to deter such conduct by others and in such case the court shall determine an appropriate period of license suspension which shall be for a period of not less than one year. If the court does not permanently forfeit such license pursuant to this paragraph, the sentence shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

(2) Upon a first conviction of health care claims fraud pursuant to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a substantially similar crime under the laws of another state or the United States, a practitioner shall have his license suspended and be barred from the practice of the profession for a period of at least one year.

(3) Upon a second conviction of health care claims fraud pursuant to subsection b. of section 3 of P.L.1997, c.353 (C.2C:21-4.3) or a substantially similar crime under the laws of another state or the United States, a practitioner shall forfeit his license and be forever barred from the practice of the profession.

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

(1) Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State; or

(2) Upon application of the county prosecutor or the Attorney General, when the license forfeiture or suspension is based upon a conviction of an offense under the laws of another state or of the United States. An order of license forfeiture or suspension pursuant to this paragraph shall be effective as of the date the person is found guilty by the trier of fact or pleads guilty to the offense.

This application may also be made in the alternative by the Attorney General to the appropriate licensing agency.

The court shall provide notice of the forfeiture or suspension to the appropriate licensing agency within 10 days of the date an order of forfeiture or suspension is entered.

c. No court shall grant a stay of an order of license forfeiture or suspension pending appeal of a conviction or forfeiture or suspension order unless the court is clearly convinced that there is a substantial likelihood of success on the merits. If the conviction is reversed or the order of license forfeiture or suspension is overturned, the court shall provide notice of reinstatement to the appropriate licensing agency within 10 days of the date of the order of reinstatement. The license shall be restored, in accordance with applicable procedures, unless the appropriate licensing agency determines to suspend or revoke the license.

d. In any case in which the issue of license forfeiture or suspension is not raised in a court of this State at the time of a finding of guilt, entry of a

guilty plea or sentencing, a license forfeiture or suspension required by this section may be ordered by a court or by the appropriate licensing agency of this State upon application of the county prosecutor or the Attorney General or upon application of the appropriate licensing agency having authority to revoke or suspend the professional's license. The fact that a court has declined to order license forfeiture or suspension shall not preclude the appropriate licensing agency having authority to revoke or suspend the professional's license from seeking to do so on the ground that the conduct giving rise to the conviction demonstrates that the person is unfit to hold the license or is otherwise liable for an offense as specified in section 8 of P.L.1978, c.73 (C.45:1-21).

e. If the Supreme Court of the State of New Jersey issues Rules of Court pursuant to this act, the Supreme Court may revoke the license to practice law of any attorney who has been convicted, under the laws of this State, of health care claims fraud pursuant to section 3 of P.L.1997, c.353 (C.2C:21-4.3), or an offense which, if committed in this State, would constitute health care claims fraud.

f. Nothing in this section shall be construed to prevent or limit the appropriate licensing agency or any other party from taking any other action permitted by law against the practitioner.

C.2C:52-27.1 Petition to rescind order of debarment for health care claims fraud.

5. a. If an order of expungement of records of conviction under the provisions of chapter 52 of Title 2C of the New Jersey Statutes is granted by the court to a person convicted of health care claims fraud in which the court had ordered the offender's professional license be forfeited and the person be forever barred from the practice of the profession pursuant to paragraph (1) of subsection a. of section 4 of P.L.1997, c.353 (C.2C:51-5), the person may petition the court for an order to rescind the court's order of debarment if the person can demonstrate that the person is sufficiently rehabilitated.

b. If an order to rescind the court's order of debarment is granted, the person granted the order may apply to be licensed to practice the profession from which the offender was barred.

6. If any provision of this act, or an application of any provision is held invalid, the invalidity shall not affect other applications of the provision or other provisions of the act which reasonably can be given effect despite the invalidity.

7. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 354

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

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

1. All proceedings heretofore had or taken by any school district or at any school district election for the authorization or issuance of bonds of the school district and any bonds or other obligations of the school district issued or to be issued in pursuance of any proposal adopted by the legal voters at such election, 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.18A:24-17; provided that a supplemental debt statement heretofore has been prepared and filed in the places required by N.J.S.18A:24-17; and notwithstanding that the notice of election was not published and posted and did not contain the substance of the bond proposal to be submitted to the voters in accordance with the provisions of N.J.S.19:12-7; provided that notices of the election were published and posted prior to the election; provided that no action, suit or other proceeding of any nature to contest the validity of such proceedings has heretofore been instituted prior to the date 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 15 days after the effective date of this act.

2. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 355

AN ACT concerning limitations on certain actions for damages and amending P.L.1967, c.59.

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

1. Section 1 of P.L.1967, c.59 (C.2A:14-1.l) is amended to read as follows.

C.2A:14-1.1 Damages for injury from unsafe condition of improvement to real property; statute of limitations; exceptions; terms defined.

1. a. No action whether in contract, in tort, or otherwise to recover damages for any deficiency in the design, planning, supervision or construction of an improvement to real property, or for any injury to property, real or personal or for an injury to the person, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained on account of such injury, shall be brought against any person performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property, more than 10 years after the performance or furnishing of such services and construction. This limitation shall serve as a bar to all such actions both governmental and private but shall not apply to actions against any person in actual possession and control as owner, tenant, or otherwise, of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury or damage for which the action is brought.

b. This section shall not bar an action by a governmental unit:

(1) on a written warranty, guaranty or other contract that expressly provides for a longer effective period;

(2) based on willful misconduct, gross negligence or fraudulent concealment in connection with performing or furnishing the design, planning, supervision or construction of an improvement to real property;

(3) under any environmental remediation law or pursuant to any contract entered into by a governmental unit in carrying out its responsibilities under any environmental remediation law; or

(4) pursuant to any contract for application, enclosure, removal or encapsulation of asbestos.

c. As used in this section:

"Asbestos " shall have the meaning as defined in subsection a. of section 3 of P.L.1984, c.173 (C.34:5A-34) and any regulations adopted pursuant thereto.

"Environmental remediation law" means chapter 10B of Title 58 of the Revised Statutes (C.58:10B-1 et seq.) and any regulations adopted pursuant thereto.

"Governmental"means the State, its political subdivisions, any office, department, division, bureau, board, commission or public authority or public agency of the State or one of its political subdivisions, including but

not limited to, a county or a municipality and any board, commission, committee, authority or agency which is not a State board, commission, committee, authority or agency.

2. This act shall take effect immediately and shall apply to any cause of action which accrues after the effective date of this act.

Approved January 15, 1998.

CHAPTER 356

AN ACT concerning autocabs and amending and supplementing R.S.48:16-13.

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

1. R.S.48:16-13 is amended to read as follows:

Definitions.

48:16-13. Except as provided in section 2 of P.L.1997, c.356 (C.48:16-13.1), as used in this article:

"Autocab" means and includes any automobile or motor car 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 held out, announced or advertised to operate or run or which is operated or run over any of the streets or public highways of this State, and which is hired by charter or for a particular contract, or by the day or hour or other fixed period, or to transport passengers to a specified place or places, or which charges a fare or price agreed upon in advance between the operator and the passenger. Nothing in this article contained shall be construed to include taxicabs, hotel buses or buses employed solely in transporting school children or teachers or autobuses which are subject to the jurisdiction of the Board of Public Utilities, or interstate autobuses required by federal or State law or rules of the Board of Public Utilities to carry insurance against loss from liability imposed by law on account of bodily injury or death.

"Limousine or livery service" means and includes the business of carrying passengers for hire by autocabs.

"Person" means and includes any individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever.

"Street" means and includes any street, avenue, park, parkway, highway, or other public place.

C.48:16-13.1 Autocab defined; county, certain.

2. In a county of the first class with a population density of over 10,000 persons per square mile, according to the latest federal decennial census, "autocab" means and includes any automobile or motor car with a carrying capacity of not more than nine passengers, not including the driver, which is issued special registration plates bearing the word "livery" pursuant to section 12 of P.L.1979, c.224 (C.39:3-19.5) and is engaged in the business of carrying passengers for hire, which is held out, announced or advertised to operate or run or which is operated or run over any of the streets or public highways of this State and which is hired by charter or for a particular contract or by the day or hour or other fixed period, on a prearranged basis for proms, weddings, funerals, or to transport passengers to and from airports, other passenger stations or motels and hotels, and for which a price is agreed upon in advance.

3. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 357

AN ACT concerning use of rail passenger service and supplementing P.L.1979, c.150 (C.27:25-1 et seq.) and amending N.J.S.2B:12-16.

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

C.27:25-5.6 Definitions relative to rail passenger service.

1. As used in this act:

"Authorized employee" means an employee of a provider of rail passenger service authorized by the provider of rail passenger service to request and inspect proof of payment of the prescribed fare from persons using rail passenger service.

"Fare enforcement officer" means an employee of the corporation, appointed pursuant to section 7 of this act, authorized to enforce the provisions of this act by requesting and inspecting proof of payment of the prescribed fare from persons using rail passenger services where proof of payment is required, and by signing and issuing a complaint and summons to any person for a violation of the provisions of this act or the regulations

adopted pursuant thereto, regardless of whether the rail passenger service is operated by the corporation or by a public or private entity under contract to the corporation. A fare enforcement officer shall include a transit or other police officer, or a conductor or trainman so authorized.

"Pre-paid fare area" means an area designated by a provider of rail passenger service where payment of the prescribed fare is required before entering the area.

"Proof of payment" means a ticket, pass, receipt or other article designated by a provider of rail passenger service to indicate that a passenger has paid for the use of rail passenger service.

"Provider of rail passenger service" means the corporation or a public or private entity under contract to the corporation to provide rail passenger service.

"Use of rail passenger service" means the boarding, occupying, riding in, or otherwise utilizing rail passenger service for conveyance.

C.27:25-5.7 Payment for service; proof of payment.

2. The use of a rail passenger service by a person shall constitute an agreement by the person to pay the prescribed fare for the service. A person who has paid the prescribed fare for a rail passenger service and who has been issued proof of payment therefor shall retain that proof of payment while in a pre-paid fare area or on designated rail passenger facilities or vehicles.

C.27:25-5.8 Violation.

3. It shall be a violation of this act for any person to use or attempt to use a rail passenger service or enter a pre-paid fare area and to: fail or refuse to pay the prescribed fare; evade or attempt to evade payment of the prescribed fare; or fail to display proof of fare payment immediately upon request of an authorized employee or fare enforcement officer.

C.27:25-5.9 Applicability to juveniles.

4. Notwithstanding any other provision of law or regulation to the contrary, this act shall apply to users of rail passenger services who are juveniles as defined in subsection a. of section 3 of P.L.1982, c.77 (C.2A:4A-22a).

C.27:25-5.10 Cooperation of passengers, required; violation.

5. A person subject to the issuance of a complaint and summons under this act shall cooperate in the issuance of the complaint and summons by providing the person's name and address. It shall be a violation of this act for a person to fail to cooperate in the issuance of a summons including failure to provide the person's name and address, or by providing a false name or address and shall subject the person to all other provisions and

remedies provided by law or regulation, in addition to the penalties provided in this act.

C.27:25-5.11 Form of complaint, summons.

6. A complaint and summons issued for a violation of the provisions of this act or any of the rules or regulations adopted by the corporation shall be in a form prescribed and approved by the Administrative Director of the Courts and served pursuant to the Rules Governing the Courts of the State of New Jersey.

C.27:25-5.12 Fare enforcement officers.

7. a. The executive director of the corporation shall have the power and authority to appoint such number of fare enforcement officers as the director deems necessary and to administer to the fare enforcement officers an oath or affirmation faithfully to perform the duties of their offices.

b. Fare enforcement officers are authorized to request and inspect proof of payment of the prescribed fare from persons using rail passenger services where proof of payment is required, to sign and issue a complaint and summons to any person for a violation of the provisions of this act or the regulations adopted by the corporation pursuant to this act, regardless of whether the rail passenger service is operated by the corporation or by a public or private entity under contract to the corporation and to perform such other duties as the corporation may deem appropriate. A fare enforcement officer who has probable cause to believe that a person has willfully evaded paying the required fare, may, for the purpose of obtaining and verifying identification, issuing a summons and complaint or otherwise detaining an individual for further action by any law enforcement officer, take the individual into custody and detain that person in a reasonable manner for not more than a reasonable time. The taking into custody by a fare enforcement officer shall not render the fare enforcement officer criminally or civilly liable unless such action is unreasonable under all of the circumstances.

c. Fare enforcement officers appointed pursuant to this section shall complete a course of training approved by the executive director appropriate to the duties required by this act.

d. Fare enforcement officers shall work under the direction of the chief of the transit police, but shall not be police officers.

e. Nothing in this section shall be construed as derogating any of the powers provided by law or regulation for police officers, conductors, trainmen and other employees of a provider of rail passenger services but the provisions of this act shall be in addition to any such powers.

C.27:25-5.13 Immunity of fare enforcement officers.

8. An authorized employee or fare enforcement officer carrying out his duties pursuant to this act shall not be criminally or civilly liable for false arrest, false imprisonment, slander or unlawful detention unless such action is unreasonable under all of the circumstances.

C.27:25-5.14 Rules, regulations.

9. The corporation shall adopt rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the purposes of this act. In any prosecution for violating any rule or regulation adopted by the corporation, copies of that regulation when authenticated under the seal of the corporation by its secretary or assistant secretary shall be evidence in like manner and equal effect as the original.

C.27:25-5.15 Complaint, proceedings; jurisdiction.

10. A complaint for a violation of any of the provisions of this act may be filed with a court having jurisdiction, at any time within one year after the commission of the violation. When a person has been charged with a violation of this act and summoned to appear, upon failure to appear, in addition to any other provisions of law or the Rules Governing the Courts of the State of New Jersey, a warrant for the arrest of the person may issue. All proceedings shall be brought before a municipal or central municipal court having jurisdiction in the municipality in which it is alleged that the violation occurred, but when a violation occurs on a moving conveyance operated by the corporation through two or more municipalities, then the proceeding may be brought before the court having jurisdiction in any one of the municipalities through which the conveyance has traversed.

C.27:25-5.16 Violation of act; penalty; distribution.

11. A violation of the provisions of this act or any rules or regulations adopted pursuant to this act by the corporation shall be punishable by a civil penalty not exceeding $100, in addition to court costs, enforced in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58- 1 et seq. The Rules Governing the Courts of the State of New Jersey shall govern the practice and procedure in such proceedings. Notwithstanding any other law to the contrary, the court shall remit 50% of any civil penalty imposed to the corporation for use in furtherance of any of the purposes of this act and 50% shall be forwarded to the proper financial officer of the local government entity in which the municipal or central municipal court has been established to be used for the local government entity to defray the cost of operating the court and for general government use.

C.27:25-5.17 Rail passes not affected.

12. The provisions of this act shall not affect certificates issued pursuant to R.S.48:12-109 through R.S.48:12-116, inclusive, or any certificate or pass issued by the corporation providing for transportation of current or retired employees, notwithstanding that payment for such certificate or pass may not have been tendered.

13. N.J.S.2B:12-16 is amended to read as follows:

Territorial jurisdiction.

2B:12-16. Territorial jurisdiction. a. A municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality except as provided in section 10 of P.L.1997, c.357 (C.27:25-5.15). A joint municipal court shall have jurisdiction over cases arising within the territory of any of the municipalities which the court serves. The territory of a municipality includes any premises or property located partly in and partly outside of the municipality. A central municipal court shall have jurisdiction over cases arising within the territorial boundaries of the county.

b. A municipal court judge, serving as an acting judge in any other municipal court in the county, may also hear matters arising out of that other court, while sitting in the court where the acting judge holds a regular appointment.

14. This act shall take effect 180 days after its enactment, except that section 9 shall take effect immediately.

Approved January 15, 1998.

CHAPTER 358

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-1.7 Millville Airport Utility; property lease, operation, 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), and pursuant to an agreement entered into between the City of Millville, Cumberland County, and the authority, to undertake a project to lease the property and manage the operations of the Millville Airport Utility, located in the City of Millville, Cumberland County, from the City of Millville, 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 P.L.1989, c.192 (C.32:11E-1 et seq.), which project shall continue to maintain airport operations in that location.

2. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 359

AN ACT permitting the Attorney General to recover costs in certain consumer fraud actions and amending P.L. 1971, c. 247.

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

1. Section 7 of P.L.1971, c.247 (C.56:8-19) is amended to read as follows:

C.56:8-19 Action, counterclaim by injured person; recovery of damages, costs.

7. Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction. In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. In all actions under this section, including those brought by the Attorney General, the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

2. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 360

AN ACT establishing a county college capital projects fund in the New Jersey Educational Facilities Authority, amending various parts of statutory law, and supplementing chapter 72A of Title 18A of the New Jersey Statutes.

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

C.18A:72A-12.2 Short title.

1. Sections 1 through 4 of this act shall be known and may be cited as the "County College Capital Projects Fund Act."

C.18A:72A-12.3 Findings, declarations relative to county college capital projects fund.

2. The Legislature finds and declares that:

a. Higher education plays a vital role in the economic development of the nation and the State by providing the education and training of the work force of the future;

b. The county colleges serve a vital role in the educational system of the State by providing students with an affordable means of obtaining higher education, thereby providing opportunities to the residents of the State which would not otherwise be available;

c. County colleges and the residents of the State would benefit from additional funds and resources enabling counties to undertake and complete county college capital projects;

d. It would therefore be appropriate for the New Jersey Educational Facilities Authority created pursuant to N.J.S.18A:72A-1 et seq. to enter into contracts with counties and the State Treasurer to provide for the financing of county college capital projects.

C.18A:72A-12.4 County college capital projects fund, established.

3. a. There is created within the New Jersey Educational Facilities Authority, established pursuant to chapter 72A of Title 18A of the New Jersey Statutes, hereinafter referred to as the "authority," a county college capital projects fund to finance county college capital projects. The authority may issue bonds to finance the State share of county college capital projects and the county share of county college capital projects as certified by the State Treasurer pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2). The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriation, shall pay the amount necessary to pay the principal and interest on bonds and notes of the authority issued to finance

the State share of county college capital projects. The authority may enter into a loan agreement with each county in which a county college capital project is located for the purpose of funding the county share of the applicable county college capital project.

b. The authority may from time to time issue bonds or notes in an amount sufficient to finance county college capital projects and which shall also finance the administrative costs and any reserves or other issuance costs associated with the issuance of bonds or notes. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of this act and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq. The authority shall not issue any bonds or notes pursuant to this section without the prior written consent of the State Treasurer.

C.18A:72A-12.5 Loan agreement to issue bonds, notes.

4. a. At any time within one year of the certification by the State Treasurer to the board of chosen freeholders, the county college at which the capital project is located, and the authority, pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2), the board of chosen freeholders is authorized, in lieu of issuing bonds or notes pursuant to N.J.S.18A:64A-19, to enter into a loan agreement with the authority for the issuance of bonds or notes of the authority to fund the county share of the capital project. The county shall issue bonds and notes to the authority which shall be delivered to the authority to evidence the loan, and which shall be the source of payment for the bonds or notes issued by the authority to finance the county share of the capital project. The loan evidenced by the bonds or notes may be made subject to such terms and conditions as the authority determines to be consistent with the purposes thereof. Each loan by the authority shall be subject to approval by the State Treasurer and shall be evidenced by notes or bonds issued by the county which shall be authorized and issued as provided by law for the issuance of notes and bonds by the county. A loan to a county, and the notes, bonds or other obligations thereby issued shall bear interest at a rate or rates per annum as may be agreed upon by the authority and the county.

b. Any bonds or notes authorized by the county to be issued to the authority or to another entity for the purpose of funding the county share of a county college capital project shall be in addition to the sums authorized to be borrowed by the board of chosen freeholders pursuant to the provisions of N.J.S.18A:64A-19 for the purpose of funding the county's share of capital projects, and the additional borrowing, if entered into by the county, shall constitute a deduction from the gross debt of the county and shall not be considered in determining its net debt for debt incurring purposes.

5. N.J.S.18A:72A-3 is amended to read as follows:

Definitions.

18A:72A-3. As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

"Authority" means the New Jersey Educational Facilities Authority created by this chapter or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this chapter shall be given by law;

"Bond" means bonds or notes of the authority issued pursuant to this chapter;

"County college capital project" means any capital project of a county college certified pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2) and approved by the State Treasurer for funding pursuant to the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

"Dormitory" means a housing unit with necessary and usual attendant and related facilities and equipment;

"Educational facility" means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, teaching hospital, and parking maintenance storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and the necessary and usual attendant and related facilities and equipment, but shall not include any facility used or to be used for sectarian instruction or as a place for religious worship;

"Emerging needs program" means a program at one or more public or private institutions of higher education directed to meeting new and advanced technology needs or to supporting new academic programs in science and technology;

"Higher education equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications or instructional equipment;

"Participating college" means a public institution of higher education or private college which, pursuant to the provisions of this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project;

"Project" means a dormitory or an educational facility or any combination thereof, or a county college capital project;

"Private college" means an institution for higher education other than a public college, situated within the State and which, by virtue of law or charter, is a nonprofit educational institution empowered to provide a program of education beyond the high school level;

"Private institution of higher education" means independent colleges or universities incorporated and located in New Jersey, which by virtue of law or character or license, are nonprofit educational institutions authorized to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid;

"Public institution of higher education" means Rutgers, The State University, the State colleges, the New Jersey Institute of Technology, the University of Medicine and Dentistry of New Jersey, the county colleges and any other public university or college now or hereafter established or authorized by law;

"University" means Rutgers, The State University.

6. N.J.S.18A:72A-5 is amended to read as follows:

Authority's powers.

18A:72A-5. The authority shall have power:

(a) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(b) To adopt and have an official common seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, and plead and be impleaded;

(e) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter;

(f) To acquire, lease as lessee, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter;

(g) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land or interest therein and other property which it may determine is reasonably necessary for any project, including any lands held by any county, municipality or other governmental subdivision of the State; and to hold and use the same and to

sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes;

(h) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made;

(i) To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating colleges under the provisions of this chapter, and from time to time to modify such plans, specifications, designs or estimates;

(j) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges; however, in any contract or contracts undertaken by the authority for the construction, reconstruction, rehabilitation or improvement of any public college project where the cost of such work will exceed $25,000, the contracting agent shall advertise for and receive in the manner provided by law:

(1) separate bids for the following categories of work;

(a) the plumbing and gas fitting work;

(b) the heating and ventilating systems and equipment;

(c) the electrical work, including any electrical power plants;

(d) the structural steel and ornamental iron work;

(e) all other work and materials required for the completion of the project, or

(2) bids for all work and materials required to complete the entire project if awarded as a single contract; or

(3) both (1) and (2) above.

All bids submitted shall set forth the names and license numbers of, and evidence of performance security from, all subcontractors to whom the bidder will subcontract the work described in the foregoing categories (1)(a) through (1)(e).

Contracts shall be awarded to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the authority;

(k) To determine the location and character of any project to be undertaken pursuant to the provisions of this chapter, and to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; to enter into contracts for any or all such purposes; to enter into contracts for the management and operation of a project, and to designate a participating college as its agent to determine the location and character

of a project undertaken by such participating college under the provisions of this chapter and, as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all such purposes including contracts for the management and operation of such project;

(l) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating college as its agent to establish rules and regulations for the use of a project undertaken by such participating college;

(m) Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof;

(n) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this chapter;

(o) To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by law for the investment of trust funds in the custody of the State Treasurer;

(p) To enter into any lease relating to higher education equipment with a public or private institution of higher education pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et al.);

(q) To enter into loan agreements with any county, to hold bonds or notes of the county evidencing those loans, and to issue bonds or notes of the authority to finance county college capital projects pursuant to the provisions of the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.).

7. Section 1 of P.L.1971, c.12 (C.18A:64A-22.1) is amended to read as follows:

C.18A:64A-22.1 County college capital project aid.

1. Whenever the funds appropriated are insufficient to satisfy the State's share of capital projects for county colleges pursuant to N.J.S.18A:64A-22, additional State support for such projects shall be made available to counties in which county colleges are located for the payment of interest and principal on bonds and notes entitled to the benefits of this act and interest on notes issued in anticipation thereof and entitled to the

benefits of the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.), provided that the total principal amount of such bonds and notes shall not exceed $140,000,000.

8. Section 2 of P.L.1971, c.12 (C.18A:64A-22.2) is amended to read as follows:

C.18A:64A-22.2 Action by State Treasurer.

2. Whenever the State Treasurer shall determine that he is unable to provide State support for a capital project of a county college pursuant to N.J.S.18A:64A-22 within the limit of available State appropriations, the State Treasurer shall determine the amount of bonds and notes entitled to the benefits of this act and the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.) and not theretofore allocated to another capital project. The State Treasurer shall determine the necessity or advisability of making available additional State support for the capital project. To the extent he determines additional support is necessary or advisable, he shall certify to the board of chosen freeholders of the county in which said capital project is located, the county college at which the capital project is located, and the New Jersey Educational Facilities Authority the amount of bonds or notes relating to the capital project which shall be entitled to the benefits of this act and the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.), which amount shall not exceed the amount of bonds and notes entitled to the benefit of those acts and not theretofore allocated to another capital project. A copy of such certification shall be filed by the State Treasurer with the Director of the Division of Local Finance.

9. Section 3 of P.L.1971, c.12 (C.18A:64A-22.3) is amended to read as follows:

C.18A:64A-22.3 Issuance of bonds, notes.

3. At any time within one year of the certification by the State Treasurer to the board of chosen freeholders, the county college at which the capital project is located, and the New Jersey Educational Facilities Authority pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2), the board of chosen freeholders is authorized to issue bonds, or notes in anticipation thereof, in an aggregate amount not exceeding the amount set forth in the treasurer's certification. Bonds or notes may also be issued by the New Jersey Educational Facilities Authority pursuant to the provisions of the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.) or by another legally empowered issuer in an aggregate amount not exceeding the amount set forth in the State Treasurer's

certification. Bonds issued by any issuer other than the authority or the board of chosen freeholders pursuant to the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.) shall be subject to the provisions of P.L.1971, c.12 (C.18A:64A-22.1 et seq.) in the same manner as bonds or notes issued by the board of chosen freeholders; provided that in the event bonds or notes are issued by another legally empowered issuer, the bonds or notes shall be sold by the issuer by competitive sale unless the State Treasurer expressly consents in writing to a negotiated sale of the bonds or notes by the issuer. Such bonds shall be in addition to the sums authorized to be borrowed by said board pursuant to N.J.S.18A:64A-19 for the purpose of funding the county share of such capital projects. No bonds or notes, other than bonds or notes issued by the New Jersey Educational Facilities Authority as authorized pursuant to the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.), shall be issued pursuant to this act bearing an interest rate in excess of a maximum rate theretofore specified by the State Treasurer and, in the case of bonds, unless the State Treasurer has theretofore approved the maturity schedule for the repayment of said bonds.

10. Section 4 of P.L.1971, c.12 (C.18A:64A-22.4) is amended to read as follows:

C.18A:64A-22.4 Deduction from gross debt.

4. Such additional borrowing, if entered into by the county, shall constitute a deduction from the gross debt of such county and shall not be considered in determining its net debt for debt incurring purposes.

11. Section 5 of P.L.1971, c.12 (C.18A:64A-22.5) is amended to read as follows:

C.18A:64A-22.5 Issuance of temporary notes.

5. Any board of chosen freeholders or other legally empowered issuer which has authorized such additional bonds may issue temporary notes in anticipation of the issuance of permanent bonds to the extent permitted by applicable law.

12. Section 6 of P.L.1971, c.12 (C.18A:64A-22.6) is amended to read as follows:

C.18A:64A-22.6 Debt service certification; appropriation, payment of funds.

6. Within 10 days after issuance of any bonds or notes entitled to the benefits of this act, the treasurer of the county issuing such bonds or notes, or if applicable, the treasurer of the other legally empowered issuer of the

bonds or notes, shall certify to the State Treasurer the exact amounts payable on account of interest and principal on such bonds and interest on such notes and the dates upon which such amounts are payable by the county or other issuer and the name and address of the paying agent or paying agents therefor. The amounts so certified by the county treasurer or the treasurer of the other issuer to the State Treasurer shall be appropriated and paid to the county, or paid to the other legally empowered issuer, on or before the dates of each payment by the county or other issuer on such bonds or notes in an amount with respect to each such date equal to the amount payable on such date and shall be used by the county or other issuer only for such payment.

13. Section 7 of P.L.1971, c.12 (C.18A:64A-22.7) is amended to read as follows:

C.18A:64A-22.7 Investments of proceeds; disposition of earnings.

7. On January 10 in each year the county treasurer or the treasurer of the other legally empowered issuer shall certify and pay to the State Treasurer the amount of the earnings received by the county or the issuer during the preceding year from the investment of the proceeds from the sale of such bonds or notes, provided that prior to the application of the proceeds to the purposes for which the bonds or notes have been issued such proceeds shall be invested in the State of New Jersey Cash Management Fund, established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4) or in such other investment as shall be explicitly authorized in writing by the State Treasurer.

14. This act shall take effect immediately.

Approved January 15, 1998.

CHAPTER 361

AN ACT concerning the testing of patients at State psychiatric facilities for hepatitis B, hepatitis C, HIV infection and sexually transmitted diseases and supplementing Title 30 of the Revised Statutes.

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

C.30:4-7.7 Definitions relative to testing of blood of patients at State psychiatric facilities.

1. As used in this act:

a. "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

b. "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

C.30:4-7.8 Blood testing required upon admission; information; guidelines for treatment.

2. a. An adult patient who is admitted for treatment at a State psychiatric hospital shall be required, upon admission, to submit to blood testing for hepatitis B, hepatitis C, and sexually transmitted diseases, as determined by the Commissioner of Human Services. The guardian, or the patient at a time appropriate to the patient's psychiatric condition, shall be provided with information and counseling regarding the benefits of being tested for HIV infection. The guardian, or patient, shall then be presented with the option of HIV testing.

b. The Commissioner of Human Services shall develop guidelines for the treatment and confinement of a patient who tests positive to any disease specified in subsection a. of this section, in consultation with the Commissioner of Health and Senior Services, and in accordance with recommended protocols established by the Centers for Disease Control and Prevention of the United States Public Health Services.

c. All employees at a State psychiatric hospital shall be trained to use universal precautions to avoid infection with any sexually transmitted disease, hepatitis B or hepatitis C.

C.30:4-7.9 Rules, regulations.

3. Subject to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services shall adopt all rules and regulations necessary to effectuate the purposes of this act.

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

Approved January 18, 1998.

CHAPTER 362

AN ACT concerning school-based drug and alcohol abuse counseling programs and supplementing chapter 40A 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:40A-7.1 Confidentiality of certain information provided by pupil; exceptions.

1. a. Except as provided by section 3 of P.L.1971, c.437 (C.9:6-8.10), if a public or private secondary school pupil who is participating in a school-based drug and alcohol abuse counseling program provides information during the course of a counseling session in that program which indicates that the pupil's parent or guardian or other person residing in the pupil's household is dependent upon or illegally using a substance as that term is defined in section 2 of P.L.1987, c.387 (C.18A:40A-9), that information shall be kept confidential and may be disclosed only under the circumstances expressly authorized under subsection b. of this section.

b. The information provided by a pupil pursuant to subsection a. of this section may be disclosed:

(1) subject to the pupil's written consent, to another person or entity whom the pupil specifies in writing;

(2) pursuant to a court order;

(3) to a person engaged in a bona fide research purpose, except that no names or other information identifying the pupil or the person with respect to whose substance abuse the information was provided, shall be made available to the researcher; or

(4) to the Division of Youth and Family Services or to a law enforcement agency, if the information would cause a person to reasonably suspect that the secondary school pupil or another child may be an abused or neglected child as the terms are used in R.S.9:6-1, or as the terms are defined in section 2 of P.L.1971, c.437 (C.9:6-8.9), or section 1 of P.L.1974, c.119 (C.9:6-8.21).

c. Any disclosure made pursuant to paragraph (1) or (2) of subsection b. of this section shall be limited to that information which is necessary to carry out the purpose of the disclosure, and the person or entity to whom the information is disclosed shall be prohibited from making any further disclosure of that information without the pupil's written consent. The disclosure shall be accompanied by a written statement advising the recipient that the information is being disclosed from records the confidentiality of which is protected by P.L.1997, c.362 (C.18A:40A-7.1 et seq.), and that this law prohibits any further disclosure of this information without the written consent of the person from whom the information originated. Nothing in this act shall be construed as prohibiting the Division of Youth and Family Services or a law enforcement agency from using or disclosing the information in the course of conducting an investigation or prosecution.

Nothing in this act shall be construed as authorizing the violation of any federal law.

d. The prohibition on the disclosure of information provided by a pupil pursuant to subsection a. of this section shall apply whether the person to whom the information was provided believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other public official, has obtained a subpoena, or asserts any other justification for the disclosure of this information.

C.18A:40A-7.2 Violations, penalties.

2. Except as provided by section 6 of P.L.1971, c.437 (C.9:6-8.13), a person who discloses or willfully permits the disclosure of information provided by a pupil in violation of the provisions of section 1 of this act is subject to a fine of not more than $500 for a first offense and not more than $5,000 for a second and each subsequent offense. The penalty shall be collected and enforced in summary proceedings under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 363

AN ACT concerning certain animal health programs administered by the Department of Agriculture and supplementing Title 4 of the Revised Statutes.

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

C.4:5-2.1 Rules, regulations relative to certain fees for animal health programs.

1. a. The State Board of Agriculture may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing a schedule in accordance with which the board may charge reasonable fees to defray the cost of:

(1) Animal disease diagnostic and testing services conducted pursuant to R.S.4:5-1 et seq.; and

(2) Animal health tests deemed necessary by the State Board of Agriculture.

b. Any fees established by the State Board of Agriculture pursuant to this section shall supersede all prior animal testing and diagnostic service

fees on the date of the State Board of Agriculture's adoption of new fees pursuant to this section.

C.4:5-2.2 "Agriculture Fee Program Revolving Fund."

2. a. There is hereby created in the Department of Agriculture a non-lapsing revolving fund to be known as the "Agriculture Fee Program Revolving Fund," hereinafter referred to as the fund, to be held separate and apart from all other funds of the State. All fees collected pursuant to section 1 of this act shall be deposited into the fund and appropriated annually by the Legislature based on estimates provided annually by the Director of Budget and Accounting in the Office of Management and Budget. All moneys appropriated from the fund shall be dedicated to the support of the program for which they were collected. All earnings received from the investment or deposit of moneys in the fund shall be credited to the fund.

b. The Secretary of the Department of Agriculture may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of the provisions of this section.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 364

AN ACT concerning the use or storage of certain hazardous substances in public schools, private schools, and child care centers and supplementing Title 34 of the Revised Statutes.

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

C.34:5A-10.1 Definitions relative to use, storage of hazardous substances in schools, child care centers.

1. As used in this act:

"Child care center" means a child care center licensed pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.);

"Hazardous substance" means any substance, or substance in a mixture, included on the hazardous substance list developed by the Department of Health and Senior Services pursuant to the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.).

"Hazardous substance" shall not include:

(1) Any article containing a hazardous substance if the hazardous substance is present in a solid form which does not pose any acute or chronic health hazard to any person exposed to it;

(2) Any hazardous substance constituting less than one percent of a mixture unless the hazardous substance is present in an aggregate amount of 500 pounds or more in a container in a public or private school or child care center building;

(3) Any hazardous substance which is a special health hazardous substance constituting less than the threshold percentage established by the Department of Health and Senior Services pursuant to P.L.1983, c.315 (C.34:5A-1 et seq.), for that special health hazardous substance when present in a mixture;

(4) Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by consumers and which is not a product intended primarily for commercial use;

(5) Any fuel in a motor vehicle;

(6) Tobacco or tobacco products;

(7) Wood or wood products;

(8) Foods, drugs, or cosmetics;

(9) Hazardous substances which are an integral part of a building's structure or furnishings;

(10) Products which are personal property and are intended for personal use; and

(11) Any substance used in the routine maintenance of a public or private school or child care center building or its grounds, any substance used in a classroom science laboratory, any substance used in a school occupational training facility, including laboratories and shops, and any substance used in the normal operation of the classrooms or administrative offices of a public or private school or child care center, including any substance used in the heating or cooling of the school or child care center;

"Hazardous substance fact sheet" means the hazardous substance fact sheets prepared by the Department of Health and Senior Services pursuant to the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.);

"Public school or private school" have the same meaning as set forth in N.J.S.18A:1-1.

C.34:5A-10.2 Use of hazardous substance prohibited when children are expected to be present; exceptions.

2. a. No person shall use or allow the use of any hazardous substance in or on any building or grounds used as a public school, a private school, or child care center at any time when children are expected to be present in the

building. The provisions of this subsection shall not apply when an emergency condition, as deemed by the Board of Education or the chief school administrator in the case of any public school, or the person having responsibility for the operation of any private school or child care center, necessitates the use of a hazardous substance when children are present.

b. Any person who uses or stores, or causes or allows the use or storage of any hazardous substance in or on any building or grounds used as a public school, a private school, or child care center shall ensure that the use or storage of that hazardous substance is in compliance with the regulations adopted by the Department of Health and Senior Services pursuant to section 5 of P.L.1997, c.364 (C.34:5A-10.5).

C.34:5A-10.3 Posting of notice of construction, activity involving hazardous substance.

3. a. The Board of Education or the chief school administrator in the case of any public school, or the person having responsibility for the operation of any private school or child care center, shall post on a bulletin board located in the public or private school or child care center a notice of any construction or other activity to take place at that school or child care center that will involve the use of a hazardous substance. The notice shall state the activity to be conducted and the hazardous substances to be used. The notice shall be posted at least two days prior to the construction or other activity except where an emergency condition, as deemed by the Board of Education or the chief school administrator in the case of any public school, or the person having responsibility for the operation of any private school or child care center, prevents the two-day notice in which case the notice shall be posted as soon as practicable.

b. The Board of Education or the chief school administrator in the case of any public school, or the person having responsibility for the operation of any private school or child care center shall make available to any person who requests it, the hazardous substance fact sheet for any hazardous substance being stored on site or that is being used in or on the school or center building or grounds during any construction or other activity.

c. The Board of Education or the chief school administrator in the case of any public school, or the person having responsibility for the operation of any private school or child care center shall, at least once per year, send a notice to a parent or guardian of each child attending the school or child care center, which notice may be contained in the school's or center's annual handbook, stating that notice of any construction or other activities involving the use of any hazardous substances will be posted on a bulletin board in the school or child care center, that hazardous substances may be stored at the school or child care center at various times throughout the year,

and that hazardous substance fact sheets for any of the hazardous substances being used or stored are available at the school or child care center.

C.34:5A-10.4 Responsibility for enforcement; violations, penalties.

4. The local health agency for the jurisdiction in which the public or private school or child care center is located shall enforce the provisions of this act. Whenever, on the basis of information available, a local health agency finds that a person has violated any of the provisions of P.L.1997, c.364 (C.34:5A-10.1 et seq.), the local health agency may bring an action in a court of competent jurisdiction to impose a civil penalty for that violation. Any person who violates any provision of this act shall be subject, upon order of a court, to a civil penalty not to exceed $2,500 for each day during which the violation continues. Any penalty imposed pursuant to this section may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). The Superior Court shall have jurisdiction to enforce "the penalty enforcement law."

C.34:5A-10.5 Regulations.

5. The Department of Health and Senior Services, in consultation with the Departments of Education, Human Services and Environmental Protection, and within 180 days of the enactment of P.L.1997, c.364 (C.34:5A-10.1 et seq.), shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations necessary to implement the provisions of this act which are consistent with federal and State indoor air quality standards and standards governing the exposure of children to hazardous substances as they are adopted by the federal government.

6. This act shall take effect 180 days following enactment.

Approved January 19, 1998.

CHAPTER 365

AN ACT concerning the practice of medicine and surgery and podiatry and supplementing Chapter 5 and Chapter 9 of Title 45 of the Revised Statutes.

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

C.45:9-19.17 Medical malpractice liability insurance, letter of credit required for physician; regulations.

1. a. A physician who maintains a professional medical practice in this State and has responsibility for patient care is required to be covered by medical malpractice liability insurance, or if such liability coverage is not available, by a letter of credit for at least the minimum amount required by the State Board of Medical Examiners.

The physician shall notify the State Board of Medical Examiners of the name and address of the insurance carrier or the institution issuing the letter of credit, pursuant to section 7 of P.L.1989, c.300 (C.45:9-19.7).

b. A physician who is in violation of this section is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

c. The State Board of Medical Examiners shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations which establish the minimum amount of a line of credit that is required pursuant to this section.

d. The State Board of Medical Examiners shall notify all physicians licensed by the board of the requirements of this section within 30 days of the date of enactment of this act.

C.45:5-5.3 Medical malpractice liability insurance, letter of credit required for podiatrist; regulations.

2. a. A podiatrist who maintains a professional practice in this State and has responsibility for patient care is required to be covered by malpractice liability insurance, or if such liability coverage is not available, by a letter of credit for at least the minimum amount required by the State Board of Medical Examiners.

The podiatrist shall notify the State Board of Medical Examiners of the name and address of the insurance carrier or the institution issuing the letter of credit, pursuant to section 7 of P.L.1989, c.300 (C.45:9-19.7).

b. A podiatrist who is in violation of this section is subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

c. The State Board of Medical Examiners shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations which establish the minimum amount of a line of credit that is required pursuant to this section.

d. The State Board of Medical Examiners shall notify all podiatrists licensed by the board of the requirements of this section within 30 days of the date of enactment of this act.

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

Approved January 19, 1998.

CHAPTER 366

AN ACT concerning the rental of certain cooperative units and supplementing chapter 8 of Title 46 of the Revised Statutes.

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

C.46:8D-13.1 Findings, declarations relative to rental housing and cooperatives; agreements, certain, unenforceable.

1. a. The Legislature finds and declares that it is in the public interest of the citizens of this State that the availability of rental housing be encouraged. Therefore restrictions imposed by certain cooperative agreements which unreasonably inhibit or prevent the holder of a proprietary lease to a cooperative unit from making the unit available for rental shall be contrary to the public policy of the State of New Jersey and shall be unenforceable.

b. Subsection a. of this section shall not apply to: any cooperative in which requirements limiting occupancy to holders of proprietary leases to units were established at the time that the cooperative was created, and which requirements were emphasized in the offering document as an absolute condition of ownership, and have been consistently and strictly enforced since that time, or which requirements were established upon the transfer of control of the association board from the developer to the holders of proprietary leases to units through properly amended bylaws which have been consistently and strictly enforced since the time of amendment.

c. Notwithstanding any provision of law to the contrary, in those cooperatives which meet the criteria of subsection b. and in which more than ten units are under one roof, when a unit is offered for sale at or below a sales price such that a sale will result in a return of any investment only, and the unit nevertheless remains unsold for four or more months, then the owner shall have the right, subject to the conditions in subsection d. of this section, to rent the unit for such a period of time until prevailing market conditions permit a sale which will allow recoupment of the investment in the unit. For the purposes of this subsection, investment shall include the purchase price, costs related to the acquisition of the property, and the costs of any improvements made to the property.

d. Nothing in this act shall prohibit a cooperative association from adopting reasonable rules necessary to protect the health, safety or interest of all of the owners, including rules based on lending policies of financial institutions pertaining to owner-occupancy ratios or from requiring a reasonable minimum term of leasehold, nor shall such associations be prohibited from requiring that all tenants comply with the properly adopted rules of the association which are applicable to other unit owners, including, but not limited to, rules relating to such matters as parking, pets, noise, and the number of permitted occupants per unit. A cooperative association which elects to screen tenants shall interview prospective tenants within seven days of the date of the submission of the tenant's name to the association.

Nothing in this act shall grant a tenant any additional rights or protected status under the laws applicable to eviction from rental premises.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 367

AN ACT concerning school buses fueled by liquefied petroleum gas and supplementing Title 26 of the Revised Statutes.

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

C.39:3B-13 Definitions relative to school buses fueled by liquefied petroleum gas.

1. As used in this act:

"Conventional fuel" means gasoline or diesel fuel;

"Governmental entity" means the State, any agency, authority, or employee thereof, or any political subdivision of the State, including but not limited to any county, municipality, or school district, or any agency, authority, or employee thereof;

"Liquefied petroleum gas" means LPG, butane, butylene, propane, or propylene, or other related or similar compounds commonly regarded to be liquefied petroleum gases as prescribed by rule or regulation adopted by the Department of Environmental Protection pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

"School bus" means a school bus as defined pursuant to R.S.39:1-1.

C.39:3B-14 Use of liquefied petroleum gas.

2. a. Liquefied petroleum gas may be used as an alternative fuel for a school bus instead of, in addition to, or in combination with a conventional fuel.

b. A school bus may be equipped or converted to operate with liquefied petroleum gas as the sole fuel or in addition to or in combination with a conventional fuel.

C.39:3B-15 Equipping, conversion of school bus for operation using liquefied petroleum gas.

3. No school bus may be operated using liquefied petroleum gas as the sole fuel, or in addition to or in combination with a conventional fuel, unless the school bus has been equipped or converted for such use and is operated in accordance with (1) all applicable federal and State laws, rules, regulations, codes, standards, and guidelines pertaining thereto, including but not limited to any such rules, regulations, codes, standards, and guidelines that may be adopted by the National Highway Traffic Safety Administration, and (2) all applicable codes, standards, and guidelines established by the National Fire Protection Association for the storage, handling, and use of liquefied petroleum gas.

C.39:3B-16 Immunity from liability.

4. a. In any action brought for any injury or damages caused either directly or indirectly by the use of liquefied petroleum gas as the sole fuel, or in addition to or in combination with a conventional fuel, to operate a school bus, or the equipping or converting of a school bus to operate using liquefied petroleum gas as the sole fuel or in addition to or in combination with a conventional fuel, neither the owner or operator of the school bus nor any governmental entity may be found negligent in connection therewith if the school bus was equipped or converted, and operated, as required by section 3 of this act.

b. The immunity provided by subsection a. of this section: (1) shall be in addition to any other immunity that may apply under the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., or any other law, rule, or regulation; and (2) shall not apply if it is established that the act or omission causing the injury or damages constitutes gross negligence, recklessness, actual fraud, actual malice, willful misconduct, or criminal conduct.

C.39:3B-17 Rules, regulations.

5. The Department of Environmental Protection, in consultation with the Department of Transportation, the Division of Motor Vehicles in the Department of Transportation, and the Department of Education, may 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 this act.

6. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 368

AN ACT concerning the administration of medication for certain school pupils and supplementing chapter 40 of Title 18A of the New Jersey Statutes.

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

C.18A:40-12.5 Development of policy for emergency administration of epinephrine via epi-pen to pupil.

1. Each board of education or chief school administrator of a nonpublic school shall develop a policy for the emergency administration of epinephrine via epi-pen to a pupil for anaphylaxis provided that:

a. the parents or guardians of the pupil provide to the board of education or chief school administrator of a nonpublic school written authorization for the administration of the epi-pen;

b. the parents or guardians of the pupil provide to the board of education or chief school administrator of a nonpublic school written orders from the physician or advanced practice nurse that the pupil requires the administration of epinephrine for anaphylaxis and does not have the capability for self-administration of the medication;

c. the board or chief school administrator of a nonpublic school informs the parents or guardians of the pupil in writing that if the procedures specified in this section are followed, the district and its employees or agents or the nonpublic school and its employees or agents shall have no liability as a result of any injury arising from the administration of the epi-pen to the pupil;

d. the parents or guardians of the pupil sign a statement acknowledging their understanding that if the procedures specified in this section are followed, the district or the nonpublic school shall have no liability as a result of any injury arising from the administration of the epi-pen to the pupil and that the parents or guardians shall indemnify and hold harmless the district and its employees or agents or the nonpublic school and its

employees or agents against any claims arising out of the administration of the epi-pen to the pupil; and

e. the permission is effective for the school year for which it is granted and is renewed for each subsequent school year upon fulfillment of the requirements in subsections a. through d. of this section.

C.18A:40-12.6 Policy for administration of medication to pupil.

2. The policy for the administration of medication to a pupil shall provide that the school nurse shall have the primary responsibility for the administration of the epi-pen. The school nurse may designate, in consultation with the board of education, or chief school administrator of a nonpublic school another employee of the school district or nonpublic school to administer epinephrine via epi-pen to a pupil for anaphylaxis when the nurse is not physically present at the scene, provided that:

a. the designated person has been properly trained in the administration of the epi-pen by the school nurse using standardized training protocols established by the Department of Education in consultation with the Department of Health and Senior Services;

b. the parents or guardians of the pupil consent in writing to the administration of the epi-pen by the designated individual;

c. the board or chief school administrator of a nonpublic school informs the parents or guardians of the pupil in writing that if the procedures specified in this section are followed, the district and its employees or agents or the nonpublic school and its employees and agents shall have no liability as a result of any injury arising from the administration of the epi-pen to the pupil;

d. the parents or guardians of the pupil sign a statement acknowledging their understanding that if the procedures specified in this section are followed, the district or nonpublic school shall have no liability as a result of any injury arising from the administration of the epi-pen to the pupil and that the parents or guardians shall indemnify and hold harmless the district and its employees or agents against any claims arising out of the administration of the epi-pen to the pupil; and

e. the permission is effective for the school year for which it is granted and is renewed for each subsequent school year upon fulfillment of the requirements in subsections a. through d. of this section.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 369

AN ACT concerning the protection of persons threatened by domestic violence, supplementing Title 47 of the Revised Statutes and enacting an additional chapter.

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

1. An additional chapter 4 is added to Title 47 as follows:

Title 47
Chapter 4
Address Confidentiality Program

Short title.

47:4-1. This act shall be known and may be cited as the "Address Confidentiality Program Act."

Address confidentiality for victims of domestic violence.

47:4-2. The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses to prevent their assailants from finding them. The purpose of this act is to enable public agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable inter-agency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, and to enable public agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

Definitions relative to protection of persons threatened by domestic violence.

47:4-3. As used in this act:

"Address" means a residential street address, school address, or work address of a person, as specified on the person's application to be a program participant under this act.

"Program participant" means a person certified by the Secretary of State as eligible to participate in the Address Confidentiality Program established by this act.

"Department" means the Department of State.

"Domestic violence" means an act defined in section 3 of P.L.1991, c.261 (C.2C:25-19), if the act has been reported to a law enforcement agency or court.

"Secretary" means the Secretary of State.

"Address Confidentiality Program."

47:4-4. a. There is created in the department a program to be known as the "Address Confidentiality Program." A person 18 years of age or over, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the secretary to have an address designated by the secretary as the applicant's address. The secretary shall approve an application if it is filed in the manner and on the form prescribed by the secretary and if it contains:

(1) a sworn statement by the applicant that the applicant has good reason to believe:

(a) that the applicant is a victim of domestic violence as defined in this act; and

(b) that the applicant fears further violent acts from the applicant's assailant;

(2) a designation of the secretary as agent for the purpose of receiving process and for the purpose of receipt of mail;

(3) the mailing address where the applicant can be contacted by the secretary, and a telephone number where the applicant can be called;

(4) the new address or addresses that the applicant requests not be disclosed because of the increased risk of domestic violence; and

(5) the signature of the applicant and any person who assisted in the preparation of the application, and the date.

b. An application shall be filed with the secretary.

c. Upon approving a completed application, the secretary shall certify the applicant as a program participant. An applicant shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date.

d. A program participant may apply to be recertified every four years thereafter.

e. A program participant may use the address designated by the secretary as his or her work address.

f. Upon receipt of first class mail addressed to a program participant, the secretary or a designee shall forward the mail to the actual address of the participant. The secretary may arrange to receive and forward other kinds and classes of mail for any program participant at the participant's expense. The actual address of a program participant shall be available only to the secretary and to those employees involved in the operation of the address confidentiality program and to law enforcement officers for law enforcement purposes.

g. The secretary, 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.

Canceling of certification.

47:4-5. The secretary may cancel a program participant's certification if:

(1) the program participant obtains a name change through an order of the court;

(2) the program participant changes the participant's residential address and does not provide seven days' advance notice to the secretary;

(3) mail forwarded by the secretary to the address or addresses provided by the program participant is returned as undeliverable; or

(4) any information on the application is false.

The application form shall notify each applicant of the provisions of this section.

Use of designated address, exceptions.

47:4-6. A program participant may request that any State or local agency use the address designated by the secretary as the program participant's address. The agency shall accept the address designated by the secretary as a program participant's address, unless the agency has demonstrated to the satisfaction of the secretary that:

(1) the agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; and

(2) the disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 370

AN ACT concerning banking institution names and amending P.L.1948, c.67.

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

1. Section 18 of P.L.1948, c.67 (C.17:9A-18) is amended to read as follows:

C.17:9A-18 Names of banks, savings banks.

18. A. The name of every bank shall contain the word "bank" or "banking" or "trust," or a combination of the words "bank" or "banking" and "trust," except that no bank which is not qualified to exercise any of the powers specified in section 28 shall use the word "trust" as part of its name. Any bank which, immediately prior to the effective date of this act, lawfully used the word "savings" as part of its name, may continue the use thereof, but no other bank shall hereafter use such word as part of its name.

B. The name of every savings bank shall contain the words "savings bank" or "savings fund society" or "savings institution" or "institution for savings" or "bank for savings." Any savings bank which, immediately prior to the effective date of this act, lawfully used the word "trust" as part of its name, may continue the use thereof, but no other savings bank shall hereafter use such word as part of its name.

C. No bank or savings bank shall assume a name identical with that of an existing banking institution, or so similar thereto that confusion may result therefrom; except that, if a bank or savings bank is organized to succeed another bank or savings bank pursuant to section 16, it may adopt the name of the bank or savings bank which it succeeds.

D. No person, other than a banking institution or bank holding company, shall use the words "bank" or "banker" or "banking" or "trust" or "savings" or any of them, as part of his or its name, or in any representations describing his or its powers, services or functions, except as otherwise permitted by law. A violation of the provisions of this subsection shall be a misdemeanor, and the Superior Court shall have jurisdiction to enjoin such violation at the suit of the commissioner.

E. The provisions of subsection D of this section shall not apply to any corporation or association formed for the purpose of promoting the interests of banking institutions, the membership of which is comprised of banking institutions, their officers or other representatives; nor shall the said subsection apply to any partnership, association, or corporation, which, on the effective date of this act, lawfully used the words "bank," "banker," "banking," "trust," or "savings," or any of them, as part of its name.

F. The provisions of subsection D of this section shall not prevent the use of the word "savings" by a building and loan association or a savings and loan association, or by a corporation or association formed for the purpose of promoting the interests of building and loan associations or savings and loan associations, the membership of which is comprised of

building and loan or savings and loan associations, their officers or other representatives.

G. The provisions of subsection D of this section shall not prevent the use of the word "trust" by a Real Estate Investment Trust as defined in 26 U.S.C. s.856.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 371

AN ACT concerning certain construction contracts and supplementing P.L.1971, c.198 (C.40A:11-1 et seq.).

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

C.40A:11-50 Process of resolution for construction contract disputes.

1. All construction contract documents entered into in accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c.371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the

arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 372

AN ACT concerning the reporting of pupil assaults upon public school employees and amending P.L.1979, c.189.

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

1. Section 2 of P.L.1979, c.189 (C.18A:37-2.1) is amended to read as follows:

C.18A:37-2.1 Suspension, expulsion of pupil for assault, appeal; report.

2. a. Any pupil who commits an assault, as defined pursuant to N.J.S.2C:12-1, upon a teacher, administrator, board member or other employee of a board of education, acting in the performance of his duties and in a situation where his authority to so act is apparent, or as a result of the victim's relationship to an institution of public education of this State, not involving the use of a weapon or firearm, shall be immediately suspended from school consistent with procedural due process pending suspension or expulsion proceedings before the local board of education. Said proceedings shall take place no later than 30 calendar days following the day on which the pupil is suspended. The decision of the board shall be made within five days after the close of the hearing. Any appeal of the board's decision shall be made to the Commissioner of Education within 90 days of the board's decision. The provisions herein shall be construed in a manner consistent with 20 U.S.C. s.1400 et seq.

b. Whenever a teacher, administrator, board member, other employee of a board of education or a labor representative on behalf of an employee makes an allegation in writing that the board member or employee has been assaulted by a pupil, the principal shall file a written report of the alleged

assault with the district's superintendent of schools. The superintendent to whom the alleged assault is reported or, if there is no superintendent in the district, the principal who received the allegation from the board member, employee, or labor representative shall report the alleged assault to the board of education of the district at its next regular meeting; provided that the name of the pupil who allegedly committed the assault, although it may be disclosed to the members of the board of education, shall be kept confidential at the public board of education meeting.

Any person who fails to file a report of an alleged assault as required pursuant to this subsection may be liable to disciplinary action by the board of education of the district.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 373

AN ACT concerning the cigarette tax licensing requirements of officers and employees of retail drugstore chains, amending P.L.1948, c.65.

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

1. 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, to drug stores and pharmacies engaged in the retail sale of prescription drugs and patent medicines and which may carry a number of lines of related merchandise, 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 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. 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 and Senior Services 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 with 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 and Senior Services.

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.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 374

AN ACT concerning motor vehicles 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.39:4-57.1 Activation of interior light in vehicle upon request of police officer; fine.

1. The driver of a motor vehicle equipped with an interior light, when stopped by a law enforcement officer during the period when lighted lamps are required, shall, upon request of the officer, activate an interior light of the vehicle in order to illuminate the driver's compartment of the vehicle. A fine of $50 shall be imposed upon any person who purposely refuses to comply with this section.

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

Approved January 19, 1998.

CHAPTER 375

AN ACT permitting the temporary transfer of a firearm for training purposes, amending N.J.S.2C:39-5 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:58-3.2 Temporary transfer of firearm for training purposes.

1. a. Notwithstanding the provisions of N.J.S.2C:39-9, N.J.S.2C:58-2, N.J.S.2C:58-3 or any other statute to the contrary, a person who is certified as an instructor in the use, handling and maintenance of firearms by the Police Training Commission, the Division of Fish, Game and Wildlife and the State Park Service in the Department of Environmental Protection, the Director of Civilian Marksmanship of the United States Department of the Army or by a recognized rifle or pistol association that certifies instructors may transfer a firearm temporarily in accordance with the terms of this section to a person participating in a training course for the use, handling and maintenance of firearms by the Police Training Commission, the Division of Fish, Game and Wildlife, the Director of Civilian Marksman-

ship or by a recognized rifle or pistol association that certifies instructors. The person to whom a firearm is transferred by a certified instructor in accordance with the terms of this section may receive, possess, carry and use the firearm temporarily during the sessions of the course for the purpose of training and participating in the course.

b. A transfer of a firearm under this section may be made only if:

(1) the transfer is made upon a firearms range or, if the firearm is unloaded, in an area designated and appropriate for the training;

(2) the transfer is made during the sessions of the firearms course for the sole purpose of participating in the course;

(3) the transfer is made for not more than eight consecutive hours in any 24-hour period; and

(4) the transferred firearm is used and handled only in the actual presence and under the direct supervision of the instructor.

c. The transfer permitted by this section may be made whether or not the person participating in the course holds a firearms license, firearms purchaser identification card or a handgun purchase permit. However, an instructor shall not knowingly transfer a firearm under the terms of this section to a person who does not meet the qualifications set forth in subsection c. of N.J.S.2C:58-3 for obtaining or holding a firearms purchaser identification card or a handgun purchase permit, and a person who knows that he does not meet such qualifications shall not receive the transferred firearm under the terms of this section.

d. No firearm shall be transferred or received under the provisions of this section for purposes described in section 1 of P.L.1983, c.229 (C.2C:39-14).

2. 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. (1) 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) The temporary possession of a firearm by a person receiving, possessing, carrying or using the firearm under the provisions of section 1

of P.L.1997, c.375 (C.2C:58-3.2) shall not be considered unlawful possession under the provisions of this section.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 376

AN ACT concerning the parent-child relationship and paternity and amending N.J.S.3B:5-10 and P.L.1983, c.17.

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

1. N.J.S.3B:5-10 is amended to read as follows:

Establishment of parent-child relationship.

3B:5-10. Establishment of Parent-Child Relationship.

If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, in cases not covered by N.J.S.3B:5-9, a person is the child of the person's parents regardless of the marital state of the person's parents, and the parent and child relationship may be established as provided by the "New Jersey Parentage Act," P.L.1983, c.17 (C.9:17-38 et seq.). The parent and child relationship may be established for purposes of this section regardless of the time limitations set forth in subsection b. of section 8 of P.L.1983, c.17 (C.9:17-45).

2. Section 8 of P.L.1983, c.17 (C.9:17-45) is amended to read as follows:

C.9:17-45 Action to determine existence of parent-child relationship.

8. a. A child, a legal representative of the child, the natural mother, the estate or legal representative of the mother, if the mother has died or is a minor, a man alleged or alleging himself to be the father, the estate or legal representative of the alleged father, if the alleged father has died or is a minor, the Division of Family Development in the Department of Human Services, or the county welfare agency, or any person with an interest recognized as justiciable by the court may bring or defend an action or be made a party to an action at any time for the purpose of determining the existence or nonexistence of the parent and child relationship.

b. No action shall be brought under this act more than five years after the child attains the age of majority.

c. The death of the alleged father shall not cause abatement of any action to establish paternity, and an action to determine the existence or nonexistence of the parent and child relationship may be instituted or continued against the estate or the legal representative of the alleged father.

d. Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with subsection c. of section 11 of P.L.1983, c.17 (C.9:17-48) between an alleged or presumed father and the mother of the child, shall not bar an action under this section.

e. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony. The court may consider the issue of medical expenses and may order the alleged father to pay the reasonable expenses of the mother's pregnancy and postpartum disability.

f. This section does not extend the time within which a right of inheritance or a right to succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise, or limit any time period for the determination of any claims arising under the laws governing probate, including the construction of wills and trust instruments.

3. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read as follows:

C.9:17-41 Establishment of parent-child relationship; termination of natural parental rights; action.

4. The parent and child relationship between a child and:

a. The natural mother, may be established by proof of her having given birth to the child, or under this act;

b. The natural father, may be established by proof that his paternity has been adjudicated under prior law; under the laws governing probate; by giving full faith and credit to a determination of paternity made by any other state, whether established through voluntary acknowledgment or through judicial or administrative processes; by a Certificate of Parentage as provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is executed by the father prior to or after the birth of a child, and filed with the appropriate State agency; by a default judgment or order of the court; by an order of the court based on a blood test or genetic test that meets or exceeds the specific threshold probability as set by subsection i. of section 11 of P.L.1983, c.17 (C.9:17-48) creating a rebuttable presumption of paternity; or under this act;

c. An adoptive parent, may be established by proof of adoption;

d. The natural mother or the natural father, may be terminated by an order of a court of competent jurisdiction in granting a judgment of adoption or as the result of an action to terminate parental rights;

e. The establishment of the parent and child relationship pursuant to subsections a., b., and c. of this section shall be the basis upon which an action for child support may be brought by a party and acted upon by the court without further evidentiary proceedings.

4. Section 11 of P.L.1983, c.17 (C.9:17-48) is amended to read as follows:

C.9:17-48 Consent conference; blood, genetic tests; presumption.

11. a. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, a consent conference shall be held by the Superior Court, Chancery Division, Family Part intake service, the county probation department or the county welfare agency. A court appearance shall be scheduled in the event that a consent agreement cannot be reached.

b. On the basis of the information produced at the conference, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) That the action be dismissed with or without prejudice; or

(2) That the alleged father voluntarily acknowledge his paternity of the child.

c. If the parties accept a recommendation made in accordance with subsection b. of this section, which has been approved by the court, judgment shall be entered accordingly.

d. If a party refuses to accept a recommendation made under subsection b. of this section or the consent conference is terminated because it is unlikely that all parties would accept a recommendation pursuant to subsection b. of this section, and blood tests or genetic tests have not been taken, the court shall require the parties to submit to blood tests or genetic tests if the court determines that there is an articulable reason for suspecting that the alleged father is the natural father. The tests shall be scheduled within 10 days and shall be performed by qualified experts. Thereafter the Family Part intake service, with the approval of the court, shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

If the results of the blood test or genetic test indicate that the specific threshold probability as set by subsection i. of this section to establish paternity has been met or exceeded, the results shall be received in evidence

as a rebuttable presumption of paternity and no additional foundation testimony or proof of authenticity or accuracy shall be required to establish paternity. In actions based on allegations of fraud or inaccurate analysis, the court shall require that the additional blood test or genetic test be scheduled within 10 days and be performed by qualified experts. The test shall be paid for by the moving party.

If a party objects to the blood test or genetic test, the party shall make the objection to the appropriate agency, in writing, within 10 days of receipt of the results.

e. The guardian ad litem may accept or refuse to accept a recommendation under this section.

f. (Deleted by amendment, P.L.1994, c.164).

g. No evidence, testimony or other disclosure from the consent conference shall be admitted as evidence in a civil action except by consent of the parties. However, blood tests or genetic tests ordered pursuant to subsection d. of this section may be admitted as evidence.

h. The refusal to submit to a blood test or genetic test required pursuant to subsection d. of this section, or both, shall be admitted into evidence and shall give rise to the presumption that the results of the test would have been unfavorable to the interests of the party who refused to submit to the test. Refusal to submit to a blood test or genetic test, or both, is also subject to the contempt power of the court.

i. Blood test or genetic test results indicating a 95% or greater probability that the alleged father is the father of the child shall create a presumption of paternity which may be rebutted only by clear and convincing evidence that the results of the tests are not reliable in that particular case.

5. This act shall take effect immediately and shall apply to any matter pending before any trial or appellate court for which the time limitations established by Title 3B of the New Jersey Statutes or any rule or principle of equity have not expired.

Approved January 19, 1998.

CHAPTER 377

AN ACT concerning certain students at New Jersey public institutions of higher education and supplementing chapter 62 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:62-4.2 Options for student at public institution of higher education unable to complete course due to military service.

1. a. A student at a New Jersey public institution of higher education who is unable to complete a course because the student is called to partial or full mobilization for State or federal active duty as a member of the National Guard or a Reserve component of the Armed Forces of the United States shall be entitled to the options set forth in this section with respect to the student's grade for the course.

b. A student who has completed at least eight weeks of attendance in a course may choose to:

(1) receive a letter grade; or

(2) receive a grade of pass or fail; or

(3) receive a grade of incomplete; or

(4) withdraw from the course.

c. A student who has completed less than eight weeks of attendance in a course may choose to:

(1) receive a grade of incomplete; or

(2) withdraw from the course.

d. A letter grade or a grade of pass shall only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work, and there is sufficient evidence of progress toward meeting the requirements of the course, to justify the grade.

e. A grade of incomplete shall remain valid for a period of one year after the student returns to the New Jersey public institution of higher education.

f. A student who chooses to accept a grade of pass or fail may, within one year after returning to the New Jersey public institution of higher education, receive a letter grade for the course by completing the work required for the course, in which case the letter grade shall replace the pass or fail grade as the student's grade for the course.

g. A student who chooses to withdraw from a course shall receive a full refund of tuition and fees attributable to that course.

h. A student who has paid amounts for room, board or fees shall, except as provided in subsection g. of this section, receive a refund of that portion of those amounts attributable to the time period during which the student did not use the services for which payment was made.

i. Any refund payable to a student who is a financial aid recipient shall be subject to the applicable State and federal regulations regarding refunds.

2. This act shall take effect immediately and shall apply to the 1997-98 academic year and thereafter.

Approved January 19, 1998.

CHAPTER 378

AN ACT concerning the liability of certain persons for activities on agricultural or horticultural lands and supplementing chapter 42A 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:42A-9 "Agricultural or horticultural land" defined.

1. As used in this act, "agricultural or horticultural land" means orchards, nurseries or other land devoted to the production for sale of plants, crops, trees, forest products or other related commodities.

C.2A:42A-10 Farmers immunity for invitees-pickers.

2. Notwithstanding the provisions of any law to the contrary, an owner, lessee or occupant of agricultural or horticultural land shall not have a legal duty to protect a person who is invited onto the land for the purposes of picking or taking agricultural or horticultural products from the natural risks or hazards that are inherent characteristics of agricultural or horticultural land, and shall not be liable if such a person invited onto the land is injured because of any natural risks or hazards that are inherent characteristics of agricultural or horticultural land.

3. This act shall take effect immediately and shall apply only to any cause of action that arises after the effective date of this act.

Approved January 19, 1998.

CHAPTER 379

AN ACT concerning mental incompetents and amending N.J.S.3A:36-2, N.J.S.3B:1-1, P.L.1970, c.289, P.L.1985, c.133, P.L.1976, c.120, and P.L.1977, c.239, and amending and supplementing N.J.S.3B:1-2.

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

1. N.J.S.3A:36-2 is amended to read as follows:

Admeasurement.

3A:36-2. A widow or widower entitled to dower or curtesy in real estate whereof her or his spouse died seized, an heir, devisee, or guardian of a minor or incapacitated person entitled to an estate in the real estate, or a purchaser thereof, may institute an action in the Superior Court for the assignment to the widow or widower of her or his dower or curtesy therein.

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

Definitions A to H.

3B:1-1. As used in this title, unless otherwise defined:

"Administrator" includes general administrators of an intestate and unless restricted by the subject or context, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, temporary administrators and administrators pendente lite.

"Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

"Child" means any individual, including a natural or adopted child, entitled to take by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

"Claims" include liabilities whether arising in contract, or in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent, including funeral expenses and expenses of administration, but does not include estate or inheritance taxes, demands or disputes regarding title to specific assets alleged to be included in the estate.

"Cofiduciary" means each of two or more fiduciaries jointly serving in a fiduciary capacity.

"Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

"Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, trust or trustee is the devisee and the beneficiaries are not devisees.

"Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A trustee is a distributee only to the extent of a distributed asset or increment thereto remaining in his hands. A beneficiary of a trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative.

"Domiciliary foreign fiduciary" means any fiduciary who has received letters, or has been appointed, or is authorized to act as a fiduciary, in the jurisdiction in which the decedent was domiciled at the time of his death, in which the ward is domiciled or in which is located the principal place of the administration of a trust.

"Estate" means all of the property of a decedent, minor or incapacitated person, trust or other person whose affairs are subject to this title as the property is originally constituted and as it exists from time to time during administration.

"Fiduciary" includes executors, general administrators of an intestate, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, guardians, substituted guardians, trustees, substituted trustees and, unless restricted by the subject or context, temporary administrators, administrators pendente lite, administrators ad prosequendum, administrators ad litem and other limited fiduciaries.

"Guardian" means a person who has qualified as a guardian of the person or estate of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

"Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

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

Definitions I to Z.

3B:1-2. "Issue" of a person includes all of his lineal descendants, natural or adopted, of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent.

"Local administration" means administration by a personal representative appointed in this State.

"Local fiduciary" means any fiduciary who has received letters in this State and excludes foreign fiduciaries who acquire the power of local fiduciary pursuant to this title.

"Incapacitated person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

The term incapacitated person is also used to designate a person who is impaired by reason of physical illness or disability, chronic use of drugs, chronic alcoholism or other cause (except minority) to the extent that he lacks sufficient capacity to govern himself and manage his affairs.

The terms incapacity and incapacitated person refer to the state or condition of an incapacitated person as hereinbefore defined.

"Minor" means a person who is under 18 years of age.

"Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

"Parent" means any person entitled to take or would be entitled to take if the child, natural or adopted, died without a will, by intestate succession from the child whose relationship is in question and excludes any person who is a stepparent, foster parent or grandparent.

"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

"Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate.

"Security" includes any note, stock, treasury stock, bond, mortgage, financing statement, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under the title or lease, collateral, trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or as a security interest or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

"Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

"Successors" means those persons, other than creditors, who are entitled to real and personal property of a decedent under his will or the laws governing intestate succession.

"Testamentary trustee" means a trustee designated by will or appointed to exercise a trust created by will.

"Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created by judgment under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, personal representatives, trust accounts created under the "Multiple-party Deposit Account Act," P.L.1979, c.491

(C.17:161-1 et seq.), gifts to minors under the "New Jersey Uniform Gifts to Minors Act," P.L.1963, c.177 (C.46:38-13 et seq.), business trusts providing for certificates to be issued to beneficiaries, common trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

"Ward" means a person for whom a guardian is appointed or a person under the protection of the court.

"Will" means the last will and testament of a testator or testatrix and includes any codicil.

4. Section 1 of P.L.1970, c.289 (C.30:4-165.7) is amended to read as follows:

C.30:4-165.7 Filing of complaint for guardianship.

1. The commissioner or any parent, spouse, relative, or interested party, on behalf of an alleged incapacitated person who is receiving functional or other services and is over 18 years of age, may file a complaint upon notice to the alleged incapacitated person with the Superior Court in the county furnishing the services or in which such parent, spouse, relative, or interested party resides, for a judgment designating a guardian. The county of settlement shall be served with a copy of the moving papers, however, the county may waive service of the moving papers if it has no reason to oppose the action. If the county elects to oppose the action it shall do so within 30 days after being served with a copy of the moving papers.

5. Section 2 of P.L.1970, c.289 (C.30:4-165.8) is amended to read as follows:

C.30:4-165.8 Necessary affidavits; "significant chronic functional impairment" defined.

2. The moving papers shall include a verified complaint, an affidavit from a practicing physician or a psychologist licensed pursuant to P.L.1966, c.282 (C.45:14B-1 et seq.), and an affidavit from the chief executive officer, medical director or other officer having administrative control over the program from which the individual is receiving functional or other services provided by the Division of Mental Retardation. The affidavits shall set forth with particularity the facts supporting the affiant's belief that the alleged incapacitated person suffers from a significant chronic functional impairment to such a degree that the person either lacks the cognitive capacity to make decisions for himself or to communicate, in any way, decisions to others. For the purposes of this section, "significant chronic

functional impairment" includes, but is not limited to, a lack of comprehension of concepts related to personal care, health care or medical treatment.

6. Section 5 of P.L.1970, c.289 (C.30:4-165.11) is amended to read as follows:

C.30:4-165.11 "Incapacitated person" defined.

5. As used in P.L.1970, c.289 (C.30:4-165.7 et seq.) the term incapacitated person has the same meaning as defined in N.J.S.3B:1-2.

7. 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 incapacitated person 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 incapacitated person is not represented by an attorney. The attorney, after conducting an investigation into the matter, which shall include an interview with the alleged incapacitated person, an interview with the proposed guardian, and, if there is cause to question the alleged incapacitated person'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 incapacity, 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 incapacitated person 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 incapacitated person, his attorney, or anyone acting on his behalf.

8. Section 2 of P.L.1976, c.120 (C.30:13-2) is amended to read as follows:

C.30:13-2 Definitions.

2. For the purposes of this act:

a. "Administrator" means any individual who is charged with the general administration or supervision of a nursing home whether or not such individual has an ownership interest in such home and whether or not his function and duties are shared with one or more other individuals.

b. "Guardian" means a person, appointed by a court of competent jurisdiction, who shall have the right to manage the financial affairs and protect the rights of any nursing home resident who has been declared an incapacitated person. In no case shall the guardian of a nursing home resident be affiliated with a nursing home, its operations, its staff personnel or a nursing home administrator in any manner whatsoever.

c. "Nursing home" means any institution, whether operated for profit or not, which maintains and operates facilities for extended medical and nursing treatment or care for two or more nonrelated individuals who are suffering from acute or chronic illness or injury, or are crippled, convalescent or infirm and are in need of such treatment or care on a continuing basis. Infirm is construed to mean that an individual is in need of assistance in bathing, dressing or some type of supervision.

d. "Reasonable hour" means any time between the hours of 8 a.m. and 8 p.m. daily.

e. "Resident" means any individual receiving extended medical or nursing treatment or care at a nursing home.

9. Section 2 of P.L.1977, c.239 (C.52:27G-2) is amended to read as follows:

C.52:27G-2 Definitions.

2. As used in this act, unless the context clearly indicates otherwise:

a. "Abuse" means the willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a person's physical and mental health. However, no person shall be deemed to be abused for the sole reason he is being furnished nonmedical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment;

b. An "act" of any facility or government agency shall be deemed to include any failure or refusal to act by such facility or government agency;

c. "Administrator" means any person who is charged with the general administration or supervision of a facility, whether or not such person has an ownership interest in such facility, and whether or not such person's functions and duties are shared with one or more other persons;

d. "Caretaker" means a person employed by a facility to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility;

e. "Exploitation" means the act or process of using a person or his resources for another person's profit or advantage without legal entitlement to do so;

f. "Facility" means any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential health care facilities, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly and medical day care centers;

g. "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities;

h. "Guardian" means any person with the legal right to manage the financial affairs and protect the rights of any patient, resident or client of a facility, who has been declared an incapacitated person by a court of competent jurisdiction;

i. "Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility;

j. "Office" means the Office of the Ombudsman for the Institutionalized Elderly established herein;

k. "Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly;

l. "Patient, resident or client" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status.

10. Section 3 of P.L.1968, c.185 (C.2A:84A-22.3) is amended to read as follows:

C.2A:84A-22.3 No privilege relative to certain communications between patient, physician.

3. There is no privilege under this act as to any relevant communication between the patient and his physician (a) upon an issue of the patient's condition in an action to commit him or otherwise place him under the control of another or others because of alleged incapacity, or in an action in which the patient seeks to establish his competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor, or (b) upon an issue as to the validity of a document as a will of the patient, or (c) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

11. Section 28 of P.L.1966, c.282 (C.45:14B-28) is amended to read as follows:

C.45:14B-28 Confidential relations and communications.

28. The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

There is no privilege under this section for any communication: (a) upon an issue of the client's condition in an action to commit the client or otherwise place the client under the control of another or others because of alleged incapacity, or in an action in which the client seeks to establish his competence or in an action to recover damages on account of conduct of the client which constitutes a crime; or (b) upon an issue as to the validity of a

document as a will of the client; or (c) upon an issue between parties claiming by testate or intestate succession from a deceased client.

12. Section 11 of P.L.1967, c.93 (C.49:3-58) is amended to read as follows:

C.49:3-58 Denial, suspension, revocation of registration.

11. (a) The bureau chief may by order deny, suspend, or revoke any registration if he finds:

(1) that the order is in the public interest; and

(2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(i) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) has willfully violated or willfully failed to comply with any provision of this act or any rule or order authorized by this act or has willfully, materially aided others in such conduct;

(iii) has been convicted of any crime involving a security or any aspect of the securities, commodities, banking, insurance or investment advisory business or any crime involving moral turpitude; however, where the applicant can show by proof satisfactory to the bureau chief that during the 10-year period preceding the application he has conducted himself in such a manner as to warrant his registration consistent with all other provisions of this act, the conviction shall not be a bar to registration;

(iv) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, banking, insurance or investment advisory business;

(v) is the subject of an effective order of the bureau chief denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, investment adviser representative or securities offering registrant;

(vi) is the subject of an order entered within the past five years by any federal or state securities, commodities, banking, insurance or investment advisory administrator or self-regulatory organization denying or revoking a securities, commodities, banking, insurance or investment advisory license or registration under federal or state securities, commodities, banking, insurance or investment advisory law, including, but not limited to

registration as a broker-dealer, agent, investment adviser, investment adviser representative or issuer, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the Securities and Exchange Commission, a self-regulatory organization, the Commodity Futures Trading Commission, an insurance regulator, or a federal or state banking regulator, suspending or expelling him from a national securities or commodities exchange or national securities or commodities association registered under the "Securities Exchange Act of 1934," or the "Commodity Exchange Act," or from engaging in the banking or insurance business, or is the subject of a United States Post Office fraud order; but (A) the bureau chief may not institute a revocation or suspension proceeding under this subparagraph (vi) more than two years from the date of the order relied on and (B) he may not enter an order under this subparagraph (vi) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under New Jersey law;

(vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business, as may be defined by rule of the bureau chief;

(viii) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the bureau chief may not enter an order against a broker-dealer or investment adviser for insolvency without a finding of insolvency as to the broker-dealer or investment adviser;

(ix) is not qualified on the basis of such factors as character, training, experience and knowledge of the securities business, except as otherwise provided in subsection (b) of this section;

(x) has failed to pass an examination under subsection (f) of section 10 of P.L.1967, c.93 (C.49:3-57) if such an examination has been by rule provided for by the bureau chief;

(xi) has failed reasonably to supervise: his agents if he is a broker-dealer or issuer; the agents of a broker dealer or issuer for whom he has supervisory responsibility; or his employees who give investment advice if he is an investment adviser;

(xii) has failed to pay the proper fees, as set by rule of the bureau chief.

(b) The following provisions govern the application of subparagraph (ix) of paragraph (2) of subsection (a)of this section:

(1) The bureau chief may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (i) the broker-dealer himself if he is an individual or (ii) an agent of the broker-dealer;

(2) The bureau chief may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (i) the investment adviser himself if he is an individual or (ii) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;

(3) The bureau chief may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(4) The bureau chief shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

(5) The bureau chief shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. If he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser.

(c) The bureau chief, for good cause shown, may by order summarily postpone, suspend, revoke or deny any registration pending final determination of any proceeding under this section. Upon entry of the order, the bureau chief shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that the order has been entered and of the reasons therefor.

(1) The bureau chief shall entertain on no less than three days' notice a written application to lift the summary postponement, suspension or revocation on written application of the applicant or registrant and in connection therewith may, but need not, hold a hearing and hear testimony, but shall provide to the applicant or registrant a written statement of the reasons for the summary postponement, suspension or revocation.

(2) Upon service of notice of the order issued by the bureau chief, the applicant or registrant shall have up to 15 days to respond to the bureau in the form of a written answer and written request for a hearing. The bureau chief shall, within five days of receiving the answer and a request for a hearing, either transmit the matter to the Office of Administrative Law for a hearing or schedule a hearing at the Bureau of Securities. Orders issued pursuant to this subsection to suspend or revoke any registration shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the order to suspend or revoke any registration shall be held in any event within 20 days after it is requested, and the filing of a motion to vacate the order shall toll the time for filing an answer and written request for a hearing.

(3) If an applicant or registrant fails to respond by filing a written answer and request for a hearing with the bureau or moving to vacate an order to suspend or revoke any registration within the 15-day prescribed period, the registrant shall have waived the opportunity to be heard and the order shall remain in effect until modified or vacated.

(d) If the bureau chief finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser or investment adviser representative, or is subject to an adjudication of incapacity or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the bureau chief may by order summarily revoke or deny the registration or application;

(e) Withdrawal from registration as a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within such other period of time as the bureau chief may determine by rule or order. The bureau chief may nevertheless institute a revocation or suspension proceeding under subparagraph (ii) of paragraph (2) of subsection (a) of this section within two years after withdrawal becomes effective and enter a revocation or suspension order as of the last date on which registration was effective;

(f) (Deleted by amendment, P.L.1997, c.276).

(g) Every hearing which this act requires to be held shall be held in accordance with the "Administrative Procedure Act, " P.L.1968, c.410 (C.52:14B-1 et seq.).

13. Whenever in any law, rule, regulation or document, reference is made to the term "mental incompetent," that term shall mean and refer to "incapacitated person", except that nothing in this act shall affect the provisions of chapter 4 of Title 2C of the New Jersey Statutes.

14. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 380

AN ACT concerning prepaid prescription service organizations and supplementing Title 17 of the Revised Statutes.

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

C.17:48F-1 Definitions relative to prepaid prescription service organizations.

1. As used in this act:

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the prepaid prescription service organization.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer Price Index" means the medical component of the Consumer Price Index for All Urban Consumers, as reported by the United States Department of Labor, shown as an average index for the New York-Northern New Jersey-Long Island region and the Philadelphia-Wilmington-Trenton region combined.

"Contract holder" means the person or organization which contracts with the prepaid prescription service provider.

"Enrollee" means a person and his dependents who are entitled to benefits provided under a prepaid prescription service organization contract.

"Evidence of coverage" means the certificate, agreement or contract issued pursuant to this act which sets forth the benefits or services to which the enrollee or contract holder is entitled.

"Net equity" means the excess of total assets over total liabilities, excluding liabilities which have been subordinated in a manner acceptable to the commissioner.

"Prepaid prescription service organization" or "organization" means any person, corporation, partnership, or other entity which, in return for a prepayment by a contract holder, undertakes to provide or arrange for the provision of prescription services to enrollees or contract holders. Prepaid prescription service organization shall not include: an entity otherwise authorized or licensed pursuant to the laws of this State or an entity that contracts with such an otherwise authorized or licensed entity, to provide a prescription service on a prepayment or other basis in connection with a health benefits plan; an entity licensed under Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes to do the business of insurance in this State; a provider or other entity who provides prescription services pursuant to a contract with a prepaid prescription service organization; or an entity which, for a fee, acts as administrator of a self-insured prescription plan on behalf of the self insurer.

"Prescription service" means any benefit or service to be provided to an enrollee or a contract holder by a provider pursuant to a contract with a prepaid prescription service organization. Prescription service includes, but is not limited to, the provision of prescription drugs, utilization review and durable medical goods.

"Provider" means a pharmacist or pharmacy which provides benefits under a prepaid prescription services contract.

"Tangible net equity" means net equity reduced by the value assigned to intangible assets, including, but not limited to, goodwill, going concern value, organizational expense, start-up costs, long-term prepayments of deferred charges, nonreturnable deposits, and obligations of officers, directors, owners, or affiliates, except short-term obligations of affiliates for goods or services arising in the normal course of business which are payable on the same terms as equivalent transactions with nonaffiliates and which are not past due.

C.17:48F-2 Prepaid prescription service organization, certificate of authority.

2. a. Beginning one year after the date of enactment of this act, no person, corporation, partnership, or other entity shall operate a prepaid prescription service organization in this State except in accordance with the provisions of this act. No person shall sell, offer to sell or solicit offers to purchase or receive advance or periodic consideration for prescription services without obtaining a certificate of authority pursuant to this act.

b. A prepaid prescription service organization operating in this State on the effective date of this act shall submit an application for a certificate of authority to the commissioner within nine months of the date of enactment of this act. The organization may continue to operate during the pendency of its application, but in no case longer than 18 months after the date of enactment of this act. In the event the application is denied, the applicant shall then be treated as a prepaid prescription service organization whose certificate of authority has been revoked pursuant to section 18 of this act. Nothing in this subsection shall operate to impair any contract which was entered into before the effective date of this act.

c. Any person offering prescription services in a manner substantially provided for in this act shall be presumed to be subject to the provisions of the act unless the person is otherwise regulated under State law.

C.17:48F-3 Application for certificate of authority, requirements.

3. Each application for a certificate of authority to operate a prepaid prescription service organization shall be made to the commissioner on a form prescribed by the commissioner, shall be certified by an officer or authorized representative of the applicant, and shall include the following:

a. A copy of the applicant's basic organizational document, such as the articles of incorporation, if a corporation, articles of association, partnership agreement, management agreement, trust agreement, or other applicable documents and all amendments to such documents;

b. A copy of the executed bylaws, rules and regulations, or similar documents, regulating the conduct of the applicant's internal affairs;

c. A list, in a form approved by the commissioner, of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including, but not limited to, the members of the board of directors, executive committee or other governing board or committee, the principal officers, and any person or entity owning or having the right to acquire 10% or more of the voting securities of the applicant; in the case of a partnership or association, the names of the partners or members; each person who has loaned funds to the applicant for the operation of its business; and a statement of any criminal convictions or enforcement or regulatory action taken against any person who is a member of the board, the executive committee or other governing board or committee, or the principal officers;

d. A statement generally describing the applicant, its facilities, personnel, and the prescription services to be offered by the organization;

e. A copy of the standard form of any contract made or to be made between the applicant and any providers relative to the provision of prescription services to enrollees or contract holders;

f. A copy of the form of any contract made or to be made between the applicant and contract holders or prospective contract holders;

g. A copy of the applicant's most recent financial statements audited by an independent certified public accountant. If the financial affairs of the applicant's parent company are audited by an independent certified public accountant but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, certified by an independent certified public accountant, attached to which are consolidating financial statements of the applicant, shall satisfy this requirement unless the commissioner determines that additional or more recent financial information is required for the proper administration of this act;

h. A copy of the applicant's financial plan, including a three-year projection of anticipated operating results, a statement of the sources of working capital, and any other sources of funding and provisions for contingencies;

i. A list of any affiliate of the applicant which provides services to the applicant in this State and a description of any material transaction between the affiliate and the applicant;

j. A schedule of rates and charges;

k. A description of the proposed method of marketing;

l. A description of the complaint procedures instituted by the applicant;

m. A description of the quality control and utilization review procedures established by the applicant;

n. A power of attorney, if the applicant is not domiciled in this State, duly executed by the applicant, appointing the commissioner and his successors in office as the true and lawful attorney of the applicant in and for this State upon whom all lawful process in any legal action or proceeding against the organization on a cause of action arising in this State may be served;

o. A description of the means which will be utilized to assure the availability and accessibility of the services to enrollees;

p. A plan, in the event of insolvency, for continuation of the benefits to be provided for under the contract; and

q. Such other information as may be required by the commissioner.

C.17:48F-4 Review of application.

4. Following receipt of an application, the commissioner shall review it and notify the applicant of any deficiencies contained therein.

a. The commissioner shall issue a certificate of authority to an applicant in a timely manner, if the following conditions are met:

(1) All of the material required by section 3 of this act has been filed;

(2) The persons responsible for conducting the applicant's affairs are competent, trustworthy and possess good reputations, and have had appropriate experience, training and education;

(3) The applicant is financially sound and may reasonably be expected to meet its obligations to enrollees and the contract holder. In making this determination, the commissioner shall consider:

(a) The financial soundness of the applicant's arrangements for prescription services and the minimum standard rates, deductibles, copayments and other enrollee charges used in connection therewith;

(b) The adequacy of working capital, other sources of funding and provisions for contingencies;

(c) Whether any deposit of cash or securities, or any other evidence of financial protection submitted meets the requirements set forth in this act or by the commissioner; and

(d) The applicant's rates and rating methodology;

(4) The agreements with providers for the provision of prescription services comply with the provisions of this act;

(5) Any deficiencies identified by the commissioner have been corrected; and

(6) Any other factors determined by the commissioner to be relevant have been addressed to the satisfaction of the commissioner.

b. If the certificate of authority is denied, the commissioner shall notify the applicant and shall set forth the reasons for the denial in writing. The applicant may request a hearing by notice to the commissioner within 30

business days of receiving the notice of denial. Upon such denial, the applicant shall submit to the commissioner a plan for bringing the prepaid prescription service organization into compliance or providing for the closing down of its business.

C.17:48F-5 Modification of matter, document, filing required; fixing of charges; filing of benefits offered.

5. a. An organization, unless otherwise provided for in this act, shall not materially modify any matter or document furnished to the commissioner pursuant to section 3 of this act, including any change in rates or charges offered or to be offered under the contract, unless the organization files with the commissioner at least 60 days prior to use or adoption of the change, a notice of the change or modification, together with such information as may be required by the commissioner to explain the change or modification. If the commissioner fails to affirmatively approve or disapprove the change or modification within 60 days of submission of the notice, the notice of modification shall be deemed approved. The commissioner may extend the 60-day review period for not more than an additional 30 days by giving written notice of the extension before the expiration of the 60-day period. If a change or modification is disapproved, the commissioner shall notify the organization in writing and specify the reason for the disapproval.

b. Charges under any contract shall be established in accordance with sound actuarial principles and shall not be excessive, inadequate, or unfairly discriminatory. If at any time the commissioner finds that the rates or benefits offered under the plan are inadequate, excessive, or unfairly discriminatory, he may order that they be rescinded or modified. If the commissioner orders that the plans be rescinded or modified, he shall notify the organization and specify the reasons for the order. The organization may, within 30 business days of receiving the order, request a hearing, which shall be held no later than 45 days after the receipt of the request by the commissioner.

c. Prior to entering into any contract with a contract holder, an organization shall file with the commissioner, for his approval, any benefits which are offered or proposed to be offered under the plan, as well as any modifications which may be made thereto. The filing shall be made no later than 60 days prior to the date that the benefits are intended to be in force. The commissioner shall either approve the benefits or state in writing his reasons for their disapproval within 60 days of receipt of the filing.

C.17:48F-6 Filing for approval by other insurers, etc.

6. Any insurer, hospital, medical or health service corporation or health maintenance organization which is not otherwise authorized to offer prescription services on a fixed prepayment basis may do so by filing for

approval with the commissioner such information as shall be required by the commissioner pursuant to section 3 of this act.

C.17:48F-7 Rights of prepaid prescription service organization.

7. A prepaid prescription service organization may:

a. Purchase, lease, construct, renovate, operate and maintain such facilities, ancillary equipment and property which may be required for its principal office or for any other purposes deemed necessary in the business transactions of the organization;

b. Borrow money;

c. Loan funds to any person for the purpose of acquiring or constructing facilities or in furtherance of a program providing services to enrollees, or for any other purpose reasonably related to the business of the organization;

d. Furnish prescription services to enrollees or contract holders through providers which are under contract with or employed by the organization;

e. Contract with any person for the performance of certain functions such as marketing, enrollment and administration, subject to the provisions of section 8 of this act;

f. Contract with an insurer licensed in this State for the provision of insurance, indemnity coverage, or reimbursement against the cost of services provided by the organization; and

g. In addition to basic services provided by the organization to contract holders and enrollees, may provide:

(1) Additional services as approved by the commissioner;

(2) Indemnity benefits covering urgent care or emergency services;

(3) Coverage for services from providers other than participating providers, when referred in accordance with the terms of the contract; and

(4) Any other function provided by law, in the organization's articles of incorporation or in the certificate of authority.

C.17:48F-8 Contract for provision of services.

8. A prepaid prescription service organization may contract with any person to provide some or all of the services it normally performs in providing prescription services and supplemental services to its enrollees and contract holders, but no such contract shall be made effective until it has been approved by the commissioner. The services may include consultative and administrative services. In granting approval, the commissioner may impose any limitations he deems necessary for the protection of the organization's enrollees and contract holders, and the actual and potential effect of providing such services on the financial condition of the organization. Before entering into such a contract, the organization shall provide the

commissioner with notice of the contract and such supporting documentation as the commissioner determines necessary. If the commissioner does not affirmatively approve or disapprove the contract within 60 days of the date of submission, the contract shall be deemed approved. The commissioner may extend the 60-day review period for not more than 30 additional days by giving written notice of the extension before the expiration of the initial 60-day period. If the contract is disapproved, the commissioner shall notify the organization in writing and specify the reasons for disapproval.

C.17:48F-9 Issuance of evidence of coverage.

9. Every contract holder and enrollee shall be issued an evidence of coverage, which shall contain a clear and complete statement of:

a. The coverage to which each enrollee is entitled;

b. Any limitation to which covered services are subject, including, but not limited to, exclusions, deductibles, copayments or other charges;

c. Where information is available as to where and how services may be obtained; and

d. The method for resolving complaints.

If any part of the benefits offered under the contract are subcontracted, the document issued to the contract holder by the organization may contain the information required herein on behalf of the subcontractor.

C.17:48F-10 Prepaid prescription service organization deemed domestic insurer.

10. a. A prepaid prescription service organization which is organized under the laws of this State shall be deemed to be a domestic insurer for the purposes of P.L.1970, c.22 (C.17:27A-1 et seq.).

b. An organization shall be subject to the provisions of N.J.S.17B:30-1 et seq.

c. The capital, surplus and other funds of an organization shall be invested in accordance with the provisions of N.J.S.17B:20-1 et seq. and guidelines established by the commissioner by regulation.

C.17:48F-11 Complaint system established.

11. A prepaid prescription service organization shall establish and maintain a complaint system providing reasonable procedures for resolving written complaints which are initiated by enrollees and providers, in accordance with minimum standards established by the commissioner by regulation. The complaint procedure shall be in writing and filed with the commissioner, and shall be made available to providers as well as contract holders and enrollees as provided for in this act.

C.17:48F-12 Examination by commissioner.

12. The commissioner may conduct an examination of a prepaid prescription service organization as often as he deems necessary in order to

protect the interests of providers, contract holders, enrollees, and the residents of this State. An organization shall make its relevant books and records available for examination by the commissioner, and retain its records in accordance with a schedule established by the commissioner by regulation. The reasonable expenses of the examination shall be borne by the organization being examined. In lieu of such examination, the commissioner may accept the report of an examination made by the commissioner of another state.

C.17:48F-13 Terms, conditions required in contracts.

13. All prepaid prescription service organization contracts with providers or with entities subcontracting for the provision of prescription services shall contain the following terms and conditions:

a. In the event that the organization fails to pay for prescription services for any reason whatsoever, including, but not limited to, insolvency or breach of contract, neither the contract holder nor the enrollee shall be liable to the provider for any sums owed to the provider under the contract.

b. No provider, agent, trustee or assignee thereof may maintain an action at law or attempt to collect from the contract holder or enrollee sums owed to the provider by the organization, but this shall not be construed to prohibit collection of uncovered charges consented to or lawfully owed to providers by a contract holder or enrollee.

C.17:48F-14 Maintenance of tangible net equity.

14. a. Except as provided in subsection b. of this section, each prepaid prescription service organization shall, at all times, have and maintain tangible net equity equal to the greater of:

(1) $50,000; or

(2) 2% of the organization's annual gross premium income, up to a maximum of the required capital and surplus of an admitted health insurer.

b. An organization which has uncovered expenses in excess of $50,000, as reported on the most recent annual financial statement filed with the commissioner, shall maintain tangible net equity equal to 25% of the uncovered expense in excess of $50,000, in addition to the tangible net equity required by subsection a. of this section.

c. The dollar amounts specified in subsections a. and b. of this section shall be adjusted annually by the commissioner, by regulation, in accordance with changes in the Consumer Price Index.

C.17:48F-15 Deposit of case, securities; net worth requirement.

15. a. A prepaid prescription service organization shall deposit with the commissioner or with an entity or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities,

or any combination of these or other measures that is acceptable to the commissioner in an amount equal to $25,000, which amount shall be adjusted annually by the commissioner, by regulation, in accordance with changes in the Consumer Price Index, plus 25% of the tangible net equity required by section 14 of this act; except that the deposit shall not be required to exceed $100,000, which amount may be adjusted by the commissioner annually in accordance with changes in the Consumer Price Index. The deposit shall be deemed an admitted asset of the organization in the determination of tangible net equity.

b. All income from deposits shall be an asset of the organization. An organization may withdraw a deposit or any part thereof after making a substitute deposit of equal amount and value, except that a security may not be substituted unless it has been approved by the commissioner.

c. Amounts on deposit shall be used to protect the interests of the organization's enrollees in the State and to assure continuation of limited health care services to enrollees of an organization which is in rehabilitation or liquidation. If an organization is placed in rehabilitation or liquidation, the deposit shall be treated as an asset subject to the provisions of N.J.S.17B:32-1 et seq.

d. The commissioner may, by regulation, adjust the amount of required net worth that an organization may have in order to provide adequate protection against contingencies affecting the organization's financial position which are not fully covered by reserves and other liabilities and supporting assets.

C.17:48F-16 Maintenance of fidelity bond.

16. A prepaid prescription service organization shall maintain in force a fidelity bond in its own name on its officers and employees, in an amount established by the commissioner by regulation. In lieu of the bond, the organization may deposit with the commissioner cash or securities or other investments approved by the commissioner.

C.17:48F-17 Annual report.

17. A prepaid prescription service organization shall file an annual report with the commissioner, on or before March 1 of each year, attested to by at least two principal officers, which covers the preceding calendar year. The report shall be on a form prescribed by the commissioner and shall include:

a. A financial statement of the organization, including its balance sheet, income statement and statement of changes in financial position for the preceding year, certified by an independent public accountant, or a consolidated audited financial statement of its parent company certified by

an independent certified public accountant, attached to which shall be consolidating financial statements of the organization;

b. The number of enrollees at the beginning of the year, the number of enrollees as of the end of the year, and the number of enrollments during the year;

c. At the discretion of the commissioner, a statement by a qualified actuary setting forth his opinion as to the adequacy of reserves; and

d. Any other information relating to the performance of the organization as may be required by the commissioner.

The commissioner may assess a fine of up to $100 per day for each day a required report is late. The commissioner may require the submission of additional reports from time to time, as he deems necessary.

C.17:48F-18 Suspension, revocation of certificate of authority.

18. The commissioner may suspend or revoke the certificate of authority issued to a prepaid prescription service organization pursuant to this act upon his determination that:

a. The organization is operating significantly in contravention of its basic organizational document;

b. The organization issues an evidence of coverage or uses rates or charges which do not comply with the requirements of this act;

c. The organization is unable to fulfill its obligations to enrollees or prospective enrollees;

d. The tangible net equity of the organization is less than that required by this act, or the organization has failed to correct any deficiency in its tangible net equity as required by the commissioner;

e. The organization has failed to implement in a reasonable manner the complaint system required to be established by this act;

f. The continued operation of the organization would be hazardous to the health and welfare of its enrollees;

g. The organization has failed to file any report required pursuant to this act; or

h. The organization has otherwise failed to comply with this act.

C.17:48F-19 Notification of suspension, revocation of certificate of authority.

19. If the commissioner has cause to believe that grounds exist for the suspension or revocation of a certificate of authority, he shall notify the prepaid prescription service organization in writing, specifically stating the grounds for suspension or revocation and fixing a time for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). If a certificate of authority is revoked, the organization shall submit a plan to the commissioner within 15 days of the revocation, for the winding up of its affairs, and shall conduct no further business except

as may be essential to the orderly conclusion of its business. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing prescription services.

C.17:48F-20 Maintenance of insurance to cover insolvency.

20. The commissioner may require, in connection with the plan for insolvency required pursuant to subsection p. of section 3 of this act, that a prepaid prescription service organization maintain insurance to cover the expenses to be paid for continued benefits following a determination of insolvency, or make other arrangements to ensure that benefits are continued for the period determined in the insolvency plan.

C.17:48F-21 Rehabilitation, liquidation, conservation of prepaid prescription service organization.

21. Any rehabilitation, liquidation or conservation of a prepaid prescription service organization shall be subject to the provisions of N.J.S.17B:32-1 et seq. and shall be conducted under the supervision of the commissioner; except that the commissioner shall have the authority to regulate any prepaid prescription service organization doing business in this State as a domestic insurer. The commissioner may apply for an order directing him to rehabilitate, liquidate, reorganize or conserve an organization upon any one or more applicable grounds as stated for insurers in N.J.S.17B:32-1 et seq. or any other provision of Title 17B of the New Jersey Statutes or when in his opinion the organization fails to satisfy the requirements for the issuance of a certificate of authority relating to solvency or the requirements for solvency protection as set forth in this act.

C.17:48F-22 Order of rehabilitation.

22. If an order of rehabilitation issued pursuant to this act directs or provides for the continued operation of the prepaid prescription service organization, including the receipt of payments from, and the provision of prescription services to enrollees, the order may authorize the rehabilitator to make the payments necessary for continued operation, including those expenses necessary for the conduct of the rehabilitation.

C.17:48F-23 Providers enjoined from billing enrollees, beneficiaries under order of rehabilitation.

23. In the event that an order of rehabilitation or liquidation is granted, the order may enjoin providers from billing enrollees and their beneficiaries for health care services provided. In the course of a rehabilitation proceeding, the court may allow reformation of enrollee and provider contracts, or other restructuring of outstanding liabilities, or transfer of the business to

another prepaid prescription service organization. A primary goal of the restructuring or transfer shall be the provision of uninterrupted services to enrollees of the organization. In the course of a rehabilitation proceeding, a plan for settling the claims of general creditors shall not be deemed to be inequitable or to constitute preferential treatment if the amount of reimbursement for an outstanding claim depends, in part, on the estimated increase or decrease in future or prior claims of the creditor.

C.17:48F-24 Inapplicability of C.17B:32A-1 et seq.

24. A prepaid prescription service organization shall not be subject to the "New Jersey Life and Health Insurance Guaranty Association Act," P.L.1991, c.208 (C.17B:32A-1 et seq.), and the New Jersey Life and Health Insurance Guaranty Association established pursuant to that act shall not provide protection to any individuals entitled to receive prescription services from a prepaid prescription service organization.

C.17:48F-25 Application, examination fees.

25. A prepaid prescription service organization subject to the provisions of this act shall pay to the commissioner such application fees and examination fees for applying for a certificate of authority as established by regulation by the commissioner.

C.17:48F-26 Violations; penalties.

26. a. The commissioner may, upon notice and hearing, levy an administrative penalty in an amount not less than $1,000 nor more than $30,000 for each violation, per contract or enrollee. Penalties imposed by the commissioner pursuant to this section may be in lieu of, or in addition to, suspension or revocation of a certificate of authority pursuant to this act. A penalty may be recovered in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

b. If the commissioner believes that any violation of this act has occurred or is threatened, the commissioner may give notice to the prepaid prescription service organization, its representatives, or any other persons who appear to be involved in the alleged violation. The commissioner may arrange a conference with the alleged violators or their authorized representatives to ascertain the facts relating to the alleged violation. In the event that it appears that a violation has occurred or is threatened, the commissioner may implement the necessary measures to correct or prevent the violation. Appeals under this section shall be conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.17:48F-27 Cease and desist order; injunctive relief.

27. a. The commissioner may issue an order directing a prepaid prescription service organization to cease and desist from engaging in any

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act or practice which is in violation of the provisions of this act. The order shall be subject to review pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. In the event of noncompliance with a cease and desist order issued pursuant to subsection a. of this section, or if the commissioner elects not to issue a cease and desist order in the case of a violation of any provision of this act, the commissioner may institute a proceeding to obtain injunctive relief, in accordance with the applicable procedures provided in the Rules of Court.

C.17:48F-28 Confidentiality of data, information.

28. Any data or information relating to the diagnosis, treatment or health of an enrollee or prospective enrollee obtained by a prepaid prescription service organization from the contract holder, enrollee, prospective enrollee or any provider shall be confidential and shall not be disclosed to any person except:

a. To the extent that it may be necessary to carry out the purposes of this act;

b. Upon the express consent of the enrollee or prospective enrollee;

c. Pursuant to statute or court order for the production of evidence or the discovery thereof; or

d. In the event of a claim or litigation between an enrollee or a prospective enrollee and the organization wherein such data or information is relevant. An organization shall be entitled to claim any statutory privilege against disclosure which the provider who furnished the information to the organization is entitled to claim.

C.17:48F-29 Rules, regulations.

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

30. This act shall take effect 180 days after enactment, but the commissioner may take such anticipatory administrative action in advance of the effective date as shall be necessary for the implementation of the act.

Approved January 19, 1998.

CHAPTER 381

AN ACT concerning certain at-fault accidents and amending P.L.1990, c.8.

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

1. Section 26 of P.L.1990, c.8 (C.17:33B-14) is amended to read as follows:

C.17:33B-14 Schedule of automobile insurance eligibility points; "at-fault accident" defined.

26. The commissioner shall, within 90 days of the effective date of this act, promulgate a schedule of automobile insurance eligibility points by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The schedule shall assess a point valuation to driving experience related violations and shall include assessments for violations of lawful speed limits within such increments as determined by the commissioner, other moving violations, and at-fault accidents. For the purposes of this section, an "at-fault accident" means an at-fault accident which results in payment by the insurer of at least a $500 claim; except that an at-fault accident shall not mean an accident occurring as a result of operation of any motor vehicle in response to a medical emergency if the operator at the time of the accident was a physician responding to the medical emergency.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 382

AN ACT appropriating $340,250 from the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, for the construction, reconstruction, development, extension, improvement and equipment of classrooms, academic buildings, libraries, computer facilities and other higher education buildings at New Jersey's public and private institutions of higher education.

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

1. There is appropriated to the Commission on Higher Education from the "Jobs, Education and Competitiveness Bond Fund" created pursuant to section 14 of the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, the sum of $340,250 for the purpose of construction, reconstructing, developing, extending, improving and equipping classrooms, academic buildings, libraries, computer facilities and other higher education buildings. The sum shall be allocated to the following institutions

of higher education which shall provide funds to projects which have been approved by the Commission on Higher Education as provided below:

Project	Institution Funds	P.L.1988, c.78 Bond Funds
Construction of Higher Education Buildings at Independent Institutions		
Construction of Academic Building at Caldwell College	$4,025,475	$50,250
Renovation of Memorial Hall at Rider University	$1,417,100	$73,000
Renovation of the Edison Science Building at Monmouth University	$2,511,000	$73,000
Construction of Academic Building at Fairleigh Dickinson University	$3,034,815	$80,000
Renovation of Hall of Sciences at Drew University	$118,900	$64,000

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 383

AN ACT An act concerning juvenile justice and amending P.L.1982, c.77.

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

1. Section 4 of P.L.1982, c.77 (C.2A:4A-23) is amended to read as follows:

C.2A:4A-23 Definition of delinquency.

4. Definition of delinquency. As used in this act, "delinquency" means the commission of an act by a juvenile which if committed by an adult would constitute:

a. A crime;

b. A disorderly persons offense or petty disorderly persons offense; or

c. A violation of any other penal statute, ordinance or regulation.

But, the commission of (1) an act which constitutes a violation of chapter 3, 4, 6 or 8 of Title 39 of the Revised Statutes by a juvenile of any age; (2) an act relating to the ownership or operation of a motorized bicycle which constitutes a violation of chapter 3 or 4 of Title 39 of the Revised Statutes by a juvenile of any age; (3) an act which constitutes a violation of article 3 or 6 of chapter 4 of Title 39 of the Revised Statutes pertaining to pedestrians and bicycles, by a juvenile of any age; (4) the commission of an act which constitutes a violation of P.L.1981, c.318 (C.26:3D-1 et seq.), P.L.1981, c.319 (C.26:3D-7 et seq.), P.L.1981, c.320 (C.26:3D-15 et seq.), P.L.1985, c.185 (C.26:3E-7 et seq.), P.L.1985, c.186 (C.26:3D-32 et seq.), N.J.S.2C:33-13, P.L.1985, c.318 (C.26:3D-38 et seq.), P.L.1985, c.381 (C.26:3D-46 et seq.), or of any amendment or supplement thereof, by a juvenile of any age; (5) an act which constitutes a violation of chapter 7 of Title 12 of the Revised Statutes relating to the regulation and registration of power vessels, by a juvenile of any age or section 2 of P.L.1987, c.453 (C.12:7-61); or (6) an act which constitutes a violation of a municipal ordinance enacted pursuant to section 2 of P.L.1992, c.132 (C.40:48-2.52) pertaining to curfew ordinances shall not constitute delinquency as defined in this act. The municipal court having jurisdiction over a case involving a violation by a juvenile of a section of Title 26 listed in this subsection, Title 40 listed in this subsection or N.J.S.2C:33-13, shall forward a copy of the record of conviction in that case to the Family Part intake service of the county where the municipal court is located.

If a municipal court orders detention or imposes a term of imprisonment on a juvenile in connection with a violation of Title 39 of the Revised Statutes, chapter 7 of Title 12 of the Revised Statutes, Title 40 of the Revised Statutes or N.J.S.2C:33-13, that detention or term of imprisonment shall be served at a suitable juvenile institution and not at a county jail or county workhouse.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 384

AN ACT concerning legislative oversight of shore protection expenditures, amending and supplementing P.L.1992, c.148.

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

C.13:19-16.2 Priority system for ranking shore protection projects.

1. a. The Commissioner of Environmental Protection shall develop a priority system for ranking shore protection projects and establish appropriate criteria therefor. Commencing with the fiscal year beginning on July 1, 1999, and for each fiscal year thereafter, the commissioner shall use the priority system to establish a shore protection project priority list for projects designated to receive funding pursuant to an appropriation made from the Shore Protection Fund, hereinafter referred to as the "fund," established pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1). The list shall include a description of each project and its purpose, impact, estimated cost, and estimated construction schedule, and an explanation of the manner in which priorities were established. A description of the priority system and the project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 31 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively, and shall cause the project priority list to be introduced in each House in the form of legislative bills authorizing the expenditure of monies appropriated pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1) for projects on the list, and shall refer these bills to the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee,or their successors, for their respective consideration.

b. Within 60 days of the referral thereof, the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee, or their successors, shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before June 1 of each year, the Legislature shall approve the legislation containing the project priority list, including any

amendatory or supplementary provisions thereto. The legislation approved by the Legislature shall authorize the expenditure of monies appropriated to the Department of Environmental Protection from the Shore Protection Fund for the specific projects, including the estimated amounts therefor, on the list.

c. No monies appropriated from the Shore Protection Fund to the Department of Environmental Protection shall be expended for any shore protection project unless the estimated expenditure is authorized pursuant to legislation approved in accordance with the provisions of subsection b. of this section or unless the shore protection project is of an emergency nature pursuant to the provisions of subsection b. of section 1 of P.L.1992, c.148 (C.13:19-16.1). The department is authorized to transfer monies between authorized projects to compensate for the differences between the estimated and actual costs of a project. If the Legislature fails to approve legislation within the time frame specified pursuant to subsection b. of this section, the expenditure of monies appropriated from the Shore Protection Fund shall be authorized pursuant to the provisions of the annual appropriations act.

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

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

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

b. Monies deposited in the "Shore Protection Fund" shall be used, in accordance with the priority list approved by the Legislature pursuant to section 1 of P.L.1997, c.384 (C.13:19-16.2), for shore protection projects associated with the protection, stabilization, restoration or maintenance of

the shore, including monitoring studies and land acquisition, consistent with the current New Jersey Shore Protection Master Plan prepared pursuant to section 5 of P.L.1978, c.157, and may include the nonfederal share of any State-federal project. The requirements of subsection c. of section 1 of P.L.1997, c.384 (C.13:19-16.2) notwithstanding, the Commissioner of Environmental Protection may, pursuant to appropriations made by law, allocate monies deposited in the fund for shore protection projects of an emergency nature, in the event of storm, stress of weather or similar act of God. Two percent of the monies annually deposited in the fund shall be allocated and annually appropriated for the purposes of funding the Coastal Protection Technical Assistance Service established pursuant to section 1 of P.L.1993, c.176 (C.18A:64L-1), of which amount up to $100,000 annually may be utilized for funding coastal engineering research and development to be conducted by Stevens Institute of Technology in response to requests therefor made by State or local governmental entities.

3. This act shall take effect on January 1 following enactment, but the Commissioner of the Department of Environmental Protection may take such anticipatory action in advance as shall be necessary for the implementation of the act.

Approved January 19, 1998.

CHAPTER 385

AN ACT concerning motor vehicles and amending P.L.1964, c.172 and supplementing chapter 21 of Title 2C of the New Jersey Statutes.

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

1. Section 1 of P.L.1964, c.172 (C.39:3-38.1) is amended to read as follows:

C.39:3-38.1 Forged, altered, counterfeited documents.

1. Any person who:

a. Keeps in his possession or conceals any falsely made, forged, altered or counterfeited certificate of registration, driver's license or insurance identification card, knowing the same to be falsely made, altered, forged or counterfeited with the intent to use the same unlawfully; or

b. Exhibits to a police officer or judge in accordance with R.S. 39:3-29 any falsely made, altered, forged or counterfeited motor vehicle certificate of registration, driver's license or insurance identification card, knowing the same to be falsely made, altered, forged or counterfeited; or

c. Exhibits to any person, for purposes of identification, any falsely made, altered, forged or counterfeited motor vehicle certificate of registration or driver's license, knowing the same to be falsely made, altered, forged or counterfeited, and representing the same as a certificate or license lawfully issued to him by the Director of Motor Vehicles, is guilty of a disorderly persons offense.

d. A person convicted under this section shall be assessed by the court two motor vehicle points pursuant to P.L.1982, c.43 (C.39:5-30.6).

C.2C:21-2.1a Producing, selling, offering simulated motor vehicle insurance identification card.

2. A person who knowingly produces, sells, offers or exposes for sale a document, printed form or other writing which simulates a motor vehicle insurance identification card is guilty of a crime of the fourth degree. In addition to any other penalty imposed, a person convicted under this section shall be ordered by the court to perform community service for a period of 30 days.

3. This act shall take effect on the first day of the third month following enactment.

Approved January 19, 1998.

CHAPTER 386

AN ACT concerning the conduct of raffles and amending and supplementing P.L.1954, c.5.

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

C.5:8-60.1 Findings, declarations relative to conduct of raffles.

1. The Legislature finds and declares that it is the purpose of this act to assist charitable, civic and service organizations, including volunteer fire companies, first-aid squads, church organizations, school groups, veterans' organizations and senior citizen clubs, in conducting raffles to raise funds for educational, charitable, patriotic, religious and public-spirited purposes.

2. Section 10 of P.L.1954, c.5 (C.5:8-59) is amended to read as follows:

C.5:8-59 Age limit, exceptions.

10. a. No person under the age of 18 years shall be permitted to participate in any manner in any game or games of chance not conducted by a drawing, except that a person under the age of 18 years shall be permitted to play a game of chance not conducted by a drawing when the prize offered and awarded consists of merchandise only and does not include cash or money.

b. No person under the age of 18 years shall be permitted to participate in any manner in any game or games of chance conducted by a drawing, held, operated or conducted pursuant to any license issued under this act, except that a person under the age of 18 years shall be permitted to play an on-premises draw raffle, including a Penny auction, when any prize offered and awarded consists of merchandise only.

C.5:8-60.2 "Penny auction" defined.

3. As used in P.L.1954, c.5 (C.5:8-50 et seq.), as amended and supplemented, "Penny auction" means an event at which multiple items of merchandise, or gift certificates therefor, but not cash, are raffled by drawing the winning ticket from a container designated for each item into which players seeking to win that item have placed tickets, with all tickets having been sold for the same price or different prices and each ticket placed in a container having an equal chance of winning.

C.5:8-60.3 Certain regulations pertaining to raffles.

4. The Legalized Games of Chance Control Commission shall promulgate regulations allowing qualified organizations to:

a. offer as a raffle prize any personal or professional service, or a gift certificate for any personal or professional service, which is a lawful activity and which the commission determines to be an appropriate raffle prize, and the value of which is within the limits set by the commission for raffle prizes;

b. offer as a raffle prize a gift certificate redeemable for live, edible seafood the value of which is within the limits set by the commission for raffle prizes;

c. offer a discount to any person purchasing two or more tickets for a draw raffle; and

d. use a big six wheel, a big eight wheel or other wheel to determine the winner of a non-draw raffle.

C.5:8-60.4 Pamphlet describing rights, duties, responsibilities of conducting raffles.

5. The Legalized Games of Chance Control Commission shall prepare, publish and make available to any qualified organization, upon request, a pamphlet which describes in plain and simple language the rights, duties and responsibilities of organizations conducting raffles and the exact manner in which games of chance are to be conducted.

C.5:8-60.5 Verbal or written warning prior to administrative action, charges.

6. Prior to initiating administrative action or bringing charges against an organization qualified to conduct raffles for a violation which relates to the conduct of games or the awarding of prizes, the Legalized Games of Chance Control Commission shall first issue a verbal or written warning and offer the organization the opportunity to cease the conduct which constitutes the violation.

7. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 387

AN ACT concerning motor vehicle towing and storage charges, and revising parts of the statutory law.

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

1. Section 1 of P.L.1979, c.101 (C.40:48-2.49) is amended to read as follows:

C.40:48-2.49 Regulation of operators engaged in removal of motor vehicles.

1. Notwithstanding the provisions of section 1 of P.L.1973, c.137 (C.39:4-56.6) or any other law, a municipality may regulate, by ordinance, the removal of motor vehicles from private or public property by operators engaged in such practice, including, but not limited to, the fees charged for storage following removal in accordance with section 3 of P.L.1987, c.127 (C.40:48-2.50), fees charged for such removal, notice requirements therefor, and the mercantile licensing of such operators.

The ordinance shall set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles. The regulations shall include, but not be limited to:

a. A schedule of fees or other charges which an operator may charge vehicle owners for towing services, storage services or both;

b. Minimum standards of operator performance, including but not limited to standards concerning the adequacy of equipment and facilities, availability and response time, and the security of vehicles towed or stored;

c. The designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law;

d. The requirement that such regulations and fee schedules of individual towers shall be made available to the public during normal business hours of the municipality.

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

C.40A:11-5 Exceptions.

5. 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, film scripts, 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;

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

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

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

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

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

(aa) The cooperative marketing of recyclable materials recovered through a recycling program; 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 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 negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract or agreement unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest

negotiated price offered by any responsible supplier, and is a reasonable price for such work, materials, supplies or services.

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

C.40:48-2.54 Model schedule of towing, storage services adopted by municipality, county.

3. a. The governing body of a municipality or county which requires the towing and storage of motor vehicles without the consent of the owners of those vehicles shall adopt an ordinance or resolution, as appropriate, setting forth a model schedule of towing and storage services which they require and the rates therefor, which rates shall be based on the usual, customary and reasonable rates of operators towing and storing motor vehicles in the municipality or county, as applicable.

b. The governing body of every municipality or county setting forth a schedule of services and rates pursuant to subsection a. of this section shall implement a procedure to receive complaints and resolve disputes arising from the towing and storage of motor vehicles required by that municipality or county without the consent of the owner.

C.40:48-2.55 Model schedule of towing, storage services adopted by Division of Consumer Affairs.

4. a. The Division of Consumer Affairs in the Department of Law and Public Safety may establish a model schedule of towing and storage services identifying those services for which a fee may be charged by the governing body of a municipality or county. This model schedule, if established, shall be provided, upon request, to any municipality or county.

b. Each governing body that is required to adopt a resolution or ordinance pursuant to section 3 of P.L.1997, c.387 (C.40:48-2.54) shall submit its schedule of services and rates for the towing and storage of motor vehicles to the Division of Consumer Affairs for review within 90 days of the effective date of this act, or within 90 days of the adoption of that ordinance or resolution, whichever is later.

C.56:8-2.26 Charging of discriminatory, unusual rates for towing, storage.

5. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge rates which are discriminatory or

are not usual, customary and reasonable rates for the towing and storage of motor vehicles as provided in section 3 of P.L.1997, c.387 (C.40:48-2.54).

Repealer.

6. Section 60 of P.L.1990, c.8 (C.17:33B-47) is repealed.

7. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 388

AN ACT concerning retirement benefits for certain municipal emergency services volunteers, supplementing Title 40 of the Revised Statutes and amending P.L.1976, c.68, P.L.1977, c.381, P.L.1979, c.453, and P.L.1985, c.288.

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

C.40A:14-183 Short title.

1. Sections 1 through 11 of this act shall be known and may be cited as the "Emergency Services Volunteer Length of Service Award Program Act."

C.40A:14-184 Definitions relative to retirement benefits for certain municipal emergency services volunteers.

2. For the purposes of this act:

"Active volunteer member" means a person who has been so designated by the governing board of a duly created emergency service organization and who is faithfully and actually performing volunteer service in that organization.

"Certification list" means a list prepared annually by an emergency service organization certifying to a governing body the names of members who have qualified to receive a length of service award.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Emergency service organization" means a fire or first aid organization, whether organized as a volunteer fire company, volunteer fire department, fire district or duly incorporated volunteer first aid, emergency or volunteer ambulance or rescue squad association.

"Elected or appointed position" means a line officer, department or company officer, trustee of an emergency services organization, or a duly established position in a municipality as determined by the governing body of the municipality.

"Length of service award program" means a system established to provide tax-deferred income benefits to active volunteer members of an emergency service organization by means of investment in those products permitted pursuant to subsection a. of section 3 of P.L.1977, c.381 (C.43:15B-3).

"Local government unit" means any municipality, county, or fire district having control of, or which is serviced by, a volunteer fire department, duly incorporated fire or first aid company, or volunteer emergency, ambulance or rescue squad association or organization.

"Participant" means an active volunteer member who is eligible for a benefit under a service award program.

"Sponsoring agency" means any local government unit which duly adopts a length of service award program pursuant to the provisions of this act.

"Year of active emergency service" means a 12-month period during which an active volunteer member participates in the fire or first aid service and satisfies the minimum requirements of participation established by the sponsoring agency on a consistent and uniform basis.

C.40A:14-185 Establishment, termination of length of service award program, referendum.

3. a. A local government unit that is a county or municipality in which a fire district does not exist may by ordinance establish or terminate a length of service award program for the active volunteer members of the emergency service organizations operating under the county's or municipality's jurisdiction.

b. The board of fire commissioners of any fire district may by resolution establish or terminate a length of service award program for the active volunteer members of the emergency service organizations operating under the district's jurisdiction.

c. No such ordinance or resolution shall take effect until it is presented as a public question, for a municipality or county at the next general election, and for a fire district at the next annual election, and ratified by the voters. Each such ordinance or resolution shall be adopted by the governing body or the board of fire commissioners no less than 60 days prior to the election at which such question is presented for ratification.

d. In addition to any other procedures provided by law, every ordinance or resolution creating a length of service awards program shall include:

(1) A general description of the program;

(2) A statement of the proposed estimated total amount to be budgeted for the program;

(3) A statement of the proposed maximum annual contribution for an active volunteer member;

(4) If the proposed program authorizes the crediting of prior year service, a statement of the number of prior years of service available for crediting for each active volunteer member; and

(5) Any such other provisions as may be reasonably required by the director to carry out the purposes of this act.

e. No ordinance, resolution or public question related to a length of service award program shall require prior approval of the director.

f. Subsequent to the adoption of a length of service award program as provided in this section, the maximum annual contribution may be increased, from time to time, without public hearing or public question, provided such increased contribution does not exceed a number calculated by multiplying the original contribution as approved by public question by the consumer price index factor. As used in this section "consumer price index factor" means a fraction the denominator of which shall be the "Revised Consumers Price Index-All Items, Philadelphia Area (1967-100)" (the "CPI") published by the Bureau of Labor Statistics of the United States Department of Labor for the month in which the length of service award program passes public question and whose numerator shall be the CPI for the most recent month available at the time the increased contribution or benefit takes effect. If the publication of the CPI is discontinued, the director shall issue regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), setting forth such revisions in the method of computation of the consumer price index factor as the circumstances require to carry out the purposes of this subsection. Except as otherwise provided in this act, all other material changes to a length of service award program subsequent to its adoption shall be effected without public question but by ordinance or by resolution subject to public hearing, as appropriate to the sponsoring agency.

g. Any amounts appropriated annually for a length of service award program shall be included in the budget of the local government unit as a separate line item. In the case of a fire district, the budget to be voted on at the time of the public question to establish a length of service award program shall include the first year's appropriation for funding such program, which appropriation, if the public question is defeated, shall be removed from the budget. In the case of a municipality or county, appropriations for length of service award programs shall commence with the budget immediately following enactment of such program.

h. No length of service award program shall be adopted by any local government unit other than pursuant to this act.

C.40A:14-186 Length of service award programs, defined contribution programs.

4. Length of service award programs shall be established as defined contribution programs and shall be subject to the provisions of this act. Length of service award programs shall be based on applicable features of deferred compensation plans adopted by local government units pursuant to P.L.1977, c.381 (C.43:15B-1 et seq.), in reference to which the local government unit shall be treated as an "employer" as defined in that law, length of service award contributions by a sponsoring agency shall be treated as "deferred salary" as defined in that law, and the active volunteer members shall be treated as "participants" as defined in that law. If applicable, a length of service award program shall also be administered in compliance with provisions of the federal Internal Revenue Code for such programs and the provisions of this act.

C.40A:14-187 Abolishment, amendment of length of service award program, special vote.

5. A length of service award program established by a local government unit pursuant to section 3 of P.L.1997, c.388 (C.40A:14-185) may be abolished or amended in the same manner as it was created. However, any such amendment or abolition shall be by a two-thirds vote of the full membership of the governing body of the local government unit. All accumulated proceeds shall remain in trust for the volunteer members.

C.40A:14-188 Provision of length of service award program not required; program requirements.

6. No emergency service organization shall be required to provide a length of service award for its active volunteer members pursuant to the provisions of this act. Any length of service award provided to an active volunteer member shall be governed by the provisions of this act. No length of service award program shall be provided under the provisions of this act unless the following requirements are met:

a. An active volunteer member shall be eligible to participate in a length of service award program immediately upon the commencement of the active volunteer member's performance of active emergency services in any emergency service organization, and shall be eligible to vest in any length of service award program provided under the provisions of this act if the active volunteer member has completed at least five years of emergency service in any emergency service organization in the State.

b. Under a length of service award program, a year of active emergency service commencing after the establishment of the program shall be credited for each calendar year in which an active volunteer member

accumulates a number of points that are granted in accordance with a schedule adopted by the sponsoring agency. The program shall provide that points shall be granted for activities designated by the sponsoring agency, which activities may include the following:

(1) Training courses;

(2) Drills;

(3) Sleep-in or standby. A "standby" means line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories;

(4) Completion of a one-year elected or appointed position in the organization;

(5) Election as a delegate to an emergency service convention;

(6) Attendance at official meetings of the sponsoring agency;

(7) Participation in emergency responses; or

(8) Miscellaneous activities including participation in inspections and other non-emergency fire, first aid or rescue activities not otherwise listed.

c. If provided for in the enabling ordinance or resolution adopted pursuant to section 3 of P.L.1997, c.388 (C.40A:14-185), a length of service award program may provide for the crediting of not more than 10 years of active emergency service periods prior to the establishment of such a program. Such credit may be granted to the active volunteer over as many years as deemed appropriate by the sponsoring agency, except that the total amount contributed in any one year shall not exceed the maximum amount allowed by law to be contributed by a sponsoring agency.

d. To provide credit for service prior to the establishment of the service award program, pursuant to subsection c. of this section, each sponsoring agency shall review the prior membership rosters of the emergency service organizations subject to the program to determine the number of years' credit for each participant who is entitled to credit. In making the analysis, the standards for active service set forth in subsection b. of this section and adopted by the sponsoring agency shall be used. The amount of the contribution provided to participants for past service may differ from the amount of the current contribution provided for under the plan. The definition of years of active emergency service shall be determined by the bylaws of the participating emergency service organization at the time service was earned. Approval for such prior service shall require certification by the duly designated persons, as determined and defined by the sponsoring agency of the participating emergency service organization. If an active volunteer member requests credit for service in more than one volunteer participating emergency service organization, each such emergency service organization shall provide a certification for the appropriate number of years. That credit may be awarded at the discretion

of the sponsoring agency of the plan in which the volunteer member seeks to apply the credit. In no event, however, shall a participant be credited for the same year of active emergency service in more than one service award program.

e. In computing credit for those active volunteer members who also serve as paid employees within a local government unit of the State, credit shall not be given for activities performed during the individual's regularly assigned work periods.

f. An active volunteer member whose name does not appear on the approved certification list or who is denied credit for service prior to the establishment of the service award program may appeal within 30 days of posting of the list or within 30 days of denial of past service credit. The appeal shall be in writing and mailed to the clerk or secretary of the governing body of that local government unit, which shall investigate the appeal. The decision of a participating emergency service organization shall be subject to appropriate judicial review.

C.40A:14-189 Award subject to contribution requirements.

7. a. Each active volunteer member's service award shall be subject to contribution requirements set forth in this section. In determining whether contribution requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsoring agency shall be considered as one program. A program adopted by a sponsoring agency shall set contributions within these requirements.

b. A program shall have minimum and maximum contribution requirements as follows: the minimum contribution for each participating active volunteer member shall be $100 per year of active emergency service; and the maximum contribution for each active volunteer member shall be $1,150 per year of active emergency service, subject, however, to periodic increases permitted pursuant to subsection f. of section 3 of P.L.1997, c.388 (C.40A:14-185).

C.40A:14-190 Maintenance of records.

8. Each participating emergency service organization shall maintain all required records on forms prescribed by the requirements of the service award program.

C.40A:14-191 Annual certification list.

9. Each participating emergency service organization shall furnish to the sponsoring agency an annual certification list, certified under oath, of all volunteer members, which shall identify those active volunteer members who have qualified for credit under the award program for the previous year. This list shall be submitted annually. Notwithstanding the provisions of this

section, a volunteer member may request that the member's name be deleted from the list as a participant in the length of service award program. A request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

C.40A:14-192 Review of annual certification list.

10. The sponsoring agency shall review the annual certification list of each participating emergency service organization and approve the final annual certification. The approved list of active certified volunteer members shall then be returned to each participating emergency service organization and posted for at least 30 days for review by members. The emergency service organization shall provide any information concerning the annual certification list that the sponsoring agency shall require as part of its review.

C.40A:14-193 Existing programs deemed valid; conditions for continuation.

11. Any length of service award program that involves any form of insurance or annuity program in existence prior to the effective date of this act is deemed valid in all respects, and may continue to operate subject to the following conditions:

a. That the director be notified of the existence of the program and its benefits within 60 days of the effective date of this act;

b. That within 180 days of being notified by the director to do so, the sponsoring agency shall file with the director documentation that demonstrates its program has been brought into compliance with this act, provided, however that such sponsoring agency need not comply with subsection c. of section 3 of P.L.1997, c.388 (C.40A:14-185), and further provided, however, that any existing defined benefit annuity programs may be continued, but only with benefit levels whereby participants who vested prior to the effective date of P.L.1997, c.388 (C.40A:14-183 et al.) with benefits in excess of $750 per month shall not receive or be entitled to benefits in excess of the benefits level in existence as of the effective date of P.L.1997, c.388 (C.40A:14-183 et al.), and participants who vest subsequent to the effective date of P.L.1997, c.388 (C.40A:14-183 et al.) shall not receive a benefit in excess of $750 per month which level may be adjusted by the means provided in subsection f. of section 3 of P.L.1997, c.388 (C.40A:14-185); and

c. Any benefit vested in a participant of a length of service award program prior to the effective date of this act shall be exempt from the contribution and benefit limitations of sections 4 and 7 of P.L.1997, c.388 (C.40A:14-186 and C.40A:14-189) and shall be deemed valid in all respects from program inception.

12. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

C.40A:4-45.3 Municipalities; limitation exceptions.

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

a. (Deleted by amendment, P.L.1990, c.89.)

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;

d. All debt service, including that of a Type I school district;

e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;

f. Amounts reserved for uncollected taxes;

g. (Deleted by amendment, P.L.1990, c.89.)

h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;

i. Any amount approved by any referendum;

j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body

corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a constituent municipality to the intermunicipal account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 of P.L.1992, c.89.

k. (Deleted by amendment, P.L.1987, c.74.)

l. Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;

m. (Deleted by amendment, P.L.1987, c.74.)

n. (Deleted by amendment, P.L.1987, c.74.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. (Deleted by amendment, P.L.1987, c.74.)

q. (Deleted by amendment, P.L.1990, c.89.)

r. Amounts expended to fund a free public library established pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;

s. (Deleted by amendment, P.L.1990, c.89.)

t. Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received by a municipality under a regional contribution agreement pursuant to section 12 of that act;

u. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

v. (Deleted by amendment, P.L.1990, c.89.)

w. Amounts appropriated for expenditures resulting from the impact of a hazardous waste facility as described in subsection c. of section 32 of P.L.1981, c.279 (C.13:1E-80);

x. Amounts expended to aid privately owned libraries and reading rooms, pursuant to R.S.40:54-35;

y. (Deleted by amendment, P.L.1990, c.89.)

z. (Deleted by amendment, P.L.1990, c.89.)

aa. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

bb. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

cc. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

dd. Expenditures of amounts actually realized in the local budget year from the sale of municipal assets if appropriated for non-recurring purposes or otherwise approved by the director;

ee. Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 (C.52:27D-118.26), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et seq.), may appropriate and expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:

1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;

2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;

3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;

4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and

5) the impact of utilization of surplus upon succeeding budgets of the local unit;

ff. Amounts expended for the staffing and operation of the municipal court;

gg. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units;

hh. Amounts appropriated for the cost of implementing an estimated tax billing system and the issuance of tax bills thereunder pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2);

ii. Expenditures related to the cost of conducting and implementing a total property tax levy sale pursuant to section 16 of P.L.1997, c.99 (C.54:5-113.5);

jj. Amounts expended for a length of service award program pursuant to P.L.1997, c.388 (C.40A:14-183 et al.).

13. Section 10 of P.L.1979, c.453 (C.40A:14-78.6) is amended to read as follows:

C.40A:14-78.6 Fire district budget to provide separate sections.

10. The fire district budget shall provide for separate sections for:

a. Operating appropriations:

(1) Current operating expenses;

(2) Amounts necessary to fund any deficit from the preceding budget year; and

(3) Length of service award program.

b. Capital appropriations: Amounts necessary in the current budget year to fund or meet obligations incurred for capital purposes pursuant to N.J.S.40A:14-84, N.J.S.40A:14-85 and N.J.S.40A:14-87, itemized according to purpose.

c. Total appropriations: The sum of a. and b. above.

14. Section 5 of P.L.1985, c.288 (C.40A:14-78.9) is amended to read as follows:

C.40A:14-78.9 Transfer of appropriations between items.

5. a. Whenever it shall become necessary during the last two months of the fiscal year to expend amounts in excess of those appropriations specified in the various line items of the operating appropriations section of the annual budget and there shall be excess appropriations in other line items of the operating appropriations section, the board of fire commissioners of the fire district may, by resolution setting forth the facts, adopted by not less than 2/3 vote of the full membership thereof, transfer the amount of the excess to those appropriations deemed to be insufficient.

b. No transfers may be made under this section from appropriations for:

(1) Contingent expenses,

(2) Deferred charges,

(3) Cash deficit of preceding year,

(4) Down payments,

(5) Capital improvements,
(6) Interest and redemption charges,
(7) Length of service award program.

15. Section 1 of P.L.1977, c.381 (C.43:15B-1) is amended to read as follows:

C.43:15B-1 Deferred compensation plan, length of service award program.

1. Any municipality, county, or an authority created by one or more counties or municipalities (hereinafter "employer") may establish a deferred compensation plan (hereinafter "plan"), and a sponsoring agency, pursuant to P.L.1997, c.388 (C.40A:14-183 et al.), may establish a length of service award program based on such plan, whereby the employer may enter into a written agreement with any of its employees (hereinafter "participants") constituting a contract for a voluntary deferral of salary. Such contract shall remain in effect until the employee's service is terminated or until a new contract is executed by the employee and employer. Not more than one contract shall be executed in any one fiscal year of the employer with any one employee. Pursuant to such contract the employer shall credit from time to time a specific amount per pay period, as deferred salary, to a participant's account. This account shall be known as the Employee's Deferred Salary Account, and shall be credited from time to time to reflect gains realized on the investment of the moneys in the deferred salary account. An accounting summary of the individual deferred salary accounts of all employee participants shall be maintained to reflect the employer's total deferred liability under the plan and the individual balances of all participants. Any employer which establishes such a plan shall designate one or a group of its public officials, or the county's or municipality's governing body, as defined in N.J.S.40A:4-2 of the Local Budget Law, or an authority's governing body, as the case may be, as the named fiduciary responsible for the administration of said plan and investment of and accounting for the funds maintained thereunder.

C.40A:14-194 Regulations.

16. The Local Finance Board in the Division of Local Government Services in the Department of Community Affairs shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to administer the provisions of this act.

17. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 389

AN ACT concerning the granting of tenure to full-time municipal court administrators and amending P.L.1975, c.39.

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

1. Section 1 of P.L.1953, c.168 (C.2A:8-13.1) is amended to read as follows:

C.2A:8-13.1 Tenure for administrator of borough municipal court.

1. Any person holding office, position or employment as administrator of the municipal court in any borough who has held such office, position or employment continuously for five years or more and who has become certified during that period shall hold and continue to hold said office, position or employment during good behavior and shall not be removed therefrom for political or other reasons except for good cause, upon written charges and after a public, fair and impartial hearing.

2. Section 1 of P.L.1975, c.39 (C.2A:8-13.3) is amended to read as follows:

C.2A:8-13.3 Tenure for full-time administrator of municipal court.

1. Any person holding office, position or employment as full-time administrator of a municipal court who has held such office, position or employment continuously for five years or more and who has become certified during that period shall hold and continue to hold said office, position or employment during good behavior and shall not be removed therefrom for political or other reasons except for good cause, upon written charges and after a public, fair and impartial hearing.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 390

AN ACT concerning certain contracts of the New Jersey Highway Authority and amending P.L.1968, c.459.

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

1. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to read as follows:

C.27:12B-5.2 Standing operating rules, procedures for entering into contracts by Highway Authority.

1. a. The New Jersey Highway Authority, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing operating rules and procedures providing that, except as hereinafter provided, no contract on behalf of the authority shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of $7,500.00 or, after June 30, 1985, the amount determined pursuant to subsection b. of this section unless the authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing of services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities of this State and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any such products to be supplied or services to be rendered are filed with the said board. Contracts for towing and storage services shall be advertised and awarded pursuant to subsection c. of this section.

This subsection shall not prevent the authority from having any work done by its own employees, nor shall it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience require, or the exigency of the authority's service will not admit of such advertisement. In such case the authority shall, by resolution, passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be so expended.

b. Commencing January 1, 1985, the Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of each odd-numbered year, adjust the threshold amount set forth in subsection a. of this section, or subsequent to 1985 the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of

Labor. The Governor shall, no later than June 1 of each odd-numbered year, notify the authority of the adjustment. The adjustment shall become effective on July 1 of each odd-numbered year.

c. The authority shall adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to provide open and competitive procedures for awarding contracts for towing and storage services. Towing and storage services on a highway project may be provided on a rotating basis, provided that the authority determines that there would be no additional cost to the authority, excepting administrative costs, as a result of those services being provided on a rotating basis. The regulations shall fix maximum towing and storage fees, and establish objective criteria to be considered in awarding a contract for towing and storage services which shall include, but shall not be limited to, reliability, experience, response time, acceptance of credit cards and prepaid towing contracts, adequate equipment to safely handle a sufficient volume of common vehicle types under a variety of traffic and weather conditions, location of storage and repair facilities, security of vehicles towed or stored, financial return to the authority, maintenance of adequate liability insurance and appropriate safeguards to protect the personal safety of customers, including considerations related to the criminal background of employees. The Division of Consumer Affairs in the Department of Law and Public Safety shall provide, at the authority's request, a report to the authority on any prospective contractor for which the division has information relevant to the prospective contractor's service record, subject to the provisions of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et seq.). The Division of Insurance Fraud Prevention in the Department of Banking and Insurance also shall provide, at the authority's request, a report to the authority on any prospective contractor for which the division has information relevant to the prospective contractor's service record, subject to the "New Jersey Insurance Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.).

2. This act shall take effect immediately and shall apply to contracts entered into on and after the 60th day following the effective date of this act and to renewals of contracts entered into prior to the effective date of this act, which renewals are effectuated after the 60th day following the effective date of this act.

Approved January 19, 1998.

CHAPTER 391

AN ACT concerning the recording of certain records and amending R.S.46:19-1.

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

1. R.S.46:19-1 is amended to read as follows:

Recording officer's books, methods.

46:19-1. The county recording officer of each of the several counties of this State shall record, when delivered to him for that purpose, and duly acknowledged or proved or certified, when acknowledgment, proof or certification is required, in large, well-bound books of good paper or by some other method as authorized pursuant to R.S.47:1-5. If a method authorized pursuant to R.S.47:1-5 is used, then the same shall be done in conformance with rules, standards and procedures promulgated by the Division of Archives and Records Management in the Department of State and approved by the State Records Committee pursuant to its authority under section 6 of P.L.1994, c.140 (C.47:1-12) and the "Destruction of Public Records Law (1953)," P.L.1953, c.410 (C.47:3-15 et seq.). The Division of Archives and Records Management and the State Records Committee shall consult with the Office of Telecommunications and Information Systems in the Department of the Treasury in the development of technical standards for record keeping. Notwithstanding the requirements of this section, the State Records Committee may adopt rules and regulations to authorize pilot programs for various individual counties in order to evaluate alternative technologies for the preservation of records. If well-bound books are to be provided for that purpose, they shall be carefully preserved, and shall be called by and backed with the different names and intended to contain the different types of conveyances and instruments authorized by this Title or any other law to be recorded, which books shall include, among others, the following:

a. "Deeds" --for the various instruments set forth in section 46:16-1 of this Title, and therein described as conveyances, releases, declarations of trust; letters of attorney for sales, conveyances, assurances, acquittances or releases; leases for life or any term not less than two years, or assignments thereof absolute, agreements for sales; consents to the execution of powers to sell, convey, acquit or release; writings to declare or direct uses or trusts, and also all other instruments heretofore or hereafter directed by law to be

acknowledged or proved and recorded, and not by such law expressly directed to be recorded in some other class of books;

b. "Ancient deeds" --for all ancient deeds of the description set forth in section 46:16-7 of this Title;

c. "Releases" --for all releases or deeds in which the intention to operate as releases from the lien and effect of any mortgage or judgment is plainly manifested, and all deeds, releases or postponements in which the intention to operate as a postponement or waiver of priority of the lien of a judgment or judgments, mechanic's lien or liens or recorded mortgage or mortgages to the lien and operation of a mortgage or mortgages, recorded, or to be recorded, subsequent thereto, is plainly manifested;

d. "Mortgages" --for all mortgages, defeasible deeds or other conveyances in the nature of a mortgage and assignments of such leases by way of mortgage or security;

e. "Assignment of mortgages" --for all assignments of mortgages, whether absolute or by way of mortgage or security;

f. "Discharge of mortgages" --for all discharges or satisfaction pieces of mortgages;

g. Such other books, not herein enumerated, but which may be required by the provisions of this Title or by some other law for the recording of such deeds or other instruments as are not expressly directed by law to be recorded in some specifically named book.

In like books the county recording officer shall record such deeds or other instruments of or affecting goods and chattels and personal property, to be called and backed as follows:

a. "Chattel mortgages" --for all chattel mortgages, and assignments, releases and discharges thereof;

b. "Conditional sales contracts" --for the entries required by section 46:32-15 of this Title;

c. "Conditional sales contracts affecting goods attached to realty" --for the entries required by section 46:32-14 of this Title;

d. "Deeds of trust of personalty" --for all deeds of personal property to literary, benevolent, religious and charitable institutions;

e. "Letters or powers of attorney--conditional sale contracts" --for all letters or powers of attorney authorizing the execution and delivery of statements of satisfaction of conditional sale contracts and all revocations of such letters or powers of attorney;

f. "Aircraft liens" --for the entries required by N.J.S.2A:44-2.

To the various books herein enumerated every person shall have access, at proper seasons, and be entitled to transcripts therefrom on paying the fees allowed by law.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 392

AN ACT concerning certificate of need application fees and amending P.L.1971, c.136.

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

1. Section 10 of P.L.1971, c. 136 (C.26:2H-10) is amended to read as follows:

C.26:2H-10 Application for certificate of need; fee.

10. Application for a certificate of need shall be made to the department, and shall be in such form and contain such information as the department may prescribe. The department shall charge a nonreturnable fee for the filing of an application for a certificate of need. The minimum fee for the filing of an application shall be $5,000. For a project whose total cost is greater than $1 million, the fee shall be $5,000 plus 0.15%of the total project cost. Upon receipt of an application, copies thereof shall be referred by the department to the appropriate local advisory board and the State Health Planning Board for review.

These appropriate boards shall provide adequate mechanisms for full consideration of each application submitted to them and for developing recommendations thereon. Such recommendations, whether favorable or unfavorable, shall be forwarded to the commissioner within 90 days of the date of referral of the application. A copy of the recommendations made shall be forwarded to the applicant.

Recommendations concerning certificates of need shall be governed and based upon the principles and considerations set forth in section 8 of P.L.1971, c.136 (C.26:2H-8).

No member, officer or employee of any planning body shall be subject to civil action in any court as the result of any act done or failure to act, or of any statement made or opinion given, while discharging his duties under this act as such member, officer, or employee, provided he acted in good faith with reasonable care and upon proper cause.

2. This act shall take effect on July 1 next following the date of enactment.

Approved January 19, 1998.

CHAPTER 393

AN ACT concerning the use of weapons in wildlife control and research and amending N.J.S.2C:39-6.

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

1. N.J.S.2C:39-6 is amended to read as follows:

Exemptions.

2C:39-6. a. Provided a person complies with the requirements of subsection j. of this section, N.J.S.2C:39-5 does not apply to:

(1) Members of the Armed Forces of the United States or of the National Guard while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities;

(2) Federal law enforcement officers, and any other federal officers and employees required to carry firearms in the performance of their official duties;

(3) Members of the State Police and, under conditions prescribed by the superintendent, members of the Marine Law Enforcement Bureau of the Division of State Police;

(4) A sheriff, undersheriff, sheriff's officer, county prosecutor, assistant prosecutor, prosecutor's detective or investigator, deputy attorney general or State investigator employed by the Division of Criminal Justice of the Department of Law and Public Safety, investigator employed by the State Commission of Investigation, inspector of the Alcoholic Beverage Control Enforcement Bureau of the Division of State Police in the Department of Law and Public Safety authorized to carry such weapons by the Superintendent of State Police, State park ranger, or State conservation officer;

(5) A prison or jail warden of any penal institution in this State or his deputies, or an employee of the Department of Corrections engaged in the interstate transportation of convicted offenders, while in the performance of his duties, and when required to possess the weapon by his superior officer, or a correction officer or keeper of a penal institution in this State at all

times while in the State of New Jersey, provided he annually passes an examination approved by the superintendent testing his proficiency in the handling of firearms;

(6) A civilian employee of the United States Government under the supervision of the commanding officer of any post, camp, station, base or other military or naval installation located in this State who is required, in the performance of his official duties, to carry firearms, and who is authorized to carry such firearms by said commanding officer, while in the actual performance of his official duties;

(7) (a) A regularly employed member, including a detective, of the police department of any county or municipality, or of any State, interstate, municipal or county park police force or boulevard police force, at all times while in the State of New Jersey;

(b) A special law enforcement officer authorized to carry a weapon as provided in subsection b. of section 7 of P.L.1985, c.439 (C.40A:14-146.14);

(c) An airport security officer or a special law enforcement officer appointed by the governing body of any county or municipality, except as provided in subsection b. of this section, or by the commission, board or other body having control of a county park or airport or boulevard police force, while engaged in the actual performance of his official duties and when specifically authorized by the governing body to carry weapons;

(8) A full-time, paid member of a paid or part-paid fire department or force of any municipality who is assigned full-time or part-time to an arson investigation unit created pursuant to section 1 of P.L.1981, c.409 (C.40A:14-7.1) or to the county arson investigation unit in the county prosecutor's office, while either engaged in the actual performance of arson investigation duties or while actually on call to perform arson investigation duties and when specifically authorized by the governing body or the county prosecutor, as the case may be, to carry weapons. Prior to being permitted to carry a firearm, such a member shall take and successfully complete a firearms training course administered by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(9) A juvenile corrections officer in the employment of the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) subject to the regulations promulgated by the commission.

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;

(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; or

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one

eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or

fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and

produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than $100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

l. Nothing in subsection b. of N.J.S.2C:39-5 shall be construed to prevent a law enforcement officer who retired in good standing, including

a retirement because of a disability pursuant to section 6 of P.L.1944, c.255 (C.43:16A-6), section 7 of P.L.1944, c.255 (C.43:16A-7), section 1 of P.L.1989, c.103 (C.43:16A-6.1) or any substantially similar statute governing the disability retirement of federal law enforcement officers, provided the officer was a regularly employed, full-time law enforcement officer for an aggregate of five or more years prior to his disability retirement and further provided that the disability which constituted the basis for the officer's retirement did not involve a certification that the officer was mentally incapacitated for the performance of his usual law enforcement duties and any other available duty in the department which his employer was willing to assign to him or does not subject that retired officer to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 which would disqualify the retired officer from possessing or carrying a firearm, who semi-annually qualifies in the use of the handgun he is permitted to carry in accordance with the requirements and procedures established by the Attorney General pursuant to subsection j. of this section and pays the actual costs associated with those semi-annual qualifications, who is less than 70 years of age, and who was regularly employed as a full-time member of the State Police; a full-time member of an interstate police force; a full-time member of a county or municipal police department in this State; a full-time member of a State law enforcement agency; a full-time sheriff, undersheriff or sheriff's officer of a county of this State; a full-time State or county corrections officer; a full-time county park police officer; a full-time county prosecutor's detective or investigator; or a full-time federal law enforcement officer from carrying a handgun in the same manner as law enforcement officers exempted under paragraph (7) of subsection a. of this section under the conditions provided herein:

(1) The retired law enforcement officer, within six months after retirement, shall make application in writing to the Superintendent of State Police for approval to carry a handgun for one year. An application for annual renewal shall be submitted in the same manner.

(2) Upon receipt of the written application of the retired law enforcement officer, the superintendent shall request a verification of service from the chief law enforcement officer of the organization in which the retired officer was last regularly employed as a full-time law enforcement officer prior to retiring. The verification of service shall include:

(a) The name and address of the retired officer;

(b) The date that the retired officer was hired and the date that the officer retired;

(c) A list of all handguns known to be registered to that officer;

(d) A statement that, to the reasonable knowledge of the chief law enforcement officer, the retired officer is not subject to any of the restrictions set forth in subsection c. of N.J.S.2C:58-3; and

(e) A statement that the officer retired in good standing.

(3) If the superintendent approves a retired officer's application or reapplication to carry a handgun pursuant to the provisions of this subsection, the superintendent shall notify in writing the chief law enforcement officer of the municipality wherein that retired officer resides. In the event the retired officer resides in a municipality which has no chief law enforcement officer or law enforcement agency, the superintendent shall maintain a record of the approval.

(4) The superintendent shall issue to an approved retired officer an identification card permitting the retired officer to carry a handgun pursuant to this subsection. This identification card shall be valid for one year from the date of issuance and shall be valid throughout the State. The identification card shall not be transferable to any other person. The identification card shall be carried at all times on the person of the retired officer while the retired officer is carrying a handgun. The retired officer shall produce the identification card for review on the demand of any law enforcement officer or authority.

(5) Any person aggrieved by the denial of the superintendent of approval for a permit to carry a handgun pursuant to this subsection may request a hearing in the Superior Court of New Jersey in the county in which he resides by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent and the county prosecutor. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination of such a hearing shall be in accordance with law and the rules governing the courts of this State.

(6) A judge of the Superior Court may revoke a retired officer's privilege to carry a handgun pursuant to this subsection for good cause shown on the application of any interested person. A person who becomes subject to any of the disabilities set forth in subsection c. of N.J.S.2C:58-3 shall surrender, as prescribed by the superintendent, his identification card issued under paragraph (4) of this subsection to the chief law enforcement officer of the municipality wherein he resides or the superintendent, and shall be permanently disqualified to carry a handgun under this subsection.

(7) The superintendent may charge a reasonable application fee to retired officers to offset any costs associated with administering the application process set forth in this subsection.

m. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish,

Game and Wildlife, while in the actual performance of duties, from possessing, transporting or using any device that projects, releases or emits any substance specified as being non-injurious to wildlife by the Director of the Division of Animal Health in the Department of Agriculture, and which may immobilize wildlife and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the purpose of repelling bear or other animal attacks or for the aversive conditioning of wildlife.

n. Nothing in subsection b., c., d. or e. of N.J.S.2C:39-5 shall be construed to prevent duly authorized personnel of the New Jersey Division of Fish,Game and Wildlife, while in the actual performance of duties, from possessing, transporting or using hand held pistol-like devices, rifles or shotguns that launch pyrotechnic missiles for the sole purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife; from possessing, transporting or using rifles, pistols or similar devices for the sole purpose of chemically immobilizing wild or non-domestic animals; or, provided the duly authorized person complies with the requirements of subsection j. of this section, from possessing, transporting or using rifles or shotguns, upon completion of a Police Training Commission approved training course, in order to dispatch injured or dangerous animals or for non-lethal use for the purpose of frightening, hazing or aversive conditioning of nuisance or depredating wildlife.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 394

AN ACT concerning the eligibility of certain public employees for membership in the Public Employees' Retirement System of New Jersey.

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

1. a. Notwithstanding any provision to the contrary of section 1 of P.L.1968, c.23 (C.43:3C-1) or any other law, if on the effective date of P.L.1997, c.394, a former member of an employees' r ent system established under P.L.1954, c.218 (C.43:13-22.3 et seq igible to receive a pension granted by that retirement system for a r than vesting or deferred retirement, the amount of which pensio been

limited, through the imposition under that retirement system of a restriction on the maximum amount of the annual salary of the former member that was eligible to be considered for pension purposes, to an amount less than the amount of pension which the former member would have been eligible to receive from the retirement system in the absence of that restriction, and (2) is employed again in a position which, except as otherwise provided by P.L.1968, c.23, makes the person eligible to be a member of the Public Employees' Retirement System established by P.L.1954, c.84 (C.43:15A-1 et seq.), then the person shall be entitled to be enrolled in the Public Employees' Retirement System upon repayment to the former retirement system of the total amount of any payments of pension that the person shall have received therefrom and submission to that former retirement system of a waiver, in such form as the former system shall require, of all rights and benefits which would otherwise be provided by the former retirement system. The waiver shall be effective from the date of its receipt by the former retirement system. The application of the person for enrollment in the Public Employees' Retirement System shall be filed with the retirement system not later than the 180th day following the effective date of P.L.1997, c.394 and shall include a copy of the waiver and proof, in such form as the Public Employees' Retirement System shall require, of the repayment of benefits to the former retirement system in accordance with the provisions of this subsection.

b. Upon receipt of an application for enrollment under the provisions of subsection a. of this section, the Public Employees' Retirement System shall enroll the applicant as a member thereof and shall notify the former retirement system of such enrollment. Within 180 days of its receipt of that notice, the former retirement system shall remit to the Public Employees' Retirement System an amount consisting of (1) the total of all contributions which shall have been deducted from the salary of the person during membership in the former retirement system, with interest at the annual rate of 6% compounded annually, and (2) the pro rata portion of all contributions to the former retirement system by the former employer of the person during such membership in that former retirement system that is applicable to that membership, with interest at the annual rate of 6%, compounded annually. The Public Employees' Retirement System shall enter the respective sums so remitted to the credit of the member in the annuity savings fund of that retirement system and to the credit of employers of the member in the contingent reserve fund of that retirement system.

c. Any credit for public service previously established by the member in the former retirement system shall be established in the Public Employees' Retirement System. If the amounts remitted to the Public Employees' Retirement System under subsection b. of this section are insufficient to

provide for the full cost of establishing that credit in the Public Employees' Retirement System, then the amount of that deficiency shall be payable by the member. Payment to the Public Employees' Retirement System by the member of the amount of any liability of the member under this subsection may be made in a lump sum or through regular deductions from the member's salary that will provide for full payment of the liability, with regular interest, over such period of time as the member may select, but not exceeding five years. The Public Employees' Retirement System shall enter the sum or sums so remitted to the credit of the member in the annuity savings fund of that retirement system.

If the member retires from the Public Employees' Retirement System prior to completing payment under this subsection of the member's liability for the cost of establishing full credit in that retirement system for service credit previously established in the former retirement system, the member shall receive pro rata credit for service in proportion to the payments made by the member prior to the date of retirement, but if the member so elects at the time of retirement, the member may make an additional lump-sum payment required at that time to provide full credit.

d. An employee enrolled in the Public Employees' Retirement System under subsection b. of this section on the basis of service in a position covered by that retirement system may purchase credit in the retirement system for all or any portion of such service rendered prior to the date of enrollment. The purchase shall be made in the same manner and subject to the same terms and conditions provided for the purchase of previous membership service by section 8 of P.L.1954, c.84 (C.43:15A-8).

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 395

AN ACT concerning commercial transactions, replacing chapter 5 of Title 12A of the New Jersey Statutes and revising various parts of the statutory law.

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

1. Chapter 5 of Title 12A of the New Jersey Statutes (N.J.S.12A:5-101 through 12A:5-117, including any amendments or supplements thereto) is repealed and replaced as follows:

CHAPTER 5.
LETTERS OF CREDIT

PART 1
SHORT TITLE AND GENERAL MATTERS

Short title.

12A:5-101. Short Title.

This chapter may be cited as "Uniform Commercial Code--Letters of Credit."

Definitions.

12A:5-102. Definitions.

a. As used in this chapter:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (a) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in subsection e. of 12A:5-108; and (b) which is capable of being examined for

compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "Good faith" means honesty in fact in the conduct or transaction concerned.

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(a) upon payment;

(b) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(c) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the requirements of 12A:5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer (a) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (b) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

b. Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Acceptance"	12A:3-409
"Value"	12A:3-303, 12A:4-211.

c. N.J.S.12A:1-101 et seq. contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

Scope.

12A:5-103. Scope.

a. This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

b. The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

c. With the exception of this subsection and subsections a. and d. of this section, paragraphs (9) and (10) of subsection a. of 12A:5-102, subsection d. of 12A:5-106 and subsection d. of 12A:5-114, and except to the extent prohibited in subsection (3) of 12A:1-102 and subsection d. of 12A:5-117, the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

d. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Formal requirements.

12A:5-104. Formal Requirements. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (a) by a signature; or (b) in accordance with the agreement of the parties or the standard practice referred to in subsection e. of 12A:5-108.

Consideration.

12A:5-105. Consideration. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

Issuance, amendment, cancellation, and duration.

12A:5-106. Issuance, Amendment, Cancellation, and Duration.

a. A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

b. After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

c. If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

d. A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

Confirmer, nominated person, and adviser.

12A:5-107. Confirmer, Nominated Person, and Adviser.

a. A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

b. A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

c. A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

d. A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection c. of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

Issuer's rights and obligations.

12A:5-108. Issuer's Rights and Obligations.

a. Except as otherwise provided in 12A:5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection e. of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided

in 12A:5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

b. An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) to honor;

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(3) to give notice to the presenter of discrepancies in the presentation.

c. Except as otherwise provided in subsection d. of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

d. Failure to give the notice specified in subsection b. of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor, fraud or forgery as described in subsection a. of 12A:5-109 or expiration of the letter of credit before presentation.

e. An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

f. An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) an act or omission of others; or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection e. of this section.

g. If an undertaking constituting a letter of credit under paragraph (10) of subsection a. of 12A:5-102 contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

h. An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

i. An issuer that has honored a presentation as permitted or required by this chapter:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter;

(3) is precluded from asserting a right of recourse on a draft under 12A:3-414 and 12A:3-415;

(4) except as otherwise provided in 12A:5-110 and 12A:5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Fraud and forgery.

12A:5-109. Fraud and Forgery.

a. If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation, if honor is demanded by (a) a nominated person who has given value in good faith and without notice of forgery or material fraud, (b) a confirmer who has honored its confirmation in good faith, (c) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (d) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

b. If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material

fraud and the person demanding honor does not qualify for protection under paragraph (1) of subsection a. of this section.

Warranties.

12A:5-110. Warranties.

a. If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in subsection a. of 12A:5-109; and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

b. The warranties in subsection a. of this section are in addition to warranties arising under 12A:3-101 et seq., 12A:4-101 et seq., 12A:7-101 et seq. and 12A:8-101 et seq. because of the presentation or transfer of documents covered by any of those chapters.

Remedies.

12A:5-111. Remedies.

a. If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation, the claimant need not present any document.

b. If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

c. If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in subsection a. or b. of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved

as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections a. and b. of this section.

d. An issuer, nominated person, or adviser who is found liable under subsection a., b., or c. of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

e. Reasonable attorney's fees and other expenses of litigation may be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

f. Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

Transfer of letter of credit.

12A:5-112. Transfer of Letter of Credit.

a. Except as otherwise provided in 12A:5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

b. Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in subsection e. of 12A:5-108 or is otherwise reasonable under the circumstances.

Transfer by operation of law.

12A:5-113. Transfer by Operation of Law.

a. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

b. A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection e. of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in subsection e. of 12A:5-108 or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

c. An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

d. Honor of a purported successor's apparently complying presentation under subsection a. or b. of this section has the consequences specified in subsection i. of 12A:5-108 even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of 12A:5-109.

e. An issuer whose rights of reimbursement are not covered by subsection d. of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection b. of this section.

f. A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Assignment of proceeds.

12A:5-114. Assignment of Proceeds.

a. In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

b. A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

c. An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

d. An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

e. Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

f. Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person, nor the issuer's or nominated person's payment of proceeds to an assignee or a third person, affect the rights between the assignee and any person other than the issuer,

transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by 12A:9-101 et seq. or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by 12A:9-101 et seq. or other law.

Statute of limitations.

12A:5-115. Statute of Limitations. An action to enforce a right or obligation arising under this chapter must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

Choice of law and forum.

12A:5-116. Choice of Law and Forum.

a. The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in 12A:5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

b. Unless subsection a. of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

c. Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection a. or b. of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that

undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in subsection c. of 12A:5-103.

d. If there is conflict between this chapter, 12A:5-101 et seq., and 12A:3-101 et seq., 12A:4-101 et seq., 12A:4A-101 et seq., or 12A:9-101 et seq., this chapter governs.

e. The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection a. of this section.

Subrogation of issuer, applicant, and nominated person.

12A:5-117. Subrogation of Issuer, Applicant, and Nominated Person.

a. An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary; and of the applicant, to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

b. An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection a. of this section.

c. A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

d. Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections a. and b. of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection c. of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

2. N.J.S.12A:1-105 is amended to read as follows:

Territorial application of the act; parties' power to choose applicable law.

12A:1-105. Territorial application of the act; parties' power to choose applicable law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this State.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 12A:2-402.

Applicability of the Chapter on Leases. 12A:2A-105 and 12A:2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 12A:4-102.

Governing law in the Chapter on Funds Transfers. 12A:4A-507.

Letters of Credit. 12A:5-116.

Applicability of the Chapter on Investment Securities. 12A:8-110.

Perfection provisions of the Chapter on Secured Transactions. 12A:9-103.

3. N.J.S.12A:2-512 is amended to read as follows:

Payment by buyer before inspection; exceptions.

12A:2-512. (1) Where the contract requires payment before inspection, non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of subsection b. of 12A:5-109.

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

4. N.J.S.12A:9-103 is amended to read as follows:

Perfection of security interests in multiple state transactions.

12A:9-103. Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by subchapter 3 of this chapter to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of 12A:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the

certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without the knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification

to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, 49 U.S.C. ss.1301 et seq., as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection d. of 12A:8-110.

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are

governed by the local law of the securities intermediary's jurisdiction as specified in subsection e. of 12A:8-110.

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

5. N.J.S.12A:9-104 is amended to read as follows:

Nonapplicability of chapter.

12A:9-104. This chapter does not apply

(a) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) To a landlord's lien; or

(c) To a lien given by statute or other rule of law for services or materials except as provided in 12A:9-310 on priority of such liens; or

(d) To a transfer of a claim for wages, salary or other compensation of an employee; or

(e) To a transfer by a government or governmental subdivision or agency; or

(f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) To a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (12A:9-306) and priorities in proceeds (12A:9-312); or

(h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) To any right of set-off; or

(j) Except to the extent that provision is made for fixtures in 12A:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) To a transfer in whole or in part of any claim arising out of tort; or

(l) To a transfer of an interest in any deposit account (subsection (1) of 12A:9-105), except as provided with respect to proceeds (12A:9-306) and priorities in proceeds (12A:9-312); or

(m) To a chattel mortgage of the character described in R.S.46:28-14; or

(n) To a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.

6. N.J.S.12A:9-105 is amended to read as follows:

Definitions and index of definitions.

12A:9-105. Definitions and Index of Definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security

agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (12A:1-201), and a receipt of the kind described in subsection (2) of 12A:7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (12A:9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in 12A:3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or

chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account." 12A:9-106.
"Attach." 12A:9-203.
"Commodity contract." 12A:9-115.
"Commodity customer." 12A:9-115.
"Commodity intermediary." 12A:9-115.
"Construction mortgage." 12A:9-313 (1).
"Consumer goods." 12A:9-109 (1).
"Control." 12A:9-115.
"Equipment." 12A:9-109 (2).
"Farm products." 12A:9-109 (3).
"Fixture." 12A:9-313(1).
"Fixture filing." 12A:9-313(1).
"General intangibles." 12A:9-106.
"Inventory." 12A:9-109 (4).
"Investment property." 12A:9-115.
"Lien creditor." 12A:9-301 (3).
"Proceeds." 12A:9-306 (1).
"Purchase money security interest." 12A:9-107.
"United States." 12A:9-103 (3).

(3) The following definitions in other chapters apply to this chapter:

"Broker." 12A:8-102.
"Certificated security." 12A:8-102.
"Check." 12A:3-104.
"Clearing corporation." 12A:8-102.
"Contract for sale." 12A:2-106.
"Control." 12A:8-106.
"Delivery." 12A:8-301.
"Entitlement holder." 12A:8-102.
"Financial asset." 12A:8-102.
"Holder in due course." 12A:3-302.
"Letter of Credit." 12A:5-102.
"Note." 12A:3-104.
"Proceeds of a letter of credit." 12A:5-114.
"Sale." 12A:2-106.
"Securities intermediary." 12A:8-102.
"Security." 12A:8-102.
"Security certificate." 12A:8-102.

"Security entitlement." 12A:8-102.

"Uncertificated security." 12A:8-102.

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

7. N.J.S.12A:9-106 is amended to read as follows:

Definitions: "account"; "general intangibles."

12A:9-106. Definitions: "Account"; "General Intangibles."

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money.

8. N.J.S.12A:9-304 is amended to read as follows:

Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

12A:9-304. Perfection of Security Interest In Instruments, Documents, Proceeds of a Written Letter of Credit, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 12A:9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance

of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of 12A:9-312; or

(b) Delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this chapter.

9. N.J.S.12A:9-305 is amended to read as follows:

When possession by secured party perfects security interest without filing.

12A:9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the rights to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

10. Section 25 of P.L.1948, c.67 (C.17:9A-25) is amended to read as follows:

C.17:9A-25 Additional powers of banks.

25. Additional powers of banks.

In addition to the powers specified in section 24, every bank shall, subject to the provisions of this act, have the following powers, whether or not such powers are specifically set forth in its certificate of incorporation:

(1) To discount, buy, invest in, hold, assign, transfer, sell, and negotiate promissory notes, drafts, bills of exchange, mortgages, trade acceptances, bankers' acceptances, bonds, debentures, bonds or notes secured by mortgages, installment obligations, balances due on conditional sales, and other evidences of debt for its own account, or for the account of customers;

(2) To accept for payment at future dates drafts drawn upon it by its customers;

(3) To issue letters of credit to guarantee the payment by its customers of amounts due or to become due upon the purchase by such customers of real or personal property;

(4) To receive interest and noninterest bearing demand and time deposits, to be repaid on such terms as may be agreed upon between the depositors and the bank, and to furnish security for such deposits when required by the laws of this State or of the United States, or by rules or orders of any court of this State or of the United States or by the regulations of an officer or agency of this State or of the United States, made pursuant to such law; provided that no bank shall be required to give security for deposits made by this State, or any political subdivision thereof, or any other body politic existing under the laws of this State, to the extent that such deposits are insured under any federal legislation providing for the insurance of bank deposits;

(5) To maintain savings departments for the receipt of interest and noninterest bearing deposits, to be repaid on such terms as may be agreed upon between the depositors and the bank, and to commingle such deposits with deposits otherwise received;

(6) During hours other than the bank's usual hours for receipt of deposits, to provide the equipment for receiving, and to receive, containers purporting to contain moneys or instruments for the payment of money;

(7) To make loans, secured or unsecured, including loans to its stockholders;

(8) To extend credit by honoring overdrafts upon deposit accounts, but no credit shall be so extended except pursuant to written agreement made in advance;

(9) To buy and sell gold and silver bullion, foreign coin, and exchange;

(10) To purchase and sell debt and equity securities of other corporations, without recourse, solely upon order and for the account of customers. This paragraph shall not limit the power of a bank to take securities of other corporations as collateral security for loans, discounts, or other extensions of credit, or to acquire those securities when their acquisition is necessary to prevent or minimize loss upon debts previously contracted in good faith. Equity securities acquired pursuant to this paragraph shall be sold within five years after their acquisition, except that the commissioner may, by order, extend the time within which sales of equity securities described in such order shall be made; but this paragraph shall not invalidate the holding of any equity securities lawfully acquired on or before the effective date of this act. This paragraph shall not apply to any case in which, pursuant to any other provision of this act, or pursuant to any other act, a bank is expressly authorized to subscribe for, purchase or otherwise acquire or hold securities;

(11) To receive any tangible personal property for safekeeping and storage on the terms provided by chapter 7 of Title 12A of the New Jersey Statutes, and to keep, maintain, and rent out for hire, space for the storage and safekeeping of personal property of such kind and description, or represented by the depositor thereof to be of such kind and description, as the commissioner may by regulation from time to time prescribe; but nothing herein contained shall limit the power of a bank to let space for the storage and safekeeping of personal property to which the bank has security title or in which it has a lien interest;

(12) To avail itself of the provisions of any federal legislation providing for the extension of any lawful banking activity in the making of loans or the extension of credit to individuals, or for the financing of business enterprises, or in such other banking activity as may be specified in such legislation and made available for participation by banks; except that the power by this paragraph conferred shall not be exercised unless the commissioner shall make a general order authorizing such participation upon such terms and conditions as may in such order be prescribed;

(13) To act as the fiscal agent of the United States, and of any corporation, and of any State, county, municipality, board, commission or other body politic, and to perform all duties as such fiscal agent as may lawfully be required of it;

(14) To assist customers or act for customers in the preparation, handling and disbursement of payrolls and payroll deductions and in the preparation, maintenance and furnishing of records and statistical information in connection therewith.

11. Section 213.1 of P.L.1948, c.67 (C.17:9A-213.1) is amended to read as follows:

C.17:9A-213.1 Limitation on powers of banks, savings banks.

213.1. Except as in this act or otherwise by law provided, and except for letters of credit issued pursuant to N.J.S.12A:5-101 et seq., no bank or savings bank shall have power to guarantee the obligations of others; or to insure or indemnify against the acts, omissions, undertakings, liabilities or losses of others.

12. This act shall take effect immediately and shall apply to all letters of credit issued on and after the effective date

Approved January 19, 1998.

CHAPTER 396

AN ACT concerning payment of Victims of Crime Compensation Board assessments and supplementing Title 30 of the Revised Statutes.

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

C.30:4-15.1 Collection of "VCCB Surcharge" by commissary in correctional facility.

1. Every commissary in a county or State correctional facility operated for the sale of commodities shall collect a surcharge of 10% of the sales price of every item sold. The surcharge shall be known as the "VCCB Surcharge." All funds collected pursuant to this section shall be forwarded to the State Treasurer for deposit in the Victims of Crime Compensation Board Account, shall be subject to reporting and accounting procedures pursuant to the provisions of section 2 of P.L.1979, c.396 (C.2C:43-3.1) and shall be used in satisfying claims pursuant to the provisions of the "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.). A sale subject to surcharge under this section shall not be subject to any tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

2. This act shall take effect immediately but section 1 shall remain inoperative until the 180th day following enactment.

Approved January 19, 1998.

CHAPTER 397

AN ACT concerning the purchase of certain service credit in State-administered retirement systems.

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

1. A retiree under a State-administered retirement system who is also receiving a pension based on public employment in another state and who was ineligible for enrollment in a State-administered retirement system prior to September 10, 1991 because of eligibility to receive a pension based on public employment in another state may apply, within 30 days of the effective date of this act, to the board of trustees of the retirement system to purchase up to 10 years of credit for the service which had been rendered in any position covered by the retirement system for which the person has received no credit. The retiree may purchase all or a portion of the service credit by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to the retiree's age at the time of the purchase to the highest annual compensation for service in this State for which contributions were made during any prior fiscal year of membership. A retiree shall not be liable for any costs associated with the financing of pension adjustment benefits and health care benefits for retirees when purchasing service credit. The purchase shall be made in a lump sum and the retiree's retirement allowance shall be recalculated to reflect the purchased service credit.

2. This act shall take effect immediately and shall expire 31 days thereafter.

Approved January 19, 1998.

CHAPTER 398

AN ACT concerning certain maintenance costs for mentally ill and developmentally disabled patients in State institutions.

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

1. If a county of the first class with a population greater than 775,000 and less than 800,000 according to the 1990 federal decennial census, has taken credits on charges to the county from the State for maintenance costs for mentally ill patients and developmentally disabled federal Medicaid and Medicare recipients in State institutions, pursuant to court orders, the State shall require a repayment structure which shall be determined by the Commissioner of Human Services in consultation with the State Treasurer, but under no circumstances shall any payments be required prior to January 1, 1999; nor shall the repayment structure set a term of repayment of less than five years

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 399

AN ACT concerning policies and procedures for contracting for certain professional services by State agencies, and supplementing P.L.1954, c.48 (C.52:34-6 et seq.).

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

C.52:34-9.1 Policy on certain State contracts for professional services.

1. It is the policy of this State that State contracts for architectural, engineering and land surveying services shall be publicly announced prior to being awarded and that contracts for these services shall be negotiated on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable compensation.

C.52:34-9.2 Definitions relative to contracting for certain professional services by State agencies.

2. As used in this act:

"Agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality created by a principal department and any independent State authority, commission, instrumentality or agency, which is authorized by law to contract for professional architectural, engineering or land surveying services;

"Compensation" means the basis of payment by an agency for professional architectural, engineering or land surveying services;

"Professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional architectural, engineering, or land surveying services in this State;

"Professional architectural, engineering and land surveying services" means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, professional engineer or professional land surveyor in connection with his professional employment practice.

C.52:34-9.3 Filing of current statement of qualifications, supporting data with agency.

3. A professional firm which wishes to be considered qualified to provide professional architectural, engineering, or land surveying services to an agency seeking to negotiate a contract or agreement for the performance of such services shall file or shall have filed with the agency a current statement of qualifications and supporting data. Such a statement may be filed at any time during a calendar year. The content of any such statement shall conform to such regulations with respect thereto as the State Treasurer, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate. For the purposes of this section and section 5 of this act, no statement which shall have been filed more than two years prior to the publication of an advertisement pursuant to the provisions of section 4 of this act shall be deemed to be a current statement with respect to qualification of the firm which shall have filed the statement to provide professional architectural, engineering, or land surveying services under any contract or agreement of which notice is given through that advertisement.

A statement of qualifications and supporting data filed with an agency under this section shall be a public record for all purposes of P.L.1963, c.73 (C.47:1A-1 et seq.).

C.52:34-9.4 Public advertisement for proposals required.

4. Notwithstanding the provisions of sections 2 through 4 of P.L.1954, c.48 (C.52:34-7 through 52:34-9), a contract or agreement with an agency for the procurement of professional architectural, engineering, or land surveying services shall be publicly advertised prior to the solicitation of proposals or expressions of interest from interested firms. To the extent consistent with the purposes and provisions of this section, the advertisement shall conform to the requirements applicable under subsections (a) and (b) of section 7 of P.L.1954, c.48 (C.52:34-12) or may be publicly advertised through electronic means. The advertisement shall include a

statement of the criteria by which the agency seeking to procure those professional services shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services; this statement shall either set forth explicitly and in full the terms of those criteria or identify them by reference to the regulation or regulations in which those criteria shall have been promulgated as required by subsection c. of section 5 of this act. In addition, the advertisement shall include notice that professional firms wishing to be considered for selection as a potential provider of such services in connection with a proposed project must have submitted to the agency a current statement of qualifications and supporting data as prescribed in section 3 of this act.

C.52:34-9.5 Filing of current statement of qualifications, supporting data necessary for awarding of contract, agreement.

5. a. In the procurement of architectural, engineering and land surveying services, no agency shall make, negotiate, or award a contract or agreement for the performance of such services with or to any professional firm which has not filed with the agency a current statement of qualifications and supporting data as prescribed under section 3 of this act.

b. For each proposed project, an agency shall evaluate current statements of qualifications and supporting data on file with the agency. The agency may solicit proposals or expressions of interest unique to the specific project which would in narrative form outline design concepts and proposed methods of approach to the assignment. The agency shall select, in order of preference, based upon the criteria included in the advertisement required by section 4 of this act, at least three professional firms deemed to be the most highly qualified to provide the services required, except that the agency may select fewer professional firms if fewer such firms responded to the solicitation or meet the qualifications required for the project.

c. An agency which intends or expects to make, negotiate or award a contract or agreement for the procurement of professional architectural, engineering, or land surveying services shall, before publishing an advertisement of notice with respect to any such contract or agreement, have adopted by regulation and have promulgated, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the criteria by which it shall with respect to any such contract or agreement make the selection of qualified firms as prescribed by subsection b. of this section. The provisions of this subsection shall not be construed to require the adoption by an agency of regulations regarding the selection criteria to be applicable with respect to a particular contract if such regulations were previously promulgated and remain in effect with respect to such a contract.

C.52:34-9.6 Submission of fee proposal.

6. Once the top three or more ranked firms have been identified, each firm, at the request of the agency, shall submit a fee proposal. The firms shall not be told of their ranking position at that time. Using the three fee proposals to provide a general guideline, an agency shall negotiate a contract with the most technically qualified professional firm for architectural, engineering or land surveying services at compensation which the agency determines to be fair and reasonable to the State of New Jersey. In making this determination, the agency shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified at a fee the agency determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. The agency shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, the agency shall formally terminate negotiations. The agency shall then undertake negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

C.52:34-9.7 Applicability of act restricted to contracts for services in excess of $25,000; use of other procurement processes.

7. Notwithstanding the provisions of section 2 of P.L.1954, c.48 (C.52:34-7) to the contrary, the provisions of this act shall only apply to contracts for architectural, engineering and land surveying services in excess of $25,000. Nothing in this act shall preclude a State agency from using procurement processes other than those prescribed herein if those processes have been approved by the federal government or other State statute or if an emergency has been declared by the chief executive officer of the agency.

8. This act shall take effect on the 360th day after enactment but an agency may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act

Approved January 19, 1998.

CHAPTER 400

AN ACT appropriating funds from the "Correctional Facilities Construction Fund of 1982" for county assistance to Ocean County.

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

1. There is appropriated to the Department of Corrections from the amounts previously appropriated but not expended from the "Correctional Facilities Construction Fund of 1982" created pursuant to the "Correctional Facilities Construction Bond Act of 1982," P.L. 1982, c.120, the sum of $540,685 for the following purpose:

26 DEPARTMENT OF CORRECTIONS

County Assistance Program	
Ocean County Facility Renovation.....	$540,685
Total Appropriation.....	$540,685

2. There is also appropriated from the "Correctional Facilities Construction Fund of 1982" such items as may be necessary to meet any expense incurred by the issuing officials under P.L.1982, c.120 for advertising, engraving, printing, clerical, legal or other services necessary to carry out the duties imposed upon them by the provisions of that act.

3. In order to provide flexibility in administering the provisions of this act, the Commissioner of Corrections may apply to the Director of the Division of Budget and Accounting in the Department of the Treasury for permission to transfer a part of any item to any other item within the respective department accounts in the Correctional Facilities Construction Fund. The transfers shall be made in a manner consistent with Section 27 of P.L.1982, c.120.

4. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 401

AN ACT concerning real estate appraisers and amending and supplementing P.L.1991, c.68.

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

1. Section 7 of P.L.1991, c.68 (C.45:14F-7) is amended to read as follows:

C.45:14F-7 Act not applicable to certain licensees or activities.

7. The provisions of this act shall not apply to any person who is:

a. a real estate appraiser licensed or certified in another state in compliance with federal requirements while on temporary assignment appraising real property located in this State, however, such appraiser shall be subject to registration requirements promulgated by the board; or

b. a tax assessor or an assistant tax assessor holding a valid tax assessor certificate employed by a county or municipal government or any political subdivision thereof whose appraisal activities are limited to appraisals in the course of his employment; or

c. a State employee (1) whose appraisal activities are limited to appraisals of parcels of property to be acquired for a public purpose with a fair market value, including damages to the remainder, if any, of each parcel to be acquired of not more than $25,000, notwithstanding the total value of the property in which the parcel is located that is owned by the prospective condemnee whose property is to be taken; and (2) whose appraisal activities are limited to appraisals in the course of his employment.

2. Section 21 of P.L.1991, c.68 (C.45:14F-21) is amended to read as follows:

C.45:14F-21 Certification requirements for persons performing appraisal; exception.

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 f. 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. s.3351(d)).

e. (Deleted by amendment, P.L.1997, c.401).

f. A State or federally chartered bank, savings bank or savings and loan association may obtain and use appraisals made by a person who is not certified or licensed pursuant to the provisions of P.L.1991, c.68 (C.45:14F-1 et seq.) in any circumstance where the underlying transaction is a federally related transaction for which federal law and regulation do not require that a certified or licensed appraiser be used. For the purposes of this subsection, "federal law" means Title XI of Pub. L.101-73 (12 U.S.C. s.3331 et seq.); and "federally related transaction" has the meaning as set forth in section 1121 of Title XI of Pub. L.101-73 (12 U.S.C. s.3350).

C.45:14F-10.1 Ineligibility, revocation of licensure, certification due to criminal record; rehabilitation.

3. a. An applicant for licensure or certification under P.L.1991, c.68 (C.45:14F-1 et seq.) shall not be eligible for licensure or certification, as the case may be, and any holder of a license or certification under P.L.1991, c.68 (C.45:14F-1 et seq.) shall have his license or certification revoked if the State Real Estate Appraiser Board determines, consistent with the requirements and standards of this section and section 4 of P.L.1997, c.401 (C.45:14F-10.2), that criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, which would disqualify that individual from being licensed or certified. An applicant or a holder of a license or certification shall be disqualified from licensure or certification if that individual's criminal history record check reveals a record of conviction of any of the following crimes and offenses:

(1) In New Jersey, any crime or disorderly persons offense:

(a) Involving danger to the person, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:11-1 et seq., N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq., or N.J.S.2C:15-1 et seq.; or

(b) Involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes; or

(c) Involving any controlled dangerous substances or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except as set forth in paragraph (4) of subsection a. of N.J.S.2C:35-10.

(2) In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in paragraph (1) of this subsection.

b. Notwithstanding the provisions of subsection a. of this section, no individual shall be disqualified from licensure or certification on the basis of any conviction disclosed by a criminal history record check performed pursuant to this section if the individual has affirmatively demonstrated to the board clear and convincing evidence of his rehabilitation. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) The nature and responsibility of the position which the convicted individual would hold;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the individual when the offense was committed;

(6) Whether the offense was an isolated or repeated incident;

(7) Any social conditions which may have contributed to the offense; and

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have had the individual under their supervision.

C.45:14F-10.2 Information submitted by applicant, holder of license; record check; costs.

4. a. An applicant and holder of a license or certificate shall submit to the board his name, address and fingerprints taken on standard fingerprint cards by a State or municipal law enforcement agency. The board is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the determinations required by section 3 of P.L.1997, c.401 (C.45:14F-10.1).

b. Upon receipt of the criminal history record information for a person from the Federal Bureau of Investigation or the Division of State Police, the board shall notify the applicant, licensee or certified individual, as applicable, in writing, of the person's qualification or disqualification for licensure or certification under section 3 of P.L.1997, c.401 (C.45:14F-10.1). If the applicant, licensee or certified individual, as applicable, is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the written notice.

c. The applicant, licensee or certified individual, as the case may be, shall have 30 days from the date of written notice of disqualification to petition the board for a hearing on the accuracy of the criminal history record information or to establish his rehabilitation under subsection b. of section 3 of P.L.1997, c.401 (C.45:14F-10.1). The board may refer any case arising hereunder to the Office of Administrative Law for administrative proceedings pursuant to P.L.1968, c.410 (C.52:14B-1 et seq.).

d. The board shall not maintain any individual's criminal history record information or evidence of rehabilitation submitted under this section for more than six months from the date of a final determination by the board as to the individual's qualification or disqualification to be licensed or certified pursuant to the provisions of this section and section 3 of this amendatory and supplementary act.

e. All costs associated with performing the criminal history check required by P.L.1997, c.401 (C.45:14F-10.1 et al.) shall be borne by the applicant for licensure or certification or the holder of any license or certification.

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

Approved January 19, 1998.

CHAPTER 402

AN ACT concerning dairy farming, and enacting and entering this State into the Northeast Interstate Dairy Compact.

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

C.32:35-1 Short title.

1. This act shall be known and may be cited as "The Northeast Interstate Dairy Compact Act."

C.32:35-2 Northeast Interstate Dairy Compact.

2. The State of New Jersey enacts and enters into the Northeast Interstate Dairy Compact with all jurisdictions legally joining therein, which compact is substantially as follows:

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS, AND DECLARATION OF POLICY

1. The purpose of this compact is to recognize by constitutional prerequisite the interstate character of the northeast dairy industry and to form an interstate commission for the northeast region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is the paramount agricultural activity of the northeast. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy and their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential to the region's rural communities and character. The farms preserve open spaces, sculpt the landscape and provide the land base for a diversity of recreational pursuits. In defining the rural character of our communities and landscape, dairy farms also provide a major draw for our tourist industries.

By entering into this compact, the participating states affirm that their ability to regulate the price which northeast dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the northeast dairy industry, with all the associated benefits.

Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the northeast dairy region. Historically, individual state regulatory action has been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices for dairy products, without preempting the power of states to regulate milk prices above the minimum levels so established. Based on this authority, each state in the region has individually attempted to implement at least one regulatory program in response to the current dairy industry crisis.

In today's regional dairy marketplace, cooperative, rather than individual state action may address more effectively the market disarray. Under our constitutional system, properly authorized, states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

2. As used in this compact:

"Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection b. of section 3 of this compact.

"Commission" means the commission established by this compact.

"Commission marketing order" means regulations adopted by the commission pursuant to sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission. Such order may establish minimum prices for any or all classes of milk.

"Compact" means this interstate compact.

"Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the commission in regulations adopted pursuant to sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

"Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the commission for regulatory purposes.

"Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area, or receipts from producers located in such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

"Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

"Pool plant" means any milk plant located in a regulated area.

"Region" means the territorial limits of the states which are or become parties to this compact.

"Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

"State dairy regulation" means any state regulation of dairy prices and associated assessments, whether by statute, marketing order or otherwise.

3. a. This compact shall not be construed to displace existing federal milk marketing orders nor state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the commission the option to replace them with one or more commission marketing orders pursuant to this compact.

b. This compact shall be construed liberally in order to achieve the purposes and intent enunciated in section 1 of this compact. It is the intent of this compact to establish a basic structure by which the commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein, but the commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

4. There is hereby created a commission to administer the compact, composed of delegations from each state in the region. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the commission. Each state delegation shall be entitled to one vote in the conduct of the affairs of the commission.

5. All actions taken by the commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment or rescission of bylaws of the commission, shall be by majority vote of the delegations present. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of the delegation of that state. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the business of the commission.

6. a. The commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. The executive director shall serve at the pleasure of the commission, and, together with the treasurer, shall be bonded in an amount determined by the commission. The commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

b. The commission shall adopt bylaws for the conduct of its business by a two-thirds vote, and shall have the power by the same vote to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all commission meetings and hearings and of the business to

be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

c. The commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both Houses of the Legislature, and the head of the state department having responsibilities for agriculture.

d. In addition to the powers and duties prescribed elsewhere in this compact, the commission shall have the power:

(1) To sue and be sued in any state or federal court;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) To borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the commission as security therefor, subject to the provisions of section 18 of this compact;

(5) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications; and

(6) To create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The commission may also retain personal services on a contract basis.

7. In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. POWERS OF THE COMMISSION

8. The commission is hereby empowered to:

a. Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region;

b. Prepare and transmit to the participating states model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for dairy products and their imitations, standards for dairy products, license standards, producer security programs, and fair trade laws;

c. Study and recommend to the participating states joint or cooperative programs for the administration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs;

d. Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems and conduct symposiums or conferences designed to improve industry relations, or a better understanding of problems;

e. Prepare and release periodic reports on activities and results of the commission's efforts to the participating states;

f. Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk;

g. Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk; and

h. Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

9. a. The powers granted in this section and section 10 of this compact, shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

b. A compact over-order price established pursuant to this section shall apply only to Class I milk. Such over-order price shall not exceed $1.50 per gallon. Beginning in 1990, and using that year as a base, the foregoing $1.50 per gallon maximum shall be adjusted annually by the rate of change in the consumer price index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the commission may prescribe in regulations.

c. A commission marketing order shall apply to all classes and uses of milk.

d. The commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The commission shall provide for similar treatment of producer-handlers under commission marketing orders.

e. In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer`s own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

f. When establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.

g. The commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing the regulatory burden and the cost of administering the compact. The commission may reimburse other agencies for the reasonable cost of providing these services.

10. Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

a. Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program;

b. With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the commission, or a single minimum price for milk purchased from producers or associations of producers;

c. With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for class I milk;

d. Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, for zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area;

e. Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them;

(1) With respect to regulations establishing a compact over-order price, the commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area; and

(2) With respect to any commission marketing order, as defined in section 2 of this compact, which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

f. Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order;

g. Provisions specially governing the pricing and pooling of milk handled by partially regulated plants;

h. Provisions requiring that the account of any person regulated under a compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state producer price regulation within the regulated area;

i. Provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection a. of section 18 of this compact;

j. Provisions for reimbursement to participants of the women, infants and children special supplemental food program of the United States Child Nutrition Act of 1966; and

k. Other provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

11. Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection f. of section 9 of this compact, or amendment thereof, as provided in Article IV of this compact, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. s.553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each affected state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organizations, consumer or public interest groups, and local, state, or federal officials.

12. In addition to the concise general statement of basis and purpose required by section 4(b) of the federal Administrative Procedure Act, as amended (5 U.S.C. s. 553(c)), the commission shall make findings of fact with respect to:

a. Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV of this compact;

b. What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes;

c. Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order; and

d. Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13 of this compact.

13. a. For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply pursuant to subsection f. of section 9 of this compact, is approved by producers, the commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the commission. The terms and conditions of the proposed order or amendment shall be described by the commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

b. An order or amendment shall be deemed approved by producers if the commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

c. For purposes of any referendum, the commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 26, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in paragraph (1) of this subsection and subject to the provisions of paragraphs (2) through (5) of this subsection.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the commission.

(3) Any producer may obtain a ballot from the commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the commission as to the name of the cooperative of which he is a member, and the commission shall remove the name of such producer from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding a proposed order, the commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commission either directly or through his cooperative.

14. a. The commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

b. The commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

c. The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. s.553).

ARTICLE VI. ENFORCEMENT

15. a. The commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the commission is authorized to examine the books and records of any regulated person relating to his milk business and for that purpose, the properly designated officers, employees, or agents of the commission shall have full access during normal business hours to the premises and records of all regulated persons.

b. Information furnished to or acquired by the commission officers, employees, or its agents pursuant to this section shall be confidential and not

subject to disclosure except to the extent that the commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the commission. The commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (b) the publication by direction of the commission of the name of any person violating any regulation of the commission, together with a statement of the particular provisions violated by such person.

c. No officer, employee, or agent of the commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. The commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States attorney.

16. a. The commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

b. Any handler subject to an order may file a written petition with the commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the commission. After such hearing, the commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

c. The district courts of the United States in any district in which such handler is an inhabitant, or where the handler has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the commission by delivering to it a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the commission with directions either (a) to make such ruling as the court shall determine to be in accor-

dance with law, or (b) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection shall not impede, hinder, or delay the commission from obtaining relief pursuant to section 17 of this compact. Any proceedings brought pursuant to section 17 of this compact (except where brought by way of counterclaim in proceedings instituted pursuant to this section) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

17. a. Any violation by a handler of the provisions of regulations establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation; and

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

b. With respect to handlers, the commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the commission in any state or federal court of competent jurisdiction; or

(2) With the agreement of the appropriate state agency of a participating state, by referral to the state agency for enforcement by judicial or administrative remedy.

c. With respect to handlers, the commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

18. a. To provide for its start-up costs, the commission may borrow money pursuant to its general power under paragraph (4) of subsection d. of section 6 of this compact. In order to finance the costs of administration and enforcement of this compact, including payback of start-up costs, the commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed,

this assessment shall be collected on a monthly basis for up to one year from the date the commission convenes, in an amount not to exceed one-tenth of 1% of the applicable federal market order blend price per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the ongoing operating expenses of the commission.

b. The commission shall not pledge the credit of any participating state or of the United States. Notes issued by the commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

19. a. The commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

b. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the commission.

c. Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. ENTRY INTO FORCE; ADDITIONAL MEMBERS AND WITHDRAWAL

20. This compact shall enter into force when enacted into law by any three states of the group of states composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia, and when the consent of Congress has been obtained. This compact shall also be open to states which are contiguous to any of the named states and open to states which are contiguous to participating states.

21. Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the commission and the governors of all other participating states. No withdrawal shall

affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

22. If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. Congress reserves the right to amend or rescind this interstate compact at any time.

23. a. The right to alter, amend or repeal this compact is expressly reserved by Congress.

b. When an over-order price is in effect, the commission established in this compact shall compensate the commodity credit corporation before the end of the fiscal year for the cost of any increased commodity credit corporation dairy purchases that result from projected increased fluid milk production for that fiscal year within the compact region in excess of the national average rate of increase.

C.32:35-3 Delegation to Northeast Interstate Compact Commission.

3. a. The New Jersey delegation to the Northeast Interstate Compact Commission shall consist of five persons, at least one of whom shall be a dairy farmer who is engaged in the production of milk at the time of appointment or reappointment and one of whom shall be representative of interests of consumers. One member shall be appointed by the Governor; one by the President of the Senate; one by the minority leader of the Senate; one by the Speaker of the General Assembly; and one by the minority leader of the General Assembly. Members shall serve for a term of three years, except that the members first appointed by the President of the Senate and the Speaker of the Assembly shall serve for a term of two years and the members first appointed by the minority leader of the Senate and the minority leader of the General Assembly shall serve for a term of one year.

b. The members of the delegation shall receive compensation for their services of three hundred dollars per diem.

c. The department and any other agency of the state shall, when called upon, provide the members with cooperation, information and staff support.

C.32:35-4 Violations, civil penalty.

4. Any violation of the provisions of regulations adopted pursuant to the Northeast Interstate Dairy Compact establishing an over-order price, a commission marketing order, or any other regulations, shall constitute a violation of this act. Any such violation shall be subject to a civil penalty of $5,000 per occurrence.

5. This act shall take effect immediately, but shall remain inoperative until the Northeast Interstate Dairy Compact is enacted and entered into by the State of New York.

Approved January 19, 1998.

CHAPTER 403

AN ACT concerning interior designers and amending P.L.1989, c.275.

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

1. Section 1 of P.L.1989, c.275 (C.45:3-1.1) is amended to read as follows:

C.45:3-1.1 Definitions.

1. For the purposes of this act:

a. "Aesthetic principles" means the concepts of order, balance, proportion, scale, rhythm, color, texture, mass and form as used in the design process.

b. "Architect" means an individual who through education, training, and experience is skilled in the art and science of building design and has been licensed by the New Jersey State Board of Architects to practice architecture in the State of New Jersey.

c. "Architecture" means the art and science of building design and particularly the design of any structure for human use or habitation. Architecture, further, is the art of applying human values and aesthetic principles to the science and technology of building methods, materials and engineering systems, required to comprise a total building project with a coherent and comprehensive unity of structure and site.

d. "Board" means the New Jersey State Board of Architects.

e. "Certificate of authorization" means a certificate issued by the board pursuant to this amendatory and supplementary act.

f. "Closely allied professional" means and is limited to licensed architects, professional engineers, land surveyors, professional planners, and persons that provide space planning services, interior design services, or the substantial equivalent thereof.

g. "Engineering systems" means those systems necessary for the proper function of a building and the surrounding site, the proper design of which requires engineering knowledge acquired through engineering or architectural education, training, or experience. These systems include but

are not limited to structural, electrical, heating, lighting, acoustical, ventilation, air conditioning, grading, plumbing, and drainage. Drainage facilities for sites of ten acres or more or involving stormwater detention facilities or traversed by a water course shall only be designed by a professional engineer.

h. "Joint committee" means the Joint Committee of Architects and Engineers established pursuant to the "Building Design Services Act," P.L.1989, c.277 (C.45:4B-1 et seq.).

i. "Human use or habitation" means the activities of living, including, but not limited to fulfilling domestic, religious, educational, recreational, employment, assembly, health care, institutional, memorial, financial, commercial, industrial and governmental needs.

j. "Human values" means the social, cultural, historical, economic and environmental influences that have an impact on the quality of life.

k. "Practice of architecture" or "architectural services" means the rendering of services in connection with the design, construction, enlargement, or alteration of a building or a group of buildings and the space within or surrounding those buildings, which have as their principal purpose human use or habitation. These services include site planning, providing preliminary studies, architectural designs, drawings, specifications, other technical documentation, and administration of construction for the purpose of determining compliance with drawings and specifications.

l. "Responsible charge" means the rendering of regular and effective supervision by a competent licensed architect to those individuals performing services which directly and materially affect the quality and competence of architectural services rendered by the licensee. A licensee engaged in any of the following acts or practices shall be deemed not to have rendered regular and effective supervision:

(1) The regular and continuous absence from principal office premises from which professional services are rendered, except for performance of field work or presence in a field office maintained exclusively for a specific project;

(2) The failure to personally inspect or review the work of subordinates where necessary and appropriate;

(3) The rendering of a limited, cursory or perfunctory review of plans for a building or structure in lieu of an appropriate detailed review;

(4) The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

m. "Interior design services" means rendering or offering to render services, for a fee or other valuable consideration, in the preparation and administration of interior design documents, including, but not limited to,

drawings, schedules and specifications which pertain to the design intent and planning of interior spaces, including furnishings, layouts, non-load bearing partitions, fixtures, cabinetry, lighting location and type, outlet location and type, switch location and type, finishes, materials and interior construction not materially related to or materially affecting the building systems, in accordance with applicable laws, codes, regulations and standards.

2. Section 4 of P.L.1989, c.275 (C.45:3-17) is amended to read as follows:

C.45:3-17 Offering of architectural services; requirements.

4. a. Architectural services shall not be rendered or offered through any business associations other than a sole proprietorship of a licensed architect, a partnership of licensed architects, a partnership of closely allied professionals including at least one licensed architect, a professional service corporation established pursuant to the "Professional Service Corporation Act," P.L.1969, c.232 (C.14A:17-1 et seq.), a corporation authorized pursuant to section 5 of P.L.1989, c.275 (C.45:3-18) or as prescribed in the "Building Design Services Act," P.L.1989, c.277 (C.45:4B-1 et seq.).

b. Nothing in this section shall prohibit a licensed architect from rendering architectural services as an agent, director, member, officer, shareholder, associate, employee or partner of a person whose principal business is space planning services, interior design services or the substantial equivalent thereof; provided that the architect, at all times, exercises independent professional judgment in the rendering of architectural services, and adheres to the standards set forth in section 1 of P.L. 1989, c. 275 (C.45:3-1.1).

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 404

AN ACT concerning retirement benefits for certain State employees.

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

1. Notwithstanding any provision to the contrary of subsection b. of section 41 of P.L.1954, c.84 (C.43:15A-41) or subsection b. of section 6 of P.L.1996, c.8 (C.52:14-17.28b), a State employee member of the Public Employees' Retirement System of New Jersey, hereinafter referred to as PERS, who shall have been employed in an institution in the Department of Human Services during any part of the period commencing June 12, 1997 and ending February 15, 1998, may retire under the provisions of subsection b. of section 41 of P.L.1954, c.84 and receive paid health benefits for the retired employee and that employee's dependents, but not including survivors, under paragraph (2) of subsection b. of section 6 of P.L.1996, c.8, if the employee:

a. on or before February 15, 1998, files an application to retire;

b. retires on or before July 1, 1998; and

c. at the time of retirement, has attained 55 years of age and has accrued 22 or more years of service credit under the retirement system. For purposes of this act, "State employee" means a full-time employee eligible to participate in the New Jersey State Health Benefits Program.

2. A State employee who receives a benefit under this act shall forfeit all tenure rights.

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

4. A State employee purchasing service credit on or after the effective date of this act to qualify for a benefit under this act may purchase a portion of the credit which the employee is eligible to purchase.

5. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 405

AN ACT concerning divorce 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:34-23d Maintenance of certain insurance coverage in action for divorce.

1. a. Upon filing of a complaint for an action for divorce, nullity or separate maintenance, where the custody, visitation or support of a minor child is an issue, the party who has maintained all existing insurance coverage or coverage traditionally maintained during the marriage, including but not limited to, all health, disability, home or life insurance, shall continue to maintain or continue to share in the cost of maintaining the coverage.

b. If a party who has maintained the existing insurance coverage or has shared in the cost of maintaining the coverage has had a voluntary or involuntary change in employment status, which may cause the existing insurance coverage to terminate, then that party shall notify the other party that it may be necessary to reallocate the financial responsibilities of maintaining the coverage.

c. Upon receipt of this notice, the party may petition the court to reallocate financial responsibilities.

d. The court may take any action it deems appropriate to reallocate financial responsibilities including but not limited to ordering a party to obtain comparable coverage or releasing a party from the obligation or any other order.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 406

AN ACT concerning certain children's records and supplementing Title 9 of the Revised Statutes.

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

C.9:2-4.2 Parental access to children's records.

1. a. Every parent, except as prohibited by federal and State law, shall have access to records and information pertaining to his or her unemancipated child, including, but not limited to, medical, dental, insurance, child care and educational records, whether or not the child resides with the parent, unless that access is found by the court to be not in the best interest of the child or the access is found by the court to be sought for the purpose of causing detriment to the other parent.

b. The place of residence of either parent shall not appear on any records or information released pursuant to the provisions of this section.

c. A child's parent, guardian or legal custodian may petition the court to have a parent's access to the records limited. If the court, after a hearing, finds that the parent's access to the record is not in the best interest of the child or that the access sought is for the purpose of causing detriment to the other parent, the court may order that access to the records be limited.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 407

AN ACT concerning equitable distribution and amending P.L.1988, c.153.

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

1. Section 4 of P.L.1988, c.153 (C.2A:34-23.1) is amended to read as follows:

C.2A:34-23.1 Equitable distribution criteria.

4. In making an equitable distribution of property, the court shall consider, but not be limited to, the following factors:

a. The duration of the marriage;

b. The age and physical and emotional health of the parties;

c. The income or property brought to the marriage by each party;

d. The standard of living established during the marriage;

e. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution;

f. The economic circumstances of each party at the time the division of property becomes effective;

g. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;

h. The contribution by each party to the education, training or earning power of the other;

i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker;

j. The tax consequences of the proposed distribution to each party;

k. The present value of the property;

l. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects;

m. The debts and liabilities of the parties;

n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children;

o. The extent to which a party deferred achieving their career goals; and

p. Any other factors which the court may deem relevant.

In every case, the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

It shall be a rebuttable presumption that each party made a substantial financial or nonfinancial contribution to the acquisition of income and property while the party was married.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 408

AN ACT concerning local 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 16 of P.L.1971, c.198 (C.40A:11-16) is amended to read as follows:

C.40A:11-16 Separate plans for various types of work; bids; contracts.

16. Separate plans for various types of work; bids; contracts

In the preparation of plans and specifications for the erection, alteration or repair of any public building by any contracting unit, when the entire cost of the work will exceed the amount set forth in, or the amount calculated by the Governor pursuant to, section 3 of P.L.1971, c.198 (C.40A:11-3), the architect, engineer or other person preparing the plans and specifications may prepare separate plans and specifications for

(1) The plumbing and gas fitting and all kindred work;

(2) Steam power plants, steam and hot water heating and ventilating apparatus and all kindred work;

(3) Electrical work;

(4) Structural steel and ornamental iron work; and

(5) All other work required for the completion of the project.

The contracting unit or its contracting agent shall advertise for and receive, in the manner provided by law, either (a) separate bids for each of said branches of work, or (b) bids for all the work and materials required to complete the building to be included in a single overall contract, or (c) both. In the case of a single bid under (b) or (c), there will be set forth in the bid the name or names of 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 this act. The contracting unit shall require evidence of performance security to be submitted simultaneously with the list of the subcontractors. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

Whenever a bid sets forth more than one subcontractor for any of the specialty trade categories (1) through (4) specified hereinabove in this section, the bidder shall submit to the contracting unit a certificate signed by the bidder listing each subcontractor named in the bid for that category. The certificate shall set forth the scope of work for which the subcontractor has submitted a price quote and which the bidder has agreed to award to each subcontractor should the bidder be awarded the contract. The certificate shall be submitted to the contracting unit simultaneously with the list of the subcontractors. The certificate may take the form of a single certificate

listing all subcontractors or, alternatively, a separate certificate may be submitted for each subcontractor. If a bidder does not submit a certificate or certificates to the contracting unit, the contracting unit shall award the contract to the next lowest responsible bidder.

Contracts shall be awarded to the lowest responsible bidder. In the event that a contract is advertised in accordance with (c) above said contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each branch is less than the amount bid by the lowest responsible bidder for all the work and materials, the contracting unit shall award separate contracts for each of such branches to the lowest responsible bidder therefor, but if the sum total of the amounts bid by the lowest responsible bidder for each branch is not less than the amount bid by the lowest responsible bidder for all the work and materials, the contracting unit shall award a single overall contract to the lowest responsible bidder for all of such work and materials. In every case in which a contract is awarded under (b) above, all payments required to be made under such contract for work and materials supplied by a subcontractor shall, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor.

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

Approved January 19, 1998.

CHAPTER 409

AN ACT excluding military pension payments and military survivor's benefit payments for certain persons from gross income subject to the gross income tax and supplementing Title 54A of the New Jersey Statutes.

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

C.54A:6-26 Certain military pension, survivor's benefit payments excluded from gross income.

1. Gross income shall not include military pension payments or military survivor's benefit payments paid to individuals by the United States with respect to service in the Armed Forces of the United States by a person who is 62 years of age or older or who, by virtue of disability, is or would be eligible to receive payments under the Federal Social Security Act at any point during the taxable year for which the military pension payment or the

military survivor's benefit payments would otherwise be included as income.

2. Notwithstanding any law to the contrary, pension payments otherwise excludable as income pursuant to this act shall be considered income for the purpose of determining income eligibility for any State benefit or program if the payments were considered income for such purposes prior to enactment.

3. This act shall take effect immediately and apply to taxable years commencing on or after January 1, 1998.

Approved January 19, 1998.

CHAPTER 410

AN ACT concerning penalties for committing an offense while released on bail and amending 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:44-5.1 Penalties for committing certain offenses while released on bail, own recognizance increased.

1. a. A person who has been convicted under subsection a. of N.J.S.2C:39-4 of possession of a firearm with intent to use it unlawfully against the person of another; or a crime under N.J.S.2C:11-3; N.J.S.2C:11-4; N.J.S.2C:13-1; subsection a. of N.J.S.2C:14-2; subsection a. of N.J.S.2C:14-3; N.J.S.2C:15-1; N.J.S.2C:18-2 if the burglary is a crime of the second degree or the structure was adapted for overnight accommodation of persons; or a crime of the first, second or third degree under subsection b. of N.J.S.2C:12-1; shall be sentenced to an extended term of imprisonment pursuant to the provisions of N.J.S.2C:43-7 and shall be subject to double the fine authorized for that crime under the provisions of N.J.S.2C:43-3 if, at the time of the commission of the crime, the defendant was released on bail or on his own recognizance for one of the enumerated crimes and was convicted of that crime.

b. The court shall not impose a sentence of imprisonment pursuant to this section unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the

ground proposed. The defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.

2. N.J.S.2C:43-7 is amended to read as follows:

Sentence of imprisonment for crime; extended terms.

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced, and in the cases designated in subsection e. of section 2 of P.L.1994, c.130 (C.2C:43-6.4), in subsection b. of section 2 of P.L.1995, c.126 (C.2C:43-7.1) and in the cases designated in section 1 of P.L.1997, c.410 (C.2C:44-5.1), a person who has been convicted of a crime shall be sentenced, to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; or kidnaping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c., 2C:44-3d., 2C:44-3e. for a term of five years, and in the case of a crime of the fourth degree pursuant to 2C:43-6f. and 2C:43-6g. for a term which shall be fixed by the court between three and five years;

(6) In the case of the crime of murder, for a specific term of years which shall be fixed by the court between 35 years and life imprisonment, of which the defendant shall serve 35 years before being eligible for parole;

(7) In the case of kidnaping under paragraph (2) of subsection c. of 2C:13-1, for a specific term of years which shall be fixed by the court between 30 years and life imprisonment, of which the defendant shall serve 30 years before being eligible for parole.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant

shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 411

AN ACT concerning the safety of certain persons when operating roller skates or skateboards, and supplementing chapter 4 of Title 39 of the Revised Statutes and amending P.L.1991, c.465.

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

C.39:4-10.5 Definitions, requirements relative to wearing helmets when roller skating, skate boarding.

1. a. As used in this act:

"Director" means the Director of Consumer Affairs in the Department of Law and Public Safety.

"Roller skates" means a pair of devices worn on the feet with a set of wheels attached, regardless of the number or placement of those wheels, and used to glide or propel the user over the ground.

b. A person under 14 years of age shall not operate any roller skates or skateboard unless that person is wearing a properly fitted and fastened helmet which meets the standards of the American National Standards Institute (ANSI Z90.4 bicycle helmet standard), the Snell Memorial Foundation's 1990 Standard for Protective Headgear for Use in Bicycling, the American Society for Testing and Materials (ASTM) standard or other such standard, as appropriate.

c. The requirement in subsection b. of this section shall apply at all times while a person subject to the provisions of this act is operating roller skates or skateboarding on any property open to the public or used by the public for roller skating or skateboarding.

C.39:4-10.6 Violations, penalties, disposition of fines collected.

2. a. A person who violates the provisions of section 1 of this act by failing to wear an approved helmet shall be warned of the violation by the enforcing official. The parent or legal guardian of the violator may be fined a maximum of $25 for a first offense and a maximum of $100 for a subsequent offense. The penalties provided under the provisions of this subsection for failing to wear an approved helmet may be waived if the parent or legal guardian of the violator presents suitable proof that an approved helmet or appropriate personal protection equipment has been purchased since the violation occurred.

b. All moneys collected as fines under subsection a. of this section shall be deposited in the "Bicycle and Skating Safety Fund" pursuant to section 2 of P.L.1991, c.465 (C.39:4-10.2).

C.39:4-10.7 Noncompliance no bar to action.

3. The failure of any person to comply with the provisions of section 1 of this act shall not constitute negligence per se, contributory negligence or assumption of risk, and shall not in any way bar, preclude or foreclose an action for personal injury or wrongful death by or on behalf of such person.

C.39:4-10.8 Warning notice for roller skates, skateboards; immunity from civil liability.

4. a. It shall be unlawful to manufacture, assemble, sell, offer to sell or distribute roller skates or skateboards unless such roller skates or skateboards contain a warning notice consistent with the requirements of this section.

b. The warning notice required by subsection a. of this section shall be placed in at least one of the following locations and shall be clearly visible to the consumer: (1) on one roller skate in each pair of roller skates or on the skateboard; (2) on the outside of the box or other container in which the roller skates or the skateboard are offered for sale at retail; or (3) on any user's guide or instruction manual provided with the roller skates or the skateboard.

c. The warning notice required by subsection a. of this section must be printed in clear and conspicuous type and be substantially similar to the following notice: "WARNING! REDUCE THE RISK OF SERIOUS INJURY AND ONLY USE WHILE WEARING FULL PROTECTIVE GEAR -- HELMET, WRIST GUARDS, ELBOW PADS AND KNEE PADS."

d. A person, firm, corporation or other legal entity regularly engaged in the business of manufacturing or assembling roller skates or skateboards who complies with the requirements of this section shall not be liable in a civil action for damages for any physical injury sustained by a user of roller skates or a skateboard as a result of that user's failure to wear a helmet in accordance with the provisions of this act.

C.39:4-10.9 Posting of sign required; violations; penalties.

5. a. A person, firm, corporation or other legal entity regularly engaged in the business of selling or renting roller skates or skateboards shall post a sign at the point where the sale or rental transaction is completed stating: "STATE LAW REQUIRES A PERSON UNDER 14 YEARS OF AGE TO WEAR A HELMET WHEN ROLLER SKATING OR SKATEBOARDING." The size of the sign shall be at a minimum 15 inches in length and 8 inches in width. This notification requirement shall not apply to a seller when roller skates are sold through the use of a mail order catalog or brochure where the purchase and payment are made by mail, telephone or another telecommunications or electronic method.

b. A person, firm, corporation or other legal entity who fails to post the sign required by subsection a. of this section shall be subject to a penalty not to exceed $25 a day for each day the business is open to the public and the sign is not posted. The enforcement of this subsection shall be vested in the director, the inspectors appointed under his authority and the police or peace officers of, or inspectors duly appointed for this purpose by, any municipal-

ity or county or the State. Jurisdiction of proceedings to collect the penalties prescribed by this act is vested in the Superior Court and the municipal court in any municipality where the defendant resides. Process shall be either a summons or warrant and shall be executed in a summary manner pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

c. A person, firm, corporation or other legal entity regularly engaged in the business of renting roller skates or skateboards shall make available an approved helmet to a person under 14 years of age who rents the roller skates or skateboards for use in an area where a helmet is required, if the person does not already have a helmet in his possession. A fee may be charged for the helmet rental.

d. A person, firm, corporation or other legal entity regularly engaged in the business of selling or renting roller skates or skateboards who complies with the applicable requirements of this section shall not be liable in a civil action for damages for any physical injury sustained by a user of roller skates or a skateboard who is under the age of 14 years as a result of that person's failure to wear a helmet in accordance with the provisions of this act.

e. Sixty days before the effective date of this act, the Division of Consumer Affairs in the Department of Law and Public Safety shall make a reasonable effort to notify any person, firm, corporation or other legal entity who is regularly engaged in the business of selling or renting roller skates or skateboards of the requirements of this section. The responsibility of a person, firm, corporation or other legal entity under this section shall not be abrogated or diminished in any manner if the person fails to receive or become aware of a notice from the division.

C.39:4-10.10 Rights, duties of roller skaters, skateboarders on roadway.

6. Every person operating any roller skates or skateboard upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes and all supplements thereto, except as to those provisions thereof which by their nature can have no application.

Regulations applicable to roller skates and skateboards shall apply whenever any person operates any roller skates or skateboard upon any highway or upon any path set aside for the exclusive use of roller skates or skateboards subject to those exceptions stated herein.

C.39:4-10.11 Roller skaters, skateboarders to keep to right of roadway; exceptions.

7. Every person operating any roller skates or skateboard upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in

the same direction; provided, however, that any person may move to the left under any of the following situations:

(a) to make a left turn from a left-turn lane or pocket;

(b) to avoid debris, drains or other hazardous conditions that make it impracticable to ride at the right side of the roadway;

(c) to pass a slower moving vehicle;

(d) to occupy any available lane when traveling at the same speed as other traffic;

(e) to travel no more than two abreast when traffic is not impeded.

Persons operating any roller skates or skateboards upon a roadway may travel no more than two abreast when traffic is not impeded, but otherwise shall ride in single file, except on paths or parts of roadways set aside for the exclusive use of bicycles, roller skates or skateboards.

C.39:4-10.12 Act not applicable to roller skating rinks.

8. The provisions of this act shall not apply to the operators and patrons of roller skating rinks governed by the provisions of the "New Jersey Roller Skating Rink Safety and Fair Liability Act," P.L.1991, c.28 (C.5:14-1 et seq.).

C.39:4-10.13 Rules, regulations.

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

10. Section 1 of P.L.1991, c.465 (C.39:4-10.1) is amended to read as follows:

C.39:4-10.1 Bicycle helmets, requirements.

1. a. A person under 14 years of age shall not operate, or ride upon a bicycle as a passenger, unless that person is wearing a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute (ANSI Z90.4 bicycle helmet standard) or the Snell Memorial Foundation's 1990 Standard for Protective Headgear for Use in Bicycling. This requirement shall apply to a person who rides upon a bicycle while in a restraining seat which is attached to the bicycle or in a trailer towed by the bicycle.

As used in this act, "bicycle" means a vehicle with two wheels propelled solely by human power and having pedals, handle bars and a saddle-like seat. The term shall include a bicycle for two or more persons having seats and corresponding sets of pedals arranged in tandem.

b. The director shall publish a list of bicycle helmets which meet the standards described in subsection a. of this section and shall provide for its

distribution in as many locations frequented by the public as the director deems appropriate and practicable.

c. The requirement in subsection a. of this section shall apply at all times while a bicycle is being operated on any property open to the public or used by the public for pedestrian and vehicular purposes; however, a municipality may by ordinance exempt from this requirement a person operating or riding on a bicycle as a passenger when the bicycle is operated:

(1) on a road or highway closed to motor vehicle traffic and limited to pedestrian or bicycle use at all times or only during specified periods of time during which bicycles may be operated; or

(2) exclusively on a trail, route, course, boardwalk, path or other area which is set aside for the use of bicycles or for the use of pedestrians and bicycle operation is not otherwise prohibited. However, an exemption may not be granted under this paragraph for any portion of a trail, route, course, boardwalk, path or other area which is immediately adjacent to a road or highway used by motor vehicle traffic and which does not contain a barrier of sufficient height and rigidity to prevent the inadvertent or deliberate entry of a bicycle operator onto the road or highway.

d. An ordinance enacted pursuant to subsection c. of this section shall specify those roads, highways, trails, routes, courses, boardwalks, paths or areas within the municipality where helmets are not required during the operation of a bicycle.

e. When a bicycle is being operated in an area where bicycle helmets are not required, the operator or a passenger, except a passenger in a restraining seat or trailer, shall dismount from the bicycle and walk whenever it is necessary to enter a crosswalk or to cross a road or highway upon which motor vehicle traffic is permitted.

11. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to read as follows:

C.39:4-10.2 Violations, warnings, fines; "Bicycle and Skating Safety Fund."

2. a. A person who violates a requirement of this act shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be fined a maximum of $25 for the person's first offense and a maximum of $100 for a subsequent offense if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct. Penalties provided in this section for a failure to wear a helmet may be waived if an offender or his parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred.

b. All money collected as fines under subsection a. of this section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-10.6) shall be deposited in a nonlapsing revolving fund to be known as the "Bicycle and Skating Safety Fund." Interest earned on money deposited in the fund shall accrue to the fund. Money in the fund shall be utilized by the director to provide educational programs devoted to bicycle, roller skating and skateboarding safety. If the director determines that sufficient money is available in the fund, he also may use, in a manner prescribed by rule and regulation, the money to assist low income families in purchasing approved bicycle helmets. For the purposes of this subsection, "low income family" means a family which qualifies for low income housing under the standards promulgated by the Council on Affordable Housing pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

12. This act shall take effect on the first day of the seventh month following enactment, except that section 9 shall take effect immediately.

Approved January 19, 1998.

CHAPTER 412

AN ACT concerning registration of certain federal liens, amending P.L.1965, c.123 and supplementing chapter 16 of Title 46 of the Revised Statutes.

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

C.46:16-15 Applicability of act to certain federal liens.

1. This act applies to liens arising from the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.), and to other federal liens, notice of which under any Act of Congress or any regulation adopted pursuant thereto, are required or permitted to be filed in such filing or recording office as a state may designate; provided, however, that the provisions of this act shall not apply to filing notice of federal tax liens pursuant to the Internal Revenue Code, 26 U.S.C. s.1 et seq., and which are subject to R.S.46:16-13.

C.46:16-16 Filing of certificates, notices affecting liens.

2. Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in

the office of the county recording officer of the county or counties wherein the property subject to such liens is situated.

C.46:16-17 Certification of notices of liens, certificates, etc.

3. Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

C.46:16-18 Endorsement, fee.

4. a. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate is presented to the county recording officer, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

b. If a refiled notice of federal lien referred to in subsection a. of this section or any certificate of release, nonattachment, discharge or subordination is presented for filing to the county recording officer, he shall permanently attach the refiled notice of the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

c. All notices received by a filing officer pursuant to this section and the index of the notices shall be held for public inspection by the filing officer. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of $2 per page.

C.46:16-19 Fee for filing, indexing notice of lien, certificate, etc.

5. The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:

a. For a lien on real estate, $8;

b. For a lien on tangible and intangible personal property, $8;

c. For a certificate of discharge or subordination, $8;

d. For all other notices, including a certificate of release or nonattachment, $5.00.

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

6. Section 2 of P.L.1965, c.123 (C.22A:4-4.1) is amended to read as follows:

C.22A:4-4.1 Fees for services of county clerks and registers.

2. County clerks and registers of deeds and mortgages, in counties having such offices, shall charge for the services herein enumerated the following fees:

	Fee
For recording veteran's discharge papers	No fee
For recording any instrument:	
First page	$15.00
Each additional page or part thereof	$ 2.00
Each rider, insertion, addition, or any map, plat or sketch filed or recorded pursuant to paragraph (c) of section 2 of P.L.1957, chapter 130 (C.48:3-17.3)	$2.00
For entering the marginal notation of an order judgment, statement or warrant discharging, annulling a notice of lis pendens and for filing such order, judgment or statement	$3.00
For preparing and transmitting to the assessor, collector, or other custodian of the assessment map of any taxing district, the abstract of an instrument evidencing title to realty	. $3.00
For entering the marginal notation of a discharge or release of a New Jersey building and loan or savings and loan mortgage and forwarding abstract	$3.00
For entering the marginal notation of a discharge, assignment, postponement or release of a mortgage, other than building and loan and savings and loan mortgages	$3.00
For the cancellation of any mortgage	$8.00
For a marginal notation of the discharge of a mortgage in counties where mortgages are indexed under a system requiring a duplication of indices and description	$3.00

For filing and recording notice of federal tax lien or other federal lien or certificate discharging such lien	$8.00
For filing each map, plat, plan or chart (except when presented by the State or its agencies or filed pursuant to paragraph (c) of section 2 of P.L.1957, c.130 (C.48:3-17.3))	$18.00
For recording tax sale certificate, except by municipalities, or a redemption or assignment of tax sale certificate, first page	$15.00
Each additional page or part thereof	$2.00
Certified copy of veteran's discharge	$1.00
For indexing any recorded instrument in excess of 10 parties, per each name in excess of 10	$0.30
For recording tax sale certificate, lien, deed, or related instrument by a municipality	$3.00

7. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 413

AN ACT exempting certain income of certain corporations of foreign countries from taxation under the corporation business tax, amending P.L.1945, c.162.

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

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

C.54:10A-4 Definitions.

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

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

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

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

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

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the 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. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

(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) (i) 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.

(ii) 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.

(H) The amount of any sales and use tax paid by a utility vendor pursuant to section 71 of P.L.1997, c.162.

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

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

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

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

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

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

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

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

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

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

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

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

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income

used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

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

(7) The entire net income of gas, electric and gas and electric public utilities and municipal electric corporations that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting the New Jersey depreciation allowance for federal tax depreciation with respect to assets placed in service prior to January 1, 1998. For gas, electric, and gas and electric public utilities, and municipal electric corporations that were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation allowance shall be computed as follows: All depreciable assets placed in service prior to January 1, 1998 shall be considered a single asset account. The New Jersey tax basis of this depreciable asset account shall be an amount equal to the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all depreciable assets in service on December 31, 1997, increased by the excess, of the "net carrying value," defined to be adjusted book basis of all assets and liabilities, excluding deferred income taxes, recorded on the public utility's books of account on December 31, 1997, over the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all assets and liabilities owned by the gas, electric, or gas and electric public utility or municipal electric corporation as of December 31, 1997. "Books of account" for gas, gas and electric, and electric public utilities and municipal electric corporations means the uniform system of accounts as promulgated by the Federal Energy Regulatory Commission and adopted by the Board of Public Utilities. The following adjustments to entire net income shall be made pursuant to this section:

(A) Depreciation for property placed in service prior to January 1, 1998 shall be adjusted as follows:

(i) Depreciation for federal income tax purposes shall be disallowed in full.

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for

the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets in the single asset account were first placed in service on January 1, 1998. Depreciation shall be computed using the straight line method over a thirty-year life. A full year's depreciation shall be allowed in the initial tax year. No half-year convention shall apply. The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

(B) Gains and losses on sales, retirements and other dispositions of assets placed in service prior to January 1, 1998 shall be recognized and reported on the same basis as for federal income tax purposes.

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility's operations are separated, spun-off, transferred to a separate company or otherwise disaggregated.

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunication public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c.162 (C.54:10A-5.25 et al.).

(9) Notwithstanding paragraph (1) of this subsection, entire net income shall not include the income derived by a corporation organized in a foreign country from the international operation of a ship or ships, or from the international operation of aircraft, if such income is exempt from federal taxation pursuant to section 883 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

(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. s.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 and Insurance 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 and Insurance 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. s.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).

(q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 414

AN ACT concerning medical savings accounts, amending P.L.1992, c.161 and amending and supplementing Title 54A of the New Jersey Statutes.

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

1. Section 6 of P.L.1992, c.161 (C.17B:27A-7) is amended to read as follows:

C.17B:27A-7 Establishment of policy, contract forms; high deductible health plan; benefit levels.

6. The board shall establish the policy and contract forms and benefit levels to be made available by all carriers for the health benefits plans required to be issued pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and shall adopt such modifications to one or more plans as the board determines are necessary to make available a "high deductible health plan" or plans consistent with section 301 of Title III of the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191, regarding tax-deductible medical savings accounts, within 60 days after the enactment of P.L.1997, c.414 (C.54A:3-4 et al.). The board shall provide the commissioner with an informational filing of the policy and contract forms and benefit levels it establishes.

a. The individual health benefits plans established by the board may include cost containment measures such as, but not limited to: utilization review of health care services, including review of medical necessity of hospital and physician services; case management benefit alternatives; selective contracting with hospitals, physicians, and other health care providers; and reasonable benefit differentials applicable to participating and nonparticipating providers; and other managed care provisions.

b. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no more than

12 months on coverage for preexisting conditions. An individual health benefits plan offered pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall not contain a preexisting condition limitation of any period under the following circumstances:

(1) to an individual who has, under creditable coverage, with no intervening lapse in coverage of more than 31 days, been treated or diagnosed by a physician for a condition under that plan or satisfied a 12-month preexisting condition limitation; or

(2) to a federally defined eligible individual who applies for an individual health benefits plan within 63 days of termination of the prior coverage.

c. In addition to the five standard individual health benefits plans provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board may develop up to five rider packages. Premium rates for the rider packages shall be determined in accordance with section 8 of P.L.1992, c.161 (C.17B:27A-9).

d. After the board's establishment of the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier shall file the policy or contract forms with the board and certify to the board that the health benefits plans to be used by the carrier are in substantial compliance with the provisions in the corresponding board approved plans. The certification shall be signed by the chief executive officer of the carrier. Upon receipt by the board of the certification, the certified plans may be used until the board, after notice and hearing, disapproves their continued use.

e. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary date of an individual health benefits plan in effect on the effective date of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its

insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this section. This section shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

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

Medical expenses.

54A:3-3. Medical expenses. (a) Each taxpayer shall be allowed to deduct from the taxpayer's gross income medical expenses for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents with respect to such expenses that were paid during the taxable year and to the extent that such medical expenses exceed 2% of the taxpayer's gross income. In the case of a nonresident, gross income shall mean gross income which such nonresident would have reported if the taxpayer had been subject to tax during the entire taxable year as a resident.

(b) Special Rule for Decedents.

(1) Treatment of expenses paid after death. Expenses for the medical care of the taxpayer which are paid out of the taxpayer's estate during the one-year period beginning with the day after the day of the death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation. Paragraph (1) shall not apply if the amount paid is not allowable as a deduction in computing medical expense deductions for federal income tax purposes.

(c) Disallowance of amounts allowed for other purposes. Any expenses allowed as a deduction of expenses for household and dependent care services necessary for gainful employment shall not be allowed as an expense paid for medical care for purposes of this section. Any amounts paid or distributed out of a medical savings account that are excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27) shall not be allowed as an expense paid for medical care for purposes of this section.

C.54A:3-4 Deductions for contributions to medical savings account.

3. a. A taxpayer may deduct from the taxpayer's gross income an amount equal to the contributions to a medical savings account that the taxpayer is allowed for the taxable year as a deduction for federal income

tax purposes pursuant to section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.

b. The deduction provided by subsection a. of this section shall, notwithstanding any amendment or supplement to federal law, be allowed only to "eligible individuals" qualifying under the limitations of subsection (i), and subject to the numerical limits of subsection (j), of section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.220, as in effect on January 1, 1997.

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

New Jersey gross income defined.

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

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property, and amounts paid or distributed, or deemed paid or distributed, out of a medical savings account that are not excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27).

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

(1) taxes based on income;

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

(3) treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f)

for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

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

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

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

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganiza-

tion, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

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

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

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

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after

the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

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

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

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

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

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

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

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

g. Gambling winnings.

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

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey

Statutes and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income.

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

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

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

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

p. Net pro rata share of S corporation income.

C.54A:6-27 Contributions to medical savings account not included in gross income.

5. a. Gross income shall not include contributions to a taxpayer's medical savings account that are excluded from the taxpayer's federal gross income pursuant to section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.

b. Gross income shall not include amounts paid or distributed, or deemed paid or distributed, out of a taxpayer's medical savings account that are excluded from the taxpayer's federal gross income pursuant to section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.220.

c. The exclusions provided by subsections a. and b. of this section shall, notwithstanding any amendment or supplement to federal law, be allowed only to "eligible individuals" qualifying under the limitations of subsection (i), and subject to the numerical limits of subsection (j), of section 220 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.220, as in effect on January 1, 1997.

6. This act shall take effect immediately and sections 2 through 5 shall apply to taxable years beginning on or after January 1, 1998.

Approved January 19, 1998.

CHAPTER 415

AN ACT concerning the rate of speed on certain highways and amending R.S.39:4-98 and supplementing chapter 4 of Title 39 of the Revised Statutes.

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

1. R.S.39:4-98 is amended to read as follows:

Rates of speed.

39:4-98. Rates of speed. Subject to the provisions of R.S.39:4-96 and R.S.39:4-97 and except in those instances where a lower speed is specified in this chapter, it shall be prima facie lawful for the driver of a vehicle to drive it at a speed not exceeding the following:

a. Twenty-five miles per hour, when passing through a school zone during recess, when the presence of children is clearly visible from the roadway, or while children are going to or leaving school, during opening or closing hours;

b. (1) Twenty-five miles per hour in any business or residential district;

(2) Thirty-five miles per hour in any suburban business or residential district;

c. Fifty miles per hour in all other locations, except as otherwise provided in the "Sixty-Five MPH Speed Limit Implementation Act," P.L.1997, c.415 (C.39:4-98.3 et al.).

Whenever it shall be determined upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, the Commissioner of Transportation, with reference to State highways, may by regulation and municipal or county authorities, with reference to highways under their jurisdiction, may by ordinance, in the case of municipal authorities, or by ordinance or resolution, in the case of county authorities, subject to the approval of the Commissioner of Transportation, except as otherwise provided in R.S.39:4-8, designate a reasonable and safe speed limit thereat which, subject to the provisions of R.S.39:4-96 and R.S.39:4-97, shall be prima facie lawful at all times or at such times as may be determined, when appropriate signs giving notice thereof are erected at such intersection, or other place or part of the highway. Appropriate signs giving notice of the speed limits authorized under the provisions of paragraph (1) of subsection b. and subsection c. of this section may be erected if the commissioner or

the municipal or county authorities, as the case may be, so determine they are necessary. Appropriate signs giving notice of the speed limits authorized under the provisions of subsection a. and paragraph (2) of subsection b. of this section shall be erected by the commissioner or the municipal or county authorities, as appropriate.

The driver of every vehicle shall, consistent with the requirements of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

The Commissioner of Transportation shall cause the erection and maintenance of signs at such points of entrance to the State as are deemed advisable, setting forth the lawful rates of speed, the wording of which shall be within his discretion.

C.39:4-98.3 Short title.

2. This act may be known and shall be cited as the "Sixty-Five MPH Speed Limit Implementation Act."

C.39:4-98.4 Definitions relative to 65 mph speed limit.

3. As used in this act:

"Authorities" means the New Jersey Highway Authority, the New Jersey Turnpike Authority and the South Jersey Transportation Authority.

"Commissioner" means the Commissioner of Transportation.

"Eligible public highways" means public highways as defined in section 3 of P.L. 1984, c. 73 (C.27:1B-3) of which portions have been determined by the commissioner to be appropriate for a 65 miles per hour speed limit based on such criteria as determined by the commissioner. Public highways under the jurisdiction of counties and municipalities shall not be eligible public highways.

C.39:4-98.5 Speed limit of 65 mph established, certain highways.

4. a. Within four months following the effective date of this act, the commissioner, in consultation with the Attorney General and the authorities, shall establish by written order speed limits of 65 miles per hour on approximately 400 miles of eligible public highways. The commissioner, pursuant to section 7 of this act, may increase or decrease the number of miles of eligible public highways on which a 65 miles per hour speed limit has been established.

b. An order to be issued pursuant to subsection a. of this section shall cite the eligible public highways to which it is to be applicable and contain

a description in plain language of the order's contents, the effective date of the order and any other information the commissioner deems necessary.

c. The commissioner shall cause a general public notice of the proposed order, including a summary of the provisions of the proposed order, to be published in a newspaper or newspapers having general circulation in the municipality or municipalities affected by the order. The notice shall include a telephone number or address which a member of the public may use to receive a copy of the complete text of the proposed order and shall provide for a 30-day period from the date of publication for public comment. The order shall be final on the 31st day after publication of the notice or on a later date if the commissioner so determines. Nothing in this subsection shall be construed as prohibiting the commissioner from extending the comment period or from modifying or withdrawing the proposed order as a result of the review of public comment.

d. A final order shall be effective and enforceable upon compliance with the requirement for the posting of signs providing notice of the speed limit, as provided under the applicable provisions of R.S.39:4-98 and R.S.39:4-198.

e. Any official traffic control device established pursuant to this section shall conform to the "Manual on Uniform Traffic Control Devices."

f. Any order issued pursuant to this section shall be binding and enforceable under the provisions of Title 39 of the Revised Statutes and all other applicable laws, in any court of competent jurisdiction, until superseded by order of the commissioner pursuant to this act.

C.39:4-98.6 Certain fines doubled where speed limit is 65 mph.

5. a. The fine for a motor vehicle offense embodied in the following sections of statutory law, when committed in an area which has been designated as having a speed limit of 65 miles per hour, shall be double the amount specified by law:

R.S.39:4-52;
R.S.39:4-57;
R.S. 39:4-80;
R.S. 39:4-81;
R.S. 39:4-84;
R.S. 39:4-85;
R.S. 39:4-86;
R.S. 39:4-88;
R.S. 39:4-89;
R.S. 39:4-90;
R.S. 39:4-96;
R.S. 39:4-97;

R.S. 39:4-98, when guilty of driving at a speed that is 10 miles per hour or more over the established speed limit;
R.S. 39:4-126;
R.S. 39:4-127;
R.S. 39:4-129;
R.S. 39:4-144;
P.L. 1955, c.217 (C.39:5C-1);
Section 41 of P.L. 1951, c.23 (C.39:4-82.1);
Section 51 of P.L. 1951, c.23 (C.39:4-90.1);
Section 5 of P.L. 1951, c.264 (C.27:23-29);
Section 18 of P.L. 1952, c.16 (C.27:12B-18); and
Section 21 of P.L. 1991, c.252 (C.27:25A-21).

b. (1) Signs designed in compliance with the specifications of the Department of Transportation or, if appropriate, the authority having jurisdiction over the appropriate highway, shall be appropriately placed, by order of the commissioner or the affected authority, as the case may be, to notify drivers approaching areas designated as having a speed limit of 65 miles per hour that the fines are doubled for motor vehicle offenses in those areas.

(2) In addition, all traffic control signs and devices erected or displayed by the State Department of Transportation or an authority within an area designated as having a speed limit of 65 miles per hour shall conform to the uniform system specified in the most current "Manual on Uniform Traffic Control Devices for Streets and Highways, " prepared by the Federal Highway Administration in the United States Department of Transportation.

c. It shall not be a defense to the imposition of the fines authorized under the provisions of this act that a sign notifying drivers that fines are doubled was not posted, improperly posted, wrongfully removed or stolen, or that signs or devices were not placed in compliance with the most current "Manual on Uniform Traffic Control Devices for Streets and Highways."

d. The Director of Motor Vehicles in the Department of Transportation shall include information concerning the penalties imposed pursuant to this section in any subsequent revision of the New Jersey Driver Manual and the New Jersey Motorist Guide.

C.39:4-98.7 Speeding 20 mph or more over limit; fines, certain; doubled.

6. The fine for a motor vehicle offense shall be double the amount specified by law when traveling 20 miles per hour or more over the designated speed limit as set forth in R.S.39:4-98, except as provided in subsection b. of section 1 of P.L.1993, c.332 (C.39:4-203.5) and subsection a. of section 5 of P.L.1997, c.415 (C.39:4-98.6).

C.39:4-98.8 Study to determine effect of 65 mph speed limit; report; implementation.

7. a. During the first 18 months following the establishment of 65 miles per hour speed limits on eligible public highways pursuant to section 4 of this act, the commissioner, in consultation with the Attorney General and the authorities, shall conduct a study to determine the overall impact of this act. The study shall consider public safety, environmental and cost issues, including, but not limited to speed, accident rates, fatalities, enforcement, air quality and such other issues as the commissioner deems appropriate to evaluate fully the effect of the 65 miles per hour speed limit on the State.

b. A report of the study's findings and recommendations, including a recommendation as to whether the number of miles of eligible public highways should increase, decrease or remain the same, shall be submitted to the Governor, President of the Senate and Speaker of the General Assembly no later than 21 months after the establishment of 65 miles per hour speed limits on eligible public highways pursuant to section 4 of this act.

c. The commissioner shall implement the recommendations contained in the report 60 days following the report's submission to the Governor and Legislature unless the recommendations, either all or in part, are disapproved each by the Senate and the General Assembly by passage of a concurrent resolution stating, in substance, that the Legislature does not favor the recommendations. If the recommendations are disapproved in part by concurrent resolution, the commissioner shall implement those recommendations that are not disapproved.

C.39:4-98.9 Emergency orders.

8. a. Notwithstanding any other provision of law to the contrary, the commissioner is authorized to set or change by emergency order, for periods of up to 60 days, the speed limit on any public highway based on emergent conditions, such as construction work, dangerous conditions, extreme congestion or traffic problems, imminent peril, or imminent risk to motorists or to the public safety.

b. An emergency order issued pursuant to this section shall cite the portions of public highway to which it is to be applicable, a description in plain language of what the order requires, the effective date of the order, and any other information the commissioner deems necessary.

c. An emergency order issued pursuant to this section shall be final upon the signature of the commissioner, or on a later date if the commissioner so determines, and shall be effective and enforceable upon compliance with the requirement for the posting of signs providing notice of the speed limit, as provided under the applicable provisions of R.S.39:4-98 and R.S.39:4-198.

d. An emergency order issued pursuant to this section may, upon its expiration date, be renewed by the commissioner for additional 60-day periods, until the emergent condition necessitating the emergency order is mitigated.

e. Any official traffic control device established pursuant to this section shall conform to the "Manual on Uniform Traffic Control Devices."

9. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 416

AN ACT concerning the licensure and duties of health officers and specialists and revising parts of the statutory law.

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

1. R.S.24:2-3 is amended to read as follows:

Appointment of analysts, chemists, specialists, chief inspectors, etc.

24:2-3. The State board may appoint such analysts, chemists, specialists, chief inspectors and other inspectors and employees as may be authorized by law, and the persons thus appointed shall perform such duties as may be assigned to them by the State department. The State board shall fix the salaries of all such officers and employees subject to the provisions of Title 11A of the New Jersey Statutes, Civil Service, except when otherwise provided by statute.

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

Designation of registered environmental health specialists to perform certain duties.

24:2-4. The local board of health may designate from among its registered environmental health specialists one or more registered environmental health specialists who shall perform the duties relating to food and drug inspection required under R.S.24:2-1 et seq. The local board may also appoint one or more food and drug analysts.

3. R.S.24:2-5 is amended to read as follows:

Powers, duties of registered environmental health specialist.

24:2-5. The registered environmental health specialist designated under R.S.24:2-4 shall have, within the jurisdiction of the local board appointing him, all the power and authority given a specialist appointed by the State board under the authority of R.S.24:2-3. He shall, in addition to the usual duties of a registered environmental health specialist, aid in the enforcement of the provisions of this subtitle.

4. Section 38 of P.L.1947, c.177 (C.26:1A-38) is amended to read as follows:

C.26:1A-38 Qualifications for licensing of health officers, registered environmental health specialists.

38. The Public Health Council shall prescribe the qualifications necessary for the licensing of health officers and registered environmental health specialists and shall prescribe the qualifications necessary for the renewal of any license permitted to remain in effect under section 41 of P.L.1947, c.177 (C.26:1A-41).

5. Section 39 of P.L.1947, c.177 (C.26:1A-39) is amended to read as follows:

C.26:1A-39 Examinations for applicants for licensure.

39. The commissioner in consultation with the Public Health Council shall cause examinations to be conducted in such manner and at such times and places as may be necessary for the purpose of determining the qualifications of applicants for licenses set forth in section 41 of P.L.1947, c.177 (C.26:1A-41). Applications for examination for any of the licenses enumerated in section 41 of P.L.1947, c.177 (C.26:1A-41), must be made in writing upon forms supplied by the department.

6. Section 41 of P.L.1947, c.177 (C.26:1A-41) is amended to read as follows:

C.26:1A-41 Issuance of licenses for health officer, registered environmental health specialist.

41. The commissioner shall, in the name of the department, issue the following licenses:

a. Health officer's license;
b. (Deleted by amendment, P.L.1997, c.416).
c. (Deleted by amendment, P.L.1997, c.416).
d. (Deleted by amendment, P.L.1997, c.416).
e. (Deleted by amendment, P.L.1997, c.416).
f. (Deleted by amendment, P.L.1997, c.416).
g. (Deleted by amendment, P.L.1997, c.416).

h. (Deleted by amendment, P.L.1997, c.416).
i. (Deleted by amendment, P.L.1997, c.416).
j. (Deleted by amendment, P.L.1997, c.416).
k. Registered environmental health specialist's license.

However, any health officer's license, sanitary inspector's license, and plumbing inspector's license issued before the effective date of P.L.1947, c.177 (C.26:1A-1 et seq.) by the State Department of Health and Senior Services shall, unless suspended or revoked in accordance with the provisions of sections 43 and 44 of that act, remain in effect during the employment as such of the holder thereof. Upon enactment of P.L.1997, c.416 (C.26:1A-42.1 et al.) any existing Sanitary Inspector, First Grade license shall become a Registered Environmental Health Specialist license without any further action required of the licensee.

Any license eliminated by P.L.1997, c.416 (C.26:1A-42.1 et al.) shall, unless suspended or revoked in accordance with the provisions of sections 43 and 44 of P.L.1947, c.177 (C.26:1A-43 and C.26:1A-44), remain in effect until the holder thereof does not renew the license within two years from the date of its expiration, or the commissioner does not renew the license in accordance with section 42 of that act, whichever comes first.

7. Section 42 of P.L.1947, c.177 (C.26:1A-42) is amended to read as follows:

C.26:1A-42 Issuance of initial license.

42. Each applicant whose examination shall be approved by the commissioner shall receive the initial license to which his examination may entitle him. All licenses issued by the commissioner shall expire on December 31 of each year and may be renewed upon the payment of a renewal fee adopted by the commissioner under section 19 of P.L.1997, c.416 (C.26:1A-42.1) and upon the satisfactory completion by the applicant of any further requirements which may be adopted by the commissioner under that section.

8. Section 43 of P.L.1947, c.177 (C.26:1A-43) is amended to read as follows:

C.26:1A-43 Suspension, revocation of license.

43. Any license issued in accordance with the provisions of this article, and any health officer's license or sanitary inspector's license heretofore issued by the State Department of Health and Senior Services, may be suspended or revoked, after notice and hearing conducted by an administrative law judge pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), for any of the following causes:

a. Violation of any of the provisions of this act or of any law relating to public health;

b. Violation of any provision of the State Sanitary Code;

c. Violation of any applicable local health regulation or ordinance;

d. Any act or happening occurring after the making of application for such license which, if the same had occurred prior to said time, would have prevented the issuance of such license; or

e. A conviction in a court of competent jurisdiction, either within or outside this State, of a crime involving moral turpitude, except that if the conviction is reversed and the holder of the license is discharged or acquitted, or if the holder is pardoned or the civil rights of the holder are restored, the holder may obtain a license.

Notwithstanding any provision of section 10 of P.L.1968, c.410 (C.52:14B-10) to the contrary, the commissioner, before adopting, rejecting or modifying the recommended report and decision of an administrative law judge, shall consult with the Public Health Council.

The suspension or revocation of a license shall be effected by a notice in writing of the suspension or revocation, designating the effective date thereof, and in the case of a suspension, the term of the suspension, which notice may be served upon the licensee personally or by mailing the same by registered mail addressed to the licensee at the licensee's home address.

The commissioner shall file a copy of the notice of suspension or revocation of license with the local board of health.

9. R.S.26:3-19 is amended to read as follows:

Employees of local board.

26:3-19. The local board may employ such personnel as it may deem necessary, to carry into effect the powers vested in it. It shall fix the duties and compensation of every appointee and, as to local boards which shall not be operating under the provisions of Title 11A, Civil Service, of the New Jersey Statutes, fix the term of every appointee.

The appointees, agents and officers of a local board, which shall not be operating under the provisions of Title 11A, Civil Service, of the New Jersey Statutes shall hold their offices during the term for which they are severally appointed, and shall not be removed except for cause and after an opportunity has been given them for a hearing.

Any duly appointed health officer shall, subject to the superior authority of the local board appointing him, be its general agent for the enforcement of its ordinances and the sanitary laws of the State. The health officer shall provide leadership in the field of public health in the community served by the local board as required under the "Recognized Public Health Activities

and Minimum Standards of Performance." In addition to being the chief executive officer of the local board, the health officer is responsible for evaluating the health problems of the community served by the local board, planning appropriate activities to meet the health problems of the citizens thereof, developing necessary budget procedures to cover these activities and directing the staff of the local board to carry out these activities efficiently and economically.

Any other duly appointed person shall be the agent of the local board appointing him for the performance of such services not inconsistent with the license held as such local board, or any officer under the authority of such board, shall assign to him. A registered environmental health specialist is authorized to make all types of inspections for a local board except plumbing inspections. A registered environmental health specialist is required to compile proper records of these inspections, inform persons of their violations, the bases thereof, and the methods of abating these violations and obtain any evidence necessary for legal action.

The licensure requirements of this section shall not apply to a person engaged in the administration and enforcement of environmental protection laws and regulations governed by the State Department of Environmental Protection.

10. Section 1 of P.L.1951, c.333 (C.26:3-19.1) is amended to read as follows:

C.26:3-19.1 Civil service status of employees of local board of health.

1. All health officers, registered environmental health specialists and other persons selected to fill available positions in a local board of health in any municipality, which has adopted, or shall hereafter adopt, the provisions of Title 11A, Civil Service of the New Jersey Statutes, shall be appointed in accordance with the provisions of Title 11A of the New Jersey Statutes and all such health officers, sanitary inspectors and employees of any such local board of health now holding office, position or employment and who were holding such office, position or employment on July 1, 1950, shall be placed in the career service of the civil service, without examination, and shall be entitled to all the rights, privileges and benefits of such classified service and their successors shall be appointed in accordance with the provisions of Title 11A of the New Jersey Statutes.

11. R.S.26:3-20 is amended to read as follows:

License necessary for appointment.

26:3-20. No local board shall appoint any person to a position for which a license is required under section 41 of P.L.1947, c.177 (C.26:1A-41) nor

employ a person to do work ordinarily performed by a person required to hold a license under that section, who is not the holder of a proper license as such.

12. R.S.26:3-21 is amended to read as follows:

Licensee eligible for appointment.

26:3-21. Any holder of a license required under section 41 of P.L.1947, c.177 (C.26:1A-41) shall be eligible to appointment to the position for which the license is required by any local board.

13. R.S.26:3-22 is amended to read as follows:

Joint health officer, registered environmental health specialists.

26:3-22. Local boards of health of two or more adjacent municipalities may join in employing a health officer and one or more registered environmental health specialists and other personnel. In such case, the local boards of such municipalities or a regional health commission formed by them, as the case may be, shall fix the salary to be paid to these persons, arrange the duties of such persons and in the case of regional health commissions apportion the sums to be paid by each of the municipalities, which sums shall be paid from moneys appropriated to the local boards of such municipalities.

14. R.S.26:3-23 is amended to read as follows:

Registered environmental health specialist for township.

26:3-23. If in any township sufficient environmental inspection is not secured, the State department may, on notice to the local board, require the appointment by the local board of a registered environmental health specialist for the township who shall be paid by the local board of the township at an equitable rate of reimbursement for his services.

15. R.S.26:3-24 is amended to read as follows:

Registered environmental health specialist in municipality of over 2,000.

26:3-24. In every municipality containing a population of 2,000 inhabitants or more, there shall be at least one registered environmental health specialist appointed by the local board.

16. Section 5 of P.L.1947, c.181 (C.26:3-25.1) is amended to read as follows:

C.26:3-25.1 Receipt of maximum salary.

5. Every person holding a license issued under section 41 of P.L.1947, c.177 (C.26:1A-41), who is employed in a position for which this license is required by any board of health, municipality or group of municipalities shall receive the maximum salary in the person's range, within five years from the date of appointment to this position if the majority of the person's job performance evaluations are satisfactory.

17. R.S.26:3-27 is amended to read as follows:

Removal of health officer.

26:3-27. The local board or regional health commission, not operating under the provisions of Title 11A, Civil Service, of the New Jersey Statutes, employing a health officer or any other person whom it is sought to remove, shall formulate or receive charges in writing, against such person and shall fix a time and place for a hearing thereon.

A written copy of the charges and a written notice of the time and place of the hearing shall be served upon the person sought to be removed at least 20 days prior to the hearing.

At the hearing the local board or regional health commission shall hear all witnesses and receive all evidence produced, and if the charges are found to be true in fact, and just cause be shown, the local board or regional health commission may remove or reduce the pay, or position of the person against whom the charges are made.

18. R.S.26:3-53 is amended to read as follows:

Notice to remove, abate nuisance.

26:3-53. A notice by any health officer or registered environmental health specialist to remove and abate any nuisance shall be taken as a notice from the board. If the owner or persons notified fails to remove and abate the nuisance complained of, the board may cause it to be removed and abated in a summary manner, giving written directions to its representative in relation thereto, and he shall proceed according to the directions so given.

C.26:1A-42.1 Preparation, adoption of fee schedule.

19. The commissioner shall prepare a fee schedule to cover the reasonable administrative costs associated with examination and licensing procedures and submit the fee schedule to the Legislature for review. The commissioner shall subsequently adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the fee schedule. These fees shall be maintained in a separate account and used only for the purposes set forth in this section.

Repealer.

20. R.S.26:3-28, section 1 of P.L.1971, c.454 (C.26:1A-40.1), section 44 of P.L.1947, c.177 (C.26:1A-44) and section 9 of P.L.1968, c.105 (C.24:16B-9) are repealed.

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

Approved January 19, 1998.

CHAPTER 417

AN ACT permitting certain State employees a leave of absence to participate in certain disaster relief services and supplementing chapter 6 of Title 11A of the New Jersey Statutes.

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

C.11A:6-11.1 Certain State employees permitted leave of absence to participate in certain disaster relief services.

1. Upon the request of the American Red Cross for the service of a State employee who is a certified disaster service volunteer of the American Red Cross, and upon the approval of that employee's appointing authority, a leave of absence with pay for no more than 10 work days in each year and an additional leave of absence without pay for no more than 10 work days in each year shall be given to the employee to participate in specialized disaster relief services for the American Red Cross if: a. the disaster relief services are to be performed in the State; b. the disaster is a federal or presidentially declared disaster designated as Level III or above, according to American National Red Cross regulations and procedures; or c. the disaster is declared by the governor of a state or territory. The appointing authority shall compensate an employee granted leave with pay under this section at the regular rate of pay for those regular work hours during which the employee is absent from work.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 418

AN ACT concerning the removal of a municipal business administrator and amending P.L.1950, c.210.

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

1. Section 3-13 of P.L.1950, c.210 (C.40:69A-43) is amended to read as follows:

C.40:69A-43 Municipal departments, number.

3-13. (a) The municipality shall have a department of administration and such other departments, not less than two and not exceeding nine in number, as council may establish by ordinance. All of the administrative functions, powers and duties of the municipality, other than those vested in the offices of the municipal clerk and the municipal tax assessor, shall be allocated and assigned among and within such departments.

The offices of the municipal clerk and the municipal tax assessor shall be subject to such general administrative procedures and requirements as are departments of the municipal government, including, but not limited to, the preparation and submission of an annual budget and of such periodic budget reports as are generally required of departments, and such accounting controls, central purchasing practices, personnel procedures and regulations, and central data processing services as are generally required of departments.

(b) Each department shall be headed by a director, who shall be appointed by the mayor with the advice and consent of the council. Each department head shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor. The mayor shall, with the advice and consent of the council, appoint the municipal assessor and all other municipal officers not assigned within municipal departments, subject to the terms of any general law providing for these offices, unless a different appointment procedure is clearly required by this plan of government or by general law.

(c) The mayor may in his discretion remove any department head and, subject to any general provisions of law concerning term of office or tenure, any other municipal executive officer who is not a subordinate departmental officer or employee, after notice and an opportunity to be heard. Prior to removal the mayor shall first file written notice of his intention with the council, and such removal shall become effective on the 20th day after the filing of such notice unless the council shall prior thereto have adopted a

resolution by a two-thirds vote of the whole number of the council, disapproving the removal.

In the event of the removal or failure of reappointment of a business administrator, that administrator may, upon the enactment of an ordinance, be entitled to a three-months' written notice of the removal or non-reappointment, or if the mayor determines that the removal shall be immediate, then the administrator may, upon the enactment of an ordinance, be paid any unpaid balance of his salary plus his salary for a maximum of the next three calendar months following the effective date of the mayor's action unless the removal is for good cause. For the purposes of this subsection, "good cause" shall mean conviction of a crime or offense involving moral turpitude, the violation of the provisions of section 17-14, 17-15, 17-16, 17-17, or 17-18 of P.L.1950, c.210 (C.40:69A-163 through 40:69A-167), or the violation of any code of ethics in effect within the municipality.

(d) Department heads shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees, subject to the provisions of Title 11A of the New Jersey Statutes, where that Title is effective in the municipality, or other general law.

(e) Notwithstanding the foregoing provisions of this section, in any city of the first class, there shall be, and in any municipality having a population of 15,000 or more, there may be, a board of alcoholic beverage control which shall exercise the powers conferred upon municipal boards of alcoholic beverage control under Title 33 of the Revised Statutes. Such boards shall be comprised of three members, no more than two of whom shall be of the same political party, who shall be appointed by the mayor, with the advice and consent of the council, each to serve for a term of three years, provided that of those first appointed, one shall be appointed to serve for a term of one year, one for two years, and one for three years. Any vacancy in such office shall be filled in the same manner as the original appointment, for the balance of the unexpired term. Except in cities of the first class the members of such board shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties; in cities of the first class, the members of such board shall receive such compensation as shall be established by ordinance of the municipality. They shall be removable by the mayor for cause. Any person appointed hereunder shall not be subject to the provisions of Title 11A of the New Jersey Statutes, and no such person shall be a member of the city council.

Nothing in this subsection shall be construed to limit the general power of the municipal council under this act to establish, alter and abolish offices,

boards and commissions in any municipality other than a city of the first class.

(f) Whenever in any municipality with a population greater than 100,000, according to the latest federal decennial census, the governing body is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the advice and consent of the council. In all other municipalities, whenever the governing body is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the advice and consent of the council, unless the specific terms of that general law clearly require a different appointment procedure or appointment by resolution, in which case the appointment shall be by the council.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 419

AN ACT to provide reimbursement under certain health insurance contracts or policies for certain services performed by licensed audiologists and speech-language pathologists, amending P.L.1992, c.162, amending and supplementing P.L.1985, c.236 and supplementing P.L.1940, c.74 (C.17:48A-1 et seq.) and chapters 26 and 27 of Title 17B of the New Jersey Statutes.

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

1. Section 1 of P.L.1985, c.236 (C.17:48E-1) is amended to read as follows:

C.17:48E-1 Definitions.

1. As used in this act:

a. "Commissioner" means the Commissioner of Banking and Insurance.

b. "Board" and "board of directors" means the board of directors of the health service corporation.

c. "Elective surgical procedure" means any nonemergency surgical procedure which may be scheduled at the convenience of the patient or the surgeon without jeopardizing the patient's life or causing serious impairment to the patient's bodily functions.

d. "Eligible physician" means a physician licensed to practice medicine and surgery who holds the rank of Diplomate of an American Board (M.D.) or Certified Specialist (D.O.) in the surgical or medical specialty for which surgery is proposed.

e. "Health service corporation" means a health service corporation established pursuant to the provisions of this act, which is organized, without capital stock and not for profit, for the purpose of (1) establishing, maintaining and operating a nonprofit health service plan and (2) supplying services in connection with (a) the providing of health care or (b) conducting the business of insurance as provided for in this act.

f. "Health service plan" means a plan under which contracts are issued providing complete or partial prepayment or postpayment of health care services and supplies eligible under the contracts for a given period to persons covered under the contracts where arrangements are made for payment for health care services and supplies directly to the provider thereof or to a covered person under those contracts.

g. "Hospital service corporation" means a hospital service corporation established pursuant to the provisions of P.L.1938, c.366 (C.17:48-1 et seq.).

h. "Medical service corporation" means a medical service corporation established pursuant to the provisions of P.L.1940, c.74 (C.17:48A-1 et seq.).

i. "Provider of health care services" shall include, but not be limited to: (1) a health service corporation, a hospital service corporation or medical service corporation; (2) a hospital or health care facility under contract with a health service corporation to provide health care services or supplies to persons who become subscribers under contracts with the health service corporation; (3) a hospital or health care facility which is maintained by a state or any of its political subdivisions; (4) a hospital or health care facility licensed by the Department of Health and Senior Services; (5) other hospitals or health care facilities, as designated by the Department of Health and Senior Services to provide health care services; (6) a registered nursing home providing convalescent care; (7) a nonprofit voluntary visiting nurse organization providing health care services other than in a hospital; (8) hospitals or other health care facilities located in other states, which are subject to the supervision of those states, which if located in this State would be eligible to be licensed or designated by the Department of Health and Senior Services; (9) nonprofit hospital, medical or health service plans

of other states approved by the commissioner; (10) physicians licensed to practice medicine and surgery; (11) licensed chiropractors; (12) licensed dentists; (13) licensed optometrists; (14) licensed pharmacists; (15) licensed chiropodists; (16) registered bio-analytical laboratories; (17) licensed psychologists; (18) registered physical therapists; (19) certified nurse-midwives; (20) registered professional nurses; (21) licensed health maintenance organizations; (22) licensed audiologists; (23) licensed speech-language pathologists; and (24) providers of other similar health care services or supplies as are approved by the commissioner.

j. "Second surgical opinion" means an opinion of an eligible physician based on that physician's examination of a person for the purpose of evaluating the medical advisability of that person undergoing an elective surgical procedure, but prior to the performance of the surgical procedure.

k. "Subscriber" means a person to whom a subscription certificate is issued by a health service corporation, and the term shall also include "policyholder," "member," or "employer" under a group contract where the context requires.

C.17:48E-35.17 Health service corporation to cover certain audiology, speech-language pathology services.

2. A health service corporation shall offer to provide group contracts covering audiology and speech-language pathology services rendered by a physician or a licensed audiologist or licensed speech-language pathologist where these services are determined to be medically necessary and are performed or rendered within the scope of practice. Notwithstanding this option for group contracts, all group health insurance contracts shall retain current coverage for audiology and speech-language pathology services. Any reimbursement to licensed audiologists and speech-language pathologists for audiology and speech-language pathology services shall be provided to the same extent that the contract authorizes payment for these services to physicians licensed to practice medicine and surgery.

C.17:48A-7r Medical service corporation to cover certain audiology, speech-language pathology services.

3. Notwithstanding any other provision of P.L.1940, c.74 (C.17:48A-1 et seq.), benefits shall not be denied to any eligible individual for eligible services, as determined under the terms of the contract or as otherwise required by law, when the services are determined by a physician to be medically necessary and are performed or rendered to that individual by a licensed audiologist or speech-language pathologist within the scope of practice. The practices of audiology and speech-language pathology shall be deemed to be within the provisions of P.L.1940, c.74 (C.17:48A-1 et seq.) and duly licensed audiologists and speech-language pathologists shall

have such privileges and benefits in the scope of their practice under that act as are afforded thereunder to licensed physicians and surgeons in the scope of their practice.

C.17B:26-2.1p Health insurance policy to cover certain audiology, speech-language pathology services.

4. Notwithstanding any other provision of chapter 26 of Title 17B of the New Jersey Statutes, benefits shall not be denied to any eligible individual for eligible services, as determined by the terms of the policy or as otherwise required by law, when the services are determined by a physician to be medically necessary and are performed or rendered to that individual by a licensed audiologist or speech-language pathologist within the scope of practice. The practices of audiology and speech-language pathology shall be deemed to be within the provisions of chapter 26 of Title 17B of the New Jersey Statutes and duly licensed audiologists and speech-language pathologists shall have such privileges and benefits in the scope of their practice under that act as are afforded thereunder to licensed physicians and surgeons in the scope of their practice.

C.17B:27-46.1s Group health insurer to cover certain audiology, speech-language pathology services.

5. Notwithstanding any other provision of chapter 27 of Title 17B of the New Jersey Statutes, benefits shall not be denied to any eligible individual for eligible services, as determined by the terms of the policy or as otherwise required by law, when the services are determined by a physician to be medically necessary and are performed or rendered to that individual by a licensed audiologist or speech-language pathologist within the scope of practice. The practices of audiology and speech-language pathology shall be deemed to be within the provisions of chapter 27 of Title 17B of the New Jersey Statutes and duly licensed audiologists and speech-language pathologists shall have such privileges and benefits in the scope of their practice under that act as are afforded thereunder to licensed physicians and surgeons in the scope of their practice.

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. s.300e et seq.). The remaining policy forms shall contain basic hospital and medical-surgical benefits, including, but not limited to:

(1) Basic inpatient and outpatient hospital care;

(2) Basic and extended medical-surgical benefits;

(3) Diagnostic tests, including X-rays;

(4) Maternity benefits, including prenatal and postnatal care; and

(5) Preventive medicine, including periodic physical examinations and inoculations.

At least three of the forms shall provide for major medical benefits in varying lifetime aggregates, one of which shall provide at least $1,000,000 in lifetime aggregate benefits. The policy forms provided pursuant to this section shall contain benefits representing progressively greater actuarial values.

Notwithstanding the provisions of this subsection to the contrary, the board also may establish additional policy forms by which a small employer carrier, other than a health maintenance organization, may provide indemnity benefits for health maintenance organization enrollees by direct contract with the enrollees' small employer through a dual arrangement with the health maintenance organization. The dual arrangement shall be filed with the commissioner for approval. The additional policy forms shall be consistent with the general requirements of P.L.1992, c.162 (C.17B:27A-17 et seq.).

b. Initially, a carrier shall offer a plan within 90 days of the approval of such plan by the commissioner. Thereafter, the plans shall be available to all small employers on a continuing basis. Every small employer which elects to be covered under any health benefits plan who pays the premium therefor and who satisfies the participation requirements of the plan shall be issued a policy or contract by the carrier.

c. The carrier may establish a premium payment plan which provides installment payments and which may contain reasonable provisions to ensure payment security, provided that provisions to ensure payment security are uniformly applied.

d. In addition to the five standard policies described in subsection a. of this section, the board may develop up to five rider packages. Any such

package which a carrier chooses to offer shall be issued to a small employer who pays the premium therefor, and shall be subject to the rating methodology set forth in section 9 of P.L.1992, c.162 (C.17B:27A-25).

e. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may approve a health benefits plan containing only medical-surgical benefits or major medical expense benefits, or a combination thereof, which is issued as a separate policy in conjunction with a contract of insurance for hospital expense benefits issued by a hospital service corporation, if the health benefits plan and hospital service corporation contract combined otherwise comply with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.). Deductibles and coinsurance limits for the contract combined may be allocated between the separate contracts at the discretion of the carrier and the hospital service corporation.

f. Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is a qualified health maintenance organization pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C. s.300e et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section.

Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is approved pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section, except that the plans shall provide the same level of benefits as required for a federally qualified health maintenance organization, including any requirements concerning copayments by enrollees.

g. A carrier shall not be required to own or control a health maintenance organization or otherwise affiliate with a health maintenance organization in order to comply with the provisions of this section, but the carrier shall be required to offer the five health benefits plans which are formulated by the board and approved by the commissioner, including one plan which contains benefits and cost sharing levels that are equivalent to those required for health maintenance organizations.

h. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may modify the benefits provided for in sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3).

i. (1) In addition to the rider packages provided for in subsection d. of this section, every carrier may offer, in connection with the five health benefits plans required to be offered by this section, any number of riders

which may revise the coverage offered by the five plans in any way, provided, however, that any form of such rider or amendment thereof which decreases benefits or decreases the actuarial value of one of the five plans shall be filed for informational purposes with the board and for approval by the commissioner before such rider may be sold. Any rider or amendment thereof which adds benefits or increases the actuarial value of one of the five plans shall be filed with the board for informational purposes before such rider may be sold.

The commissioner shall disapprove any rider filed pursuant to this subsection that is unjust, unfair, inequitable, unreasonably discriminatory, misleading, contrary to law or the public policy of this State. The commissioner shall not approve any rider which reduces benefits below those required by sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3) and required to be sold pursuant to this section. The commissioner's determination shall be in writing and shall be appealable.

(2) The benefit riders provided for in paragraph (1) of this subsection shall be subject to the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-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 and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunization as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, or any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

The benefits shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this section. This section shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

l. The board shall consider including benefits for speech-language pathology and audiology services, as rendered by speech-language pathologists and audiologists within the scope of their practices, in at least one of the five standard policies and in at least one of the five riders to be developed under this section.

7. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 420

AN ACT concerning the Adult Diagnostic and Treatment Center and amending N.J.S.2C:47-4.

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

1. N.J.S.2C:47-4 is amended to read as follows:

Treatment arrangements.

2C:47-4. Treatment arrangements. a. Except as provided in subsection b. of this section, the Commissioner of the Department of Corrections, upon

commitment of such person, shall provide for his treatment in the Adult Diagnostic and Treatment Center.

b. (1) The commissioner may, in his discretion, order the transfer of a person sentenced under this chapter out of the Adult Diagnostic and Treatment Center.

(2) The commissioner shall order the transfer of a person sentenced under this chapter out of the Adult Diagnostic and Treatment Center under the following circumstances:

(a) The person is serving a life sentence without possibility of parole; or

(b) The person is not participating in or cooperating with the treatment provided in the Adult Diagnostic and Treatment Center.

(3) A person who is transferred pursuant to either paragraph (1) or subparagraph (a) of paragraph (2) of this subsection shall be subject to conditions of confinement, parole and release applicable to persons sentenced to State prison. A person who is transferred pursuant to subparagraph (b) of paragraph (2) of this subsection shall continue to be eligible for parole in accordance with the provisions of N.J.S.2C;47-5, except that the commissioner shall return the person to the Adult Diagnostic and Treatment Center as soon as practicable if the commissioner determines that the person is likely to participate and fully cooperate in the treatment provided therein.

c. If the Special Classification Review Board submits a written recommendation to the commissioner that continued confinement of the person is not necessary, the commissioner may move before the sentencing court for modification of the sentence originally imposed.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 421

AN ACT appropriating moneys from the "Water Conservation Bond Act," P.L.1969, c.127, for the acquisition of lands or interests therein in the Highlands area for the purpose of augmenting, increasing, improving, preserving, protecting, or conserving natural water resources and supplies important to New Jersey and facilitating recreational uses incidental thereto.

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

1. There is appropriated from the "Water Conservation Fund" established pursuant to section 13 of the "Water Conservation Bond Act," P.L.1969, c.127, to the Department of Environmental Protection the sum of $2,300,000 for the acquisition of lands or interests therein in the Highlands area of New Jersey by the department, in consultation with the Palisades Interstate Park Commission and the North Jersey District Water Supply Commission, for the purpose of augmenting, increasing, improving, preserving, protecting, or conserving natural water resources and supplies important to New Jersey and facilitating recreational uses incidental thereto, except that no amount of this appropriation shall be expended for the acquisition of lands, or interests therein, located in Sussex County or for the acquisition of lands, or interests therein, from a seller other than a willing seller.

2. To the extent that the balance of the moneys available in the "Water Conservation Fund" that have not been previously appropriated pursuant to law is insufficient to support the sum appropriated pursuant to section 1 of this act, the following shall be made available from the "Water Conservation Fund" to support the remainder of the appropriation made in that section as required:

a. moneys returned to the "Water Conservation Fund" due to project withdrawals, cancellations, or cost savings involving projects previously funded by law; and

b. moneys previously appropriated pursuant to law from the "Water Conservation Fund" to fund projects but for which no such moneys have been expended, other than for administrative or program purposes, in the five-year period immediately prior to the date of enactment of this act, or to fund projects deemed by the Department of Environmental Protection as of the date of enactment of this act to be otherwise no longer active, the previous appropriation of which is canceled subject to the approval of the Joint Budget Oversight Committee or its successor, except that this subsection shall not apply to moneys appropriated pursuant to P.L.1995, c.7.

3. The expenditure of the sum appropriated from the "Water Conservation Fund" pursuant to section 1 of this act is subject to the provisions and conditions of P.L.1969, c.127, as amended by section 26 of P.L.1979, c.86, and as amended and supplemented by P.L.1981, c.233.

4. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 422

AN ACT concerning the Adult Diagnostic and Treatment Center and supplementing chapter 47 of Title 2C of the New Jersey Statutes.

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

C.2C:47-10 "Sexually oriented material" defined; receipt by inmates at Adult Diagnostic and Treatment Center, prohibited.

1. a. As used in this act, "sexually oriented material" means any description, narrative account, display, or depiction of sexual activity or associated anatomical area contained in, or consisting of, a picture or other representation, publication, sound recording, live performance, or film.

b. An inmate sentenced to a period of confinement in the Adult Diagnostic Treatment Center shall not receive, possess, distribute or exhibit within the center sexually oriented material, as defined in subsection a. of this section. Upon the discovery of any such material within the center, the commissioner shall provide for its removal and destruction, subject to a departmental appeal procedure for the withholding or removal of such material from the inmate's possession.

c. The commissioner shall request an inmate sentenced to confinement in the center to acknowledge in writing the requirements of this act prior to the enforcement of its provisions. Any inmate who violates the provisions of subsection b. of this section shall be subject to on-the-spot sanctions pursuant to rules and regulations adopted by the commissioner.

d. A person who sells or offers for sale the material prohibited in subsection b. either for purposes of possession or viewing or who receives, possesses, distributes or exhibits any text, photograph, film, video or any other reproduction or reconstruction which depicts a person under 18 years of age engaging in a prohibited sexual act or in the simulation of such an act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), within the center shall be considered to have committed an inmate prohibited act and be subject to sanctions pursuant to rules and regulations adopted by the commissioner.

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

Approved January 19, 1998.

CHAPTER 423

AN ACT concerning certain immunities for law enforcement officers and amending R.S.39:4-91 and N.J.S.59:5-2.

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

1. R.S.39:4-91 is amended to read as follows:

Right of way of emergency vehicles; liability of drivers.

39:4-91. a. The driver of a vehicle upon a highway shall yield the right of way to any authorized emergency vehicle when it is operated on official business, or in the exercise of the driver's profession or calling, in response to an emergency call or in the pursuit of an actual or suspected violator of the law and when an audible signal by bell, siren, exhaust whistle or other means is sounded from the authorized emergency vehicle and when the authorized emergency vehicle, except a police vehicle, is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of at least five hundred feet to the front of the vehicle.

b. This section shall not relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall it protect the driver from the consequences of his reckless disregard for the safety of others. Nothing in this section shall be construed to limit any immunity or defense otherwise provided by law.

2. N.J.S.59:5-2 is amended to read as follows:

Parole or escape of prisoner; injuries between prisoners; pursuit for law enforcement purposes.

59:5-2. Parole or escape of prisoner; injuries between prisoners; pursuit for law enforcement purposes.

Neither a public entity nor a public employee is liable for:

a. An injury resulting from the parole or release of a prisoner or from the terms and conditions of his parole or release or from the revocation of his parole or release;

b. any injury caused by:

(1) an escaping or escaped prisoner;

(2) an escaping or escaped person;

(3) a person resisting arrest or evading arrest;

(4) a prisoner to any other prisoner; or

c. any injury resulting from or caused by a law enforcement officer's pursuit of a person.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 424

AN ACT concerning hunting with bait, and supplementing Title 23 of the Revised Statutes.

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

C.23:4-24.4 Hunting deer with bait; "baited area" defined.

1. a. Notwithstanding the provisions of section 1 and section 2 of P.L.1970, c.180 (C.23:4-24.2 and C.23:4-24.3), a person may: (1) use bait to attract, entice, or lure a deer; and (2) kill, destroy, injure, shoot, shoot at, take, wound, or attempt to take, kill, or wound, a deer, or have in possession or control any firearm or other weapon of any kind for such purposes, within any distance of a baited area. A person may be elevated in a standing tree or in a structure of any kind when using a baited area for hunting deer, and the baited area may be within any distance of the standing tree or structure.

The provisions of this subsection shall not apply in counties of the first class except in such game management zones therein as may be designated therefor by the Division of Fish, Game and Wildlife and approved by the Fish and Game Council. The provisions of this subsection shall expire within eighteen months from the effective date of this act.

b. For the purposes of this section, "baited area" means the presence of placed, exposed, deposited, distributed, or scattered agricultural products, salt, or other edible lure whatsoever capable of attracting, enticing, or luring deer.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 425

AN ACT concerning certain persons incarcerated for contempt of court and amending P.L.1968, c.372.

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

1. Section 1 of P.L.1968, c.372 (C.30:8-44) is amended to read as follows:

C.30:8-44 Work release or vocational training of certain prisoners or incarcerated persons.

1. In any county in which the governing body, by ordinance or resolution, as appropriate, approves the application of this act and designates a county work release administrator who may be the sheriff, warden or other person, a person convicted of any offense, except as otherwise provided in section 2 of P.L.1994, c.153 (C.30:8-44.1) and sentenced to the county jail, workhouse or penitentiary of the county or a person incarcerated in the county jail, workhouse or penitentiary pursuant to the Rules of Court for contempt of an order or judgment issued by the Superior Court, Chancery Division, Family Part may be placed at outside labor or permitted to attend a vocational training course operated or sponsored by a public or private agency in the county by order of the court by which the sentence or order of incarceration was imposed, or by the assignment judge of the county in which the sentence or order of incarceration was imposed, at the time such person is sentenced or incarcerated or at any time thereafter during the term of the sentence or term of incarceration. A work release order may include permission for release from confinement during specified hours to care for the offender's family. Such order may be revoked by the court which granted it at any time.

The Department of Corrections shall prepare and enforce regulations for the operation of this act in accordance with the provisions thereof.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 426

AN ACT concerning limited liability companies and limited liability partnerships and amending R.S.31:1-6 and N.J.S. 2C:21-19.

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

1. R.S.31:1-6 is amended to read as follows:

Defense of usury by corporation, limited liability company, limited liability partnership; prohibited.

31:1-6. No corporation, limited liability company or limited liability partnership shall plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation, limited liability company or limited liability partnership.

2. N.J.S. 2C:21-19 is amended to read as follows:

Wrongful credit practices and related offenses.

2C:21-19. Wrongful Credit Practices and Related Offenses.

a. Criminal usury. A person is guilty of criminal usury when not being authorized or permitted by law to do so, he:

(1) Loans or agrees to loan, directly or indirectly, any money or other property at a rate exceeding the maximum rate permitted by law; or

(2) Takes, agrees to take, or receives any money or other property as interest on the loan or on the forbearance of any money or other interest in excess of the maximum rate permitted by law.

For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company or limited liability partnership any rate not in excess of 50% per annum shall be a rate authorized or permitted by law.

Criminal usury is a crime of the second degree if the rate of interest on any loan made to any person exceeds 50% per annum or the equivalent rate for a longer or shorter period. It is a crime of the third degree if the interest rate on any loan made to any person except a corporation, limited liability company or limited liability partnership does not exceed 50% per annum but the amount of the loan or forbearance exceeds $1,000.00. Otherwise, making a loan to any person in violation of subsections a.(1) and a.(2) of this section is a disorderly persons offense.

b. Business of criminal usury. Any person who knowingly engages in the business of making loans or forbearances in violation of subsection a. of this section is guilty of a crime of the second degree and, notwithstanding the provisions of N.J.S. 2C:43-3, shall be subject to a fine of not more than $250,000.00 and any other appropriate disposition authorized by N.J.S. 2C:43-2b.

c. Possession of usurious loan records. A person is guilty of a crime of the third degree when, with knowledge of the nature thereof, he possesses

any writing, paper instrument or article used to record criminally usurious transactions prohibited by subsection a. of this section.

d. Unlawful collection practices. A person is guilty of a disorderly persons offense when, with purpose to enforce a claim or judgment for money or property, he sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance simulates a summons, complaint, court order or process or an insignia, seal or printed form of a federal, State or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

e. Making a false statement of credit terms. A person is guilty of a disorderly persons offense when he understates or fails to state the interest rate, or makes a false or inaccurate or incomplete statement of any other credit terms.

f. Debt adjusters. Any person who shall act or offer to act as a debt adjuster shall be guilty of a crime of the fourth degree.

"Debt adjuster" means a person who either (1) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (2) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor. "Debtor" means an individual or two or more individuals who are jointly and severally, or jointly or severally indebted.

The following persons shall not be deemed debt adjusters for the purposes of this section: an attorney at law of this State who is not principally engaged as a debt adjuster; a nonprofit social service or consumer credit counseling agency licensed pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.); a person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts; a person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this State or of the United States; a person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; or a person who, at the request of the debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting such debts.

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 427

AN ACT concerning the priority of certain mortgage loans and amending and supplementing P.L.1985, c.353.

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

1. Section 1 of P.L.1985, c.353 (C.46:9-8.1) is amended to read as follows:

C.46:9-8.1 Definitions.

1. As used in this act:

a. "Mortgage loan" means any loan or line of credit, except a construction loan, which states a maximum specified principal amount and which is secured by an interest in real property.

b. "Construction loan" means a loan for a fixed term of no more than three years which is secured by a lien on real property and which is made by the lender for the sole purpose of financing the erection, construction, completion, addition to, alteration or repair of improvements to real property.

c. "Line of credit" means an agreement whereby a lender is obligated to provide a specified amount of credit to a borrower from time to time. The agreement may include provisions to amend or change the interest rate or terms of repayment and shall be an obligation for the purposes of this section notwithstanding the inclusion of one or more of the following limitations and conditions:

(1) An expiration date of the agreement or an option of the lender to cancel the agreement on notice to the borrower;

(2) The financial condition of any borrower;

(3) Continued compliance by the borrower with the terms of the agreement and any mortgage or security agreement securing the amounts advanced pursuant to the agreement;

(4) The absence of an adverse change in the value or condition of any collateral securing the agreement;

(5) A requirement of certain procedures for activating the obligation to make advances pursuant to the agreement; or

(6) A decision of the lender not to continue to engage in the business of providing lines of credit on terms similar to the agreement.

d. "Modification" means:

(1) A change in the interest rate, due date or other terms and conditions of a mortgage loan; or

(2) An advance made pursuant to a line of credit or other advance of principal, but only to the extent that the advance does not cause the principal balance due to exceed the principal amount stated in the mortgage. "Modification" does not include a substitution in the collateral.

C.46:9-8.5 Title insurance to continue in effect despite modification to mortgage loan; exception.

2. If a holder of a mortgage loan has insured the holder's interest in the real property securing the mortgage loan with title insurance issued in accordance with the "Title Insurance Act of 1974," P.L.1975, c.106 (C.17:46B-1 et seq.) and a modification has been made in the mortgage loan which continues the priority of the original mortgage as provided in section 2 of P.L.1985, c. 353 (C.46:9-8.2), the title insurance shall continue in effect whether or not the modification agreement is recorded on the records of the county where the mortgage is recorded, unless the terms of the title insurance policy explicitly provide that the policy will not continue to apply if a modification of a mortgage loan takes place pursuant to P.L.1985, c.353 (C.46:9-8.1 et seq.).

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 428

AN ACT concerning the display of certain vegetation and supplementing the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.).

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

C.52:27D-198.6 Conditions for display of certain holiday vegetation.

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, trees and wreaths used in holiday displays may be exhibited in all buildings covered by the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) under the following conditions:

a. Natural cut trees shall be permitted in any building if the trees:

1) Are located in areas protected by an approved automatic sprinkler system, or

2) Meet the flame-retardant requirements of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) provided that the trees are watered daily.

b. Living trees in a balled condition with their roots protected by an earth ball, maintained in a fresh condition and not allowed to become dry, shall be permitted in any building.

c. Holiday wreaths not in excess of 10 percent of the aggregate wall area of any room or space shall be permitted in any building.

d. The appropriate enforcing agency may limit the number of trees in any building.

e. Trees shall not be allowed to obstruct corridors, exits or other means of egress.

f. Open flames such as from candles, lanterns, kerosene heaters and gas-fired heaters shall not be located on or near trees or holiday wreaths.

g. Nothing herein shall apply to, or be construed as extending the jurisdiction of, the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) to residential buildings.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 429

AN ACT requiring the registering of licensed insurance producers and limited insurance representatives with the Superior Court in certain cases and supplementing Title 17 of the Revised Statutes.

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

C.17:22A-16.1 Registration of licensed insurance producers, limited insurance representatives; notice when authorization to write bail terminated.

1. An insurance company shall register with the clerk of the Superior Court the name and address of each licensed insurance producer and each limited insurance representative authorized by that company to write bail, together with any other information that the rules of the court may require. The insurance company shall provide written notice to the Clerk of the Superior Court when any licensed insurance producer or limited insurance representative authorized to write bail is terminated.

2. This act shall take effect 30 days following enactment.

Approved January 19, 1998.

CHAPTER 430

AN ACT concerning the regulation of underground storage tanks, and amending P.L.1986, c.102.

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

1. Section 1 of P.L.1991, c.123 (C.58:10A-24.1) is amended to read as follows:

C.58:10A-24.1 No tank services on underground storage tank; exceptions.

1. a. Except as provided in subsection b. of this section, a person shall not perform, except in accordance with the provisions of this act, tank services on an underground storage tank at an underground storage tank site required for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), including, but not limited to, tank testing, tank installation, tank removal, tank repair, installation of monitoring systems, and subsurface evaluations for corrective action, closure, and corrosivity.

b. Subsection a. of this section shall not apply to a person performing tank closure on an underground storage tank located on a farm. A person performing tank closure on an underground storage tank located on a farm shall comply with the guidelines and the criteria established pursuant to subsection c. of this section. For the purposes of this section, "farm" shall mean land that qualifies for a special tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural or horticultural products with a wholesale value of $10,000 or more annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

c. Within 90 days of the effective date of P.L.1997, c.430, the department shall implement guidelines establishing a protocol for the performance of tank closures on a farm. Within 18 months of the effective date of P.L.1997, c.430, the Department of Environmental Protection, in consultation with the Department of Agriculture and the State Soil Conservation Committee, shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt criteria for the performance of tank closures on farms. Both the guidelines and the criteria shall be developed with the objectives of reducing the cost and increasing the efficiency of the process of tank closure while also ensuring environmental protection and public safety.

2. Section 2 of P.L.1991, c.123 (C.58:10A-24.2) is amended to read as follows:

C.58:10A-24.2 Services on underground storage tanks by certified persons; exceptions.

2. a. A business firm shall not engage in the business of performing services on underground storage tanks at underground storage tank sites for purposes of complying with the requirements of P.L.1986, c.102 (C.58:10A-21 et seq.) unless the business firm has been certified in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3), by certification of the owner, or, in the case of partnership, a partner in the firm, or, in the case of a corporation, an executive officer of the corporation.

b. Except as provided pursuant to subsection b. of section 1 of P.L.1991, c.123 (C.58:10A-24.1), any service performed on an underground storage tank at an underground storage tank site for the purpose of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall be performed by, or under the immediate on-site supervision of, a person certified by the department in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

c. A business firm or other person performing well drilling or pump installation services at the site of an underground storage tank who is licensed to perform such services pursuant to section 7 of P.L.1947, c.377 (C.58:4A-11), shall not be required to be certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3), or to perform those services under the supervision of a person certified thereunder.

d. Professional engineers licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.) shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from the payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A:24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank at an underground storage tank site. Professional engineers exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification.

e. A plumbing contractor, as defined pursuant to section 2 of P.L.1968, c.362 (C.45:14C-2), engaged in the installation, repair, testing, or closure of a waste oil underground storage tank shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from payment of a recertification or renewal fee required pursuant to section 4 of

that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank. Plumbing contractors exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification. A plumbing contractor engaged in the installation, repair, testing, or closure of an underground storage tank that is not a waste oil tank shall be required to comply with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

3. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 431

AN ACT concerning certain executive directors of housing authorities and amending P.L.1992, c.79.

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

1. Section 18 of P.L.1992, c.79 (C.40A:12A-18) is amended to read as follows:

C.40A:12A-18 Executive director of housing authority.

18. The executive director of a housing authority shall have attained a degree from an accredited four year college or university in a public administration, social science, or other appropriate program, and shall have at least five years' experience in public administration, public finance, realty, or similar professional employment. A master's degree in an appropriate program may substitute for two years of that experience. An executive director holding that position prior to or on January 18, 1992 and possessing the required work experience and holding certification as a Public Housing Manager (PHM) from the National Association of Housing and Redevelopment Officials, or equivalent certification from a nationally recognized professional association in the housing and redevelopment field, shall not be required to meet the educational requirement, except as otherwise provided in section 45 of P.L.1992, c.79 (C.40A:12A-45) and shall be deemed qualified for continued employment as executive director of the

authority in which he holds that post and eligible for equivalent employment in any other local public housing authority in this State.

The executive director shall serve at the pleasure of the members of the authority, and may be relieved of his duties only after not less than 120 days' notice. The authority may provide that the executive director shall be the appointing authority for all or any portion of the employees of the authority. The executive director shall assign and supervise employees in the performance of their duties. A housing authority may elect to adopt or not to adopt the provisions of Title 11A of the New Jersey Statutes regardless of whether the establishing county or municipality has or has not adopted those provisions.

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 432

AN ACT concerning the monitoring of public school districts and supplementing chapter 7A 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:7A-14.3 Findings, declarations relative to monitoring of public school districts.

1. The Legislature finds and declares that:

a. It is the goal of the State of New Jersey to prepare its students to be internationally competitive and to meet world class standards through our system of public education.

b. In order to achieve this State priority, leaders from government, education, business and our local communities must work collaboratively to promote quality, creativity, and accountability in the delivery of educational services.

c. An alternative program of monitoring and evaluation of schools may be used to promote the goals of quality and excellence in our schools and to effectuate educational improvement in this State.

d. The utilization of an alternative program of monitoring and evaluation of schools could effectuate educational improvement by promoting greater use of quality management principles, increasing the exchange of information concerning best practices and the achievement of

excellence in education, and promoting partnerships between the public and private sectors in pursuit of educational excellence.

e. The State could benefit from the use of an alternate program of monitoring and evaluation of schools because:

(1) the alternate program stimulates increased cooperation among internal and external stakeholders in a school system;

(2) the program mobilizes the business community to assist school districts by sharing its expertise in total quality management principles;

(3) the program fosters consensus in establishing district goals, clear values, high standards, and organizational excellence;

(4) the ongoing nature of the districts' self assessment process will result in continuous improvement and increased accountability for public schools; and

(5) State and local resources will be more efficiently utilized by the application of quality management principles and a self assessment process.

C.18A:7A-14.4 Level I district may apply for alternative program of monitoring, evaluation.

2. a. Notwithstanding any law to the contrary, a school district at Level I may apply to participate in an alternative program of monitoring and evaluation for the purpose of certification pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14). Prior to the application of the school district to the Commissioner of Education for participation in the alternative program of monitoring and evaluation, there shall be consensus between the school district and the majority representative of the school employees in the district concerning the district's participation in the program.

b. A school district approved to participate in the alternative program of monitoring and evaluation shall conduct ongoing monitoring and evaluation according to criteria established by the Commissioner of Education, in consultation with the Commission on Business Efficiency of the Public Schools. The criteria shall include, but not be limited to, the criteria used in the education eligibility category of the Malcolm Baldrige National Quality Award, established pursuant to subsection (a) of section 3 of Pub.L. 100-107 (15 U.S.C. s.3711a), and the New Jersey Quality Achievement Award established pursuant to Executive Order No. 47 of 1991, such as: (1) leadership; (2) information and analysis; (3) strategic and operational planning; (4) human resource development and management; (5) educational and business process management; (6) school performance results; and (7) student focus and stakeholder satisfaction.

c. The commissioner may eliminate a school district from participation in the alternative program of monitoring and evaluation, if the commissioner deems it to be advisable. The commissioner shall inform the school district of its elimination from the alternative program of monitoring and

evaluation and shall direct that the school district comply with the program of evaluation provided for in sections 10, 11 and 14 of P.L.1975, c.212 (C.18A:7A-10, 18A:7A-11 and 18A:7A-14).

C.18A:7A-14.5 Rules, regulations.

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

4. This act shall take effect immediately and the Commissioner of Education shall make the alternative program of monitoring and evaluation available to eligible school districts in the 1998-1999 school year.

Approved January 19, 1998.

CHAPTER 433

AN ACT empowering the waterfront commission to grant permanent registration to certain checkers, container equipment operators and longshoremen with temporary registration and amending P.L.1966, c.18.

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

1. Section 2 (5-p) of P.L.1966, c.18 (C.32:23-114) is amended to read as follows:

C.32:23-114 Longshoremen's register.

2. 5-p 1. The commission shall suspend the acceptance of applications for inclusion in the longshoremen's register for a period of 60 days after the effective date of this act. Upon the termination of such 60-day period the commission shall thereafter have the power to make determinations to suspend the acceptance of applications for inclusion in the longshoremen's register for such periods of time as the commission may from time to time establish and, after any such period of suspension, the commission shall have the power to make determinations to accept applications, which shall be processed in the order in which they are filed with the commission, for such period of time as the commission may establish or in such number as the commission may determine, or both. Such determinations to suspend or accept applications shall be made by the commission on its own initiative or upon the joint recommendation in writing of stevedores and other

employers of longshoremen in the Port of New York District, acting through their representative for the purposes of collective bargaining with a labor organization representing such longshoremen in such district and such labor organization, which joint recommendation the commission shall have the power to accept or reject.

2. In administering the provisions of this section, the commission shall observe the following standards:

(a) To encourage as far as practicable the regularization of the employment of longshoremen;

(b) To bring the number of eligible longshoremen into balance with the demand for longshoremen's services within the Port of New York District without reducing the number of eligible longshoremen below that necessary to meet the requirements of longshoremen in the Port of New York District;

(c) To encourage the mobility and full utilization of the existing work force of longshoremen;

(d) To protect the job security of the existing work force of longshoremen;

(e) To eliminate oppressive and evil hiring practices injurious to waterfront labor and waterborne commerce in the Port of New York District, including, but not limited to, those oppressive and evil hiring practices that may result from either a surplus or shortage of waterfront labor;

(f) To consider the effect of technological change and automation and such other economic data and facts as are relevant to a proper determination.

In observing the foregoing standards and before determining to suspend or accept applications for inclusion in the longshoremen's register, the commission shall consult with and consider the views of, including any statistical data or other factual information concerning the size of the longshoremen's register submitted by, carriers of freight by water, stevedores, waterfront terminal owners and operators, any labor organization representing employees registered by the commission, and any other person whose interests may be affected by the size of the longshoremen's register.

3. Any determination by the commission pursuant to this section to suspend or accept applications for inclusion in the longshoremen's register shall be made upon a record, shall not become effective until five days after notice thereof to the collective bargaining representative of stevedores and other employers of longshoremen in the Port of New York District and to the labor organization representing such longshoremen and shall be subject to judicial review for being arbitrary, capricious, and an abuse of discretion in a proceeding jointly instituted by such representative and such labor organization. Such judicial review proceeding may be instituted in either state in the manner provided by the law of such state for review of the final

decision or action of administrative agencies of such state, provided, however, that such proceeding shall be decided directly by the appellate division as the court of first instance (to which the proceeding shall be transferred by order of transfer by the Supreme Court in the state of New York or in the State of New Jersey by notice of appeal from the commission's determination), and provided further that notwithstanding any other provision of law in either state no court shall have power to stay the commission's determination prior to final judicial decision for more than 15 days. In the event that the court enters a final order setting aside the determination by the commission to accept applications for inclusion in the longshoremen's register, the registration of any longshoremen included in the longshoremen's register as a result of such determination by the commission shall be canceled.

This section shall apply, notwithstanding any other provision of this act, provided, however, such action shall not in any way limit or restrict the provision of section 5 of article IX of this act empowering the commission to register longshoremen on a temporary basis to meet special or emergency needs or the provisions of section 4 of article IX of this act relating to the immediate reinstatement of persons removed from the longshoremen's register pursuant to article IX of this act. Nothing in this section shall be construed to modify, limit or restrict in any way any of the rights protected by article 15 of this act.

4. Notwithstanding any other provision of this act, the commission may include in the longshoremen's register under such terms and conditions as the commission may prescribe:

(a) A person issued registration on a temporary basis to meet special or emergency needs, who, on the effective date of this act, is still so registered by the commission;

(b) A person defined as a "longshoreman" in subdivision (6) of section 1(5-a) of P.L.1954, c.14 (C.32:23-85), who is employed by a stevedore as defined in paragraph (b) or (c) of subdivision (1) of the same section (C.32:23-85) and whose employment is not subject to the guaranteed annual income provisions of any collective bargaining agreement relating to longshoremen;

(c) No more than 20 persons issued and holding registration pursuant to paragraph (b) of this subdivision who are limited to acting as scalemen and who are no longer employed as scalemen on the effective date of this 1987 amendatory act;

(d) A person issued registration on a temporary basis as a checker to meet special or emergency needs who applied for such registration prior to January 15, 1986 and who is still so registered by the commission;

(e) A person issued registration on a temporary basis as a checker to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission;

(f) A person issued registration on a temporary basis as a container equipment operator to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission; and

(g) A person issued registration on a temporary basis as a longshoreman to meet special or emergency needs in accordance with a waterfront commission resolution of September 4, 1996 and who is still so registered by the commission.

2. If any part or provision of this act or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this act or the application thereof to other persons or circumstances and the two states hereby declare that they would have entered into this act or the remainder thereof had the invalidity of such provisions or application thereof been apparent.

3. This act constitutes an agreement between the states of New Jersey and New York, supplementary to the waterfront commission compact and amendatory thereof, and shall be liberally construed to effectuate the purposes of that compact and the powers vested in the waterfront commission hereby shall be construed to be in aid of and supplemental to and not in limitation of or in derogation of any of the powers heretofore conferred upon or delegated to the waterfront commission.

4. This act shall take effect immediately but shall remain inoperative until the enactment into law by the State of New York of legislation of substantially similar substance and effect; but if such legislation already has been enacted, this act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 434

A SUPPLEMENT to "An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1998 and regulating the disbursement thereof," approved June 27, 1997 (P.L.1997, c. 131).

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 "Beaches and Harbors Fund of 1977" created pursuant to section 9 of the "Beaches and Harbors Bond Act of 1977," P.L. 1977, c.208, the sum of $1,208,244 to provide grants for the researching, planning, acquiring, developing, constructing and maintaining of beach and harbor restoration, maintenance and protection facilities, projects and programs.

2. There is appropriated to the Department of Environmental Protection such sums as may become available due to the return of any currently escrowed funds to the "Beaches and Harbors Fund of 1977" to provide grants for the researching, planning, acquiring, developing, constructing and maintaining of beach and harbor restoration, maintenance and protection facilities, projects and programs.

3. There is appropriated to the Department of Environmental Protection from the "Shore Protection Fund" created pursuant to section 14 of the "Shore Protection Bond Act of 1983," P.L. 1983, c. 356, the sum of $2,706,735 to provide grants to counties and municipalities for the cost of researching, planning, acquiring, developing, constructing and maintaining county and municipal shore protection projects.

4. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 435

AN ACT concerning the New Jersey Health Care Facilities Financing Authority and amending and supplementing P.L.1972, c.29.

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

1. The Title of P.L.1972, c.29 is amended to read as follows:

Title amended.

An act relating to the financing of health care facilities, equipment and services; creating the New Jersey Health Care Facilities Financing Authority and prescribing its powers and duties; authorizing the issuance of bonds and notes of the authority and providing for the terms and security thereof, and making an appropriation therefor.

2. Section 1 of P.L.1972, c.29 (C.26:2I-1) is amended to read as follows:

C.26:2I-1 Declaration of serious public emergency relative to health care facilities.

1. It is hereby declared that a serious public emergency exists affecting the health, safety and welfare of the people of the State resulting from the fact that many health care facilities throughout the State are no longer adequate to meet the needs of modern health care. Inadequate and outmoded facilities deny to the people of the State the benefits of health care of the highest quality, efficiently and promptly provided at a reasonable cost. As a result, health care providers are restructuring their organizations, facilities and operations in order to develop integrated health care delivery systems capable of providing a full range of health care services in the most cost-effective manner.

It is the purpose of this act to ensure that all health care institutions have access to financial resources to improve the health and welfare of the citizens of the State. It is hereby declared to be the policy of the State to encourage the provision of modern, well-equipped health care facilities, and such provision is hereby declared to be a public use and purpose.

3. Section 3 of P.L.1972, c.29 (C.26:2I-3) is amended to read as follows:

C.26:2I-3 Terms defined.

3. As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

"Authority" means the New Jersey Health Care Facilities Financing Authority created by this act or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this act shall be given by law.

"Bond" means bonds, notes or other evidences of indebtedness of the authority issued pursuant to this act.

"Commissioner" means the Commissioner of Health and Senior Services.

"Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, interest exchange agreement, insurance contract, surety bond, commitment to purchase bonds, purchase or sale agreement, or commitment or other contract or agreement authorized and approved by the authority in connection with the authorization, issuance, security or payment of bonds.

"Health care organization" means an organization located in this State which is authorized or permitted by law, whether directly or indirectly through a holding corporation, partnership or other entity, to provide health care-related services, including, but not limited to, hospital, outpatient, public health, home health care, residential care, assisted living, hospice, health maintenance organization, blood bank, alcohol or drug abuse, halfway house, diagnostic, treatment, rehabilitation, extended care, skilled nursing care, nursing care, intermediate care, tuberculosis care, chronic disease care, maternity, mental health, boarding or sheltered care or day care, services provided by a physician in his office, or any other service offered in connection with health care services or by an entity affiliated with a health care organization or an integrated delivery system.

"Integrated delivery system" means a group of legally affiliated health care organizations.

"Public health care organization" means a State, county or municipal health care organization.

"Project" or "health care organization project" means the acquisition, construction, improvement, renovation or rehabilitation of lands, buildings, fixtures, equipment and articles of personal property, or other tangible or intangible assets that are necessary or useful in the development, establishment or operation of a health care organization pursuant to this act, and "project" or "health care organization project" may include: the financing, refinancing or consolidation of secured or unsecured debt, borrowings or obligations, or the provision of financing for any other expense incurred in the ordinary course of business, all of which lands, buildings, fixtures, equipment and articles of personal property are to be used or occupied by any person in the health care organization; the acquisition of an entity interest, including capital stock, in a corporation; or any combination thereof; and may include any combination of the foregoing undertaken jointly by any health care organization with one or more other health care organizations.

"Project cost" or "health care organization project cost" means the sum total of all or any part of costs incurred or estimated to be incurred by the authority or by a health care organization which are reasonable and necessary for carrying out all works and undertakings and providing all necessary equipment for the development of a project, exclusive of the amount of any private or federal, State or local financial assistance for and received by a health care organization for the payment of such project cost. Such costs shall include, but are not necessarily limited to: interest prior to, during and for a reasonable period after such development; start-up costs and costs of operation and maintenance during the construction period and for a reasonable additional period thereafter; organization, administration, operation and other expenses of the health care organization prior to and during construction; the cost of necessary studies, surveys, plans and specifications, architectural, engineering, legal or other special services; the cost of acquisition of land, buildings and improvements thereon (including payments for the relocation of persons displaced by such acquisition), site preparation and development, construction, reconstruction, equipment, including fixtures, equipment, and cost of demolition and removal, and articles of personal property required; the reasonable cost of financing incurred by a health care organization or the authority in the course of the development of the project; reserves for debt service; the fees imposed upon a health care organization by the commissioner and by the authority; other fees charged, and necessary expenses incurred in connection with the initial occupancy of the project; and the cost of such other items as may be reasonable and necessary for the development of a project; as well as provision or reserves for working capital, operating or maintenance or replacement expenses, or for payment or security of principal of, or interest on, bonds.

4. Section 4 of P.L.1972, c.29 (C.26:2I-4) is amended to read as follows:

C.26:2I-4 "New Jersey Health Care Facilities Financing Authority."

4. a. There is hereby established in the Department of Health and Senior Services, a public body corporate and politic, with corporate succession, to be known as the "New Jersey Health Care Facilities Financing Authority." The authority shall constitute a political subdivision of the State established as an instrumentality 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.

b. The authority shall consist of seven members, three of whom shall be the commissioner, who shall be the chairman, the Commissioner of Banking and Insurance, and the Commissioner of Human Services, who shall serve during their terms of office, or when so designated by them, their deputies or other representatives, who shall serve at their pleasure, and four public members who are citizens of the State to be appointed by the Governor, with the advice and consent of the Senate for terms of four years; provided that the four members first appointed by the Governor shall serve terms expiring on the first, second, third, and fourth, respectively, April 30 ensuing after the enactment of this act. Each member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy among the public members shall be filled by appointment for the unexpired term only.

c. Any member of the authority appointed by the Governor may be removed from office by the Governor for cause after a public hearing.

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

e. The authority, upon the first appointment of its members and thereafter on or after April 30 in each year, shall annually elect from among its members a vice chairman who shall hold office until April 30 next ensuing and shall continue to serve during the term of his successor and until his successor shall have been appointed and qualified. The authority may also appoint, retain and employ, without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, such officers, agents, and employees as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation.

f. The powers of the authority shall be vested in the members thereof in office from time to time and a majority of the total authorized membership of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the authority at any meeting thereof by the affirmative vote of a majority of the members present, unless in any case the bylaws of the authority shall require a larger number. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

g. Each member and the treasurer of the authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member or treasurer, as the case may be, in such form and amount as may be prescribed by the Attorney General. 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.

h. No trustee, director, officer or employee of a health care organization may serve as a member of the authority.

i. At least two true copies 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, exclusive of Saturdays, Sundays and public holidays, after such copies of the minutes shall have been so delivered or at such earlier time as the Governor shall sign a statement of approval thereof. If, in said 10-day period, the Governor returns a 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 of no effect. If the Governor shall not return the minutes within said 10-day period, any action therein recited shall have force and effect according to the wording thereof. At any time prior to the expiration of the said 10-day period, the Governor may sign a statement of approval of all or any such action of the authority.

The powers conferred in this subsection upon the Governor shall be exercised with due regard for the rights of the holders of bonds of the authority at any time outstanding.

5. Section 5 of P.L.1972, c.29 (C.26:2I-5) is amended to read as follows:

C.26:2I-5 Powers of authority.

5. Powers of authority. The authority shall have power:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business and to alter and revise such bylaws from time to time at its discretion.

b. To adopt and have an official seal and alter the same at pleasure.

c. To maintain an office at such place or places within the State as it may designate.

d. To sue and be sued in its own name.

e. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof as provided in this act.

f. To acquire, lease as lessee or lessor, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this act.

g. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, any land or interest therein and other property which it may determine is

reasonably necessary for any project; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes, for fair consideration after public notice.

h. To receive and accept, from any federal or other public agency or governmental entity directly or through the Department of Health and Senior Services or any other agency of the State or any health care organization, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made.

i. To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of health care organization projects for health care organizations under the provisions of this act, and from time to time to modify such plans, specifications, designs or estimates.

j. By contract or contracts with and for health care organizations only, to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip health care organization projects. The authority, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing rules and procedures providing that, except as hereinafter provided, no contract on behalf of the authority shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of $7,500.00 or the amount determined as provided in this subsection, unless the authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing of services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any such products to be supplied or services to be rendered are filed with said board. The Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of each odd-numbered year, adjust the threshold amount set forth in this subsection, or subsequent to 1985 the threshold amount resulting from any adjustment under this subsection or section 17 of P.L.1985, c.469, 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, no later than June 1 of each odd-numbered year, notify the authority of the adjustment. The adjustment shall become effective July 1 of each odd-numbered year.

k. To determine the location and character of any project to be undertaken, subject to the provisions of this act, and subject to State health and environmental laws, to construct, reconstruct, maintain, repair, lease as lessee or lessor, and regulate the same and operate the same in the event of default by a health care organization of its obligations and agreements with the authority; to enter into contracts for any or all such purposes; and to enter into contracts for the management and operation of a project in the event of default as herein provided. The authority shall use its best efforts to conclude its position as an operator as herein provided as soon as is practicable.

l. To establish rules and regulations for the use of a project or any portion thereof and to designate a health care organization as its agent to establish rules and regulations for the use of a project undertaken by such a health care organization.

m. Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof.

n. To enter into agreements, credit agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this act.

o. To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by resolution of the authority.

p. To obtain, or aid in obtaining, from any department or agency of the United States any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any loan or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this act; and notwithstanding any other provisions of this act, to enter into agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee, and accept payment in such manner and form as provided therein in the event of default by the borrower.

q. To obtain from any department or agency of the United States or a private insurance company any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof,

on any bonds issued by the authority pursuant to the provisions of this act; and notwithstanding any other provisions of this act, to enter into any agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee, except to the extent that such action would in any way impair or interfere with the authority's ability to perform and fulfill the terms of any agreement made with the holders of the bonds of the authority.

r. To receive and accept, from any department or agency of the United States or of the State or from any other entity, any grant, appropriation or other moneys to be used for or applied to any corporate purpose of the authority, including without limitation the meeting of debt service obligations of the authority in respect of its bonds.

6. Section 10 of P.L.1972, c.29 (C.26:2I-10) is amended to read as follows:

C.26:2I-10 Additional powers of authority.

10. The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees and charges from such project so as to provide funds sufficient with other revenues or moneys, if any:

a. To pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for.

b. To pay the principal of and the interest on outstanding bonds of the authority issued in respect of such project as the same shall become due and payable; and

c. To create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such bonds of the authority.

Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this State other than the authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such

resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys or securities so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such bonds issued to finance projects of a health care organization without distinction or priority of one over another; provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a health care organization and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in such case, the authority may create separate sinking or other similar funds in respect to such subordinate lien bonds.

7. Section 17 of P.L.1972, c.29 (C.26:2I-17) is amended to read as follows:

C.26:2I-17 State will not limit, alter, restrict rights of authority.

17. The State of New Jersey does pledge to and agree with the holders of the bonds issued pursuant to authority contained in this act, and with those parties who may enter into contracts with the authority pursuant to the provisions of this act, that the State will not limit, alter or restrict the rights hereby vested in the authority and the health care organization to maintain, construct, reconstruct and operate any project as defined in this act or to establish and collect such rents, fees, receipts or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this act, and with

the parties who may enter into contracts with the authority pursuant to the provisions of this act, or in any way impair the rights or remedies of the holders of such bonds or such parties until the bonds, together with interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority. The authority as a public body corporate and politic shall have the right to include the pledge herein made in its bonds and contracts.

8. Section 21 of P.L.1972, c.29 (C.26:2I-21) is amended to read as follows:

C.26:2I-21 Department may visit, examine, inspect authority, require reports.

21. The Department of Health and Senior Services, or the commissioner or their representatives, may visit, examine into and inspect, the authority and may require, as often as desired, duly verified reports therefrom giving such information and in such form as such department or commissioner shall prescribe.

9. Section 23 of P.L.1972, c.29 (C.26:2I-23) is amended to read as follows:

C.26:2I-23 Powers of State departments, agencies.

23. In order to provide new health care organizations and to enable the construction and financing thereof, to refinance indebtedness hereafter created by the authority for the purpose of providing one or more health care organizations or additions or improvements thereto or modernization thereof or for any one or more of said purposes but for no other purpose unless authorized by law, each of the following bodies shall have the powers hereafter enumerated to be exercised upon such terms and conditions, including the fixing of fair consideration or rental to be paid or received, as it shall determine by resolution as to such property and each shall be subject to the performance of the duties hereafter enumerated, that is to say, the Department of Health and Senior Services as to such as are located on land owned by, or owned by the State and held for, any State institution or on lands of the institutions under the jurisdiction of the Department of Health and Senior Services or of the Department of Human Services, or by the authority, the Commissioner of Human Services as to State institutions operated by that department, the board of trustees or governing body of any public health care organization, the board of trustees of the University of Medicine and Dentistry of New Jersey, as to such as are located on land owned by the university, or by the State for the university, the State or by the particular public health care organization, respectively, namely:

a. The power to sell and to convey to the authority title in fee simple in any such land and any existing health care facility thereon owned by the State and held for any department thereof or of any of the institutions under the jurisdiction of the Department of Health and Senior Services or the power to sell and to convey to the authority such title as the State or the public health care organization, respectively, may have in any such land and any existing health care facility thereon.

b. The power to lease to the authority any land and any existing health care facility thereon so owned for a term or terms not exceeding 50 years each.

c. The power to lease or sublease from the authority, and to make available, any such land and existing health care facility conveyed or leased to the authority under subsections a. and b. of this section, and any new health care facility erected upon such land or upon any other land owned by the authority.

d. The power and duty, upon receipt of notice of any assignment by the authority of any lease or sublease made under subsection c. of this section, or of any of its rights under any such lease or sublease, to recognize and give effect to such assignment, and to pay to the assignee thereof rentals or other payments then due or which may become due under any such lease or sublease which has been so assigned by the authority.

10. Section 24 of P.L.1972, c.29 (C.26:2I-24) is amended to read as follows:

C.26:2I-24 Additional powers, duties relative to institutions, facilities.

24. In addition thereto the Commissioner of Human Services as to institutions operated by that department, the chief executive officer and the board of trustees of other State institutions, and the board of trustees or governing body of county and municipal public health care organizations shall have the following powers and shall be subject to the following duties as to their lands and health care facilities:

a. The power to pledge and assign all or any part of the revenues derived from the operation of a health care organization as security for the payment of rentals due and to become due under any lease or sublease of a new health care facility as provided under subsection c. of section 23 of P.L.1972, c.29 (C.26:2I-23).

b. The power to covenant and agree in any lease or sublease of such new health care facilities made under subsection c. of section 23 of P.L.1972, c.29 (C.26:2I-23) to impose fees, rentals or other charges for the use and occupancy or other operation of such new health care facilities in an

amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

c. The power to apply all or any part of the revenues derived from the operation of any health care organization to the payment of rentals due and to become due under any lease or sublease made under subsection c. of section 23 of P.L.1972, c.29 (C.26:2I-23).

d. The power to pledge and assign all or any part of the revenues derived from the operation of any health care organization to the payment of rentals due and to become due under any lease or sublease made under subsection c. of section 23 of P.L.1972, c.29 (C.26:2I-23).

e. The power to covenant and agree in any lease or sublease made under subsection c. of section 23 of P.L.1972, c.29 (C.26:2I-23) to impose fees, rentals or other charges for the use and occupancy of a health care facility or for the operation of a health care organization in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

11. Section 25 of P.L.1972, c.29 (C.26:2I-25) is amended to read as follows:

C.26:2I-25 Powers relative to revenue producing facilities.

25. In addition to the powers and duties with respect to health care organizations given under sections 23 and 24 of P.L.1972, c.29 (C.26:2I-23 and C.26:2I-24, respectively), the board of trustees or governing body of any State institution or public health care organization and the board of trustees of the University of Medicine and Dentistry of New Jersey shall also have the same powers and be subject to the same duties in relation to any conveyance, lease or sublease made under subsection a., b., or c. of section 24 of P.L.1972, c.29 (C.26:2I-24), with respect to revenue producing facilities; that is to say, structures or facilities which produce revenues sufficient to pay the rentals due and to become due under any lease or sublease made under subsection c. of section 24 of P.L.1972, c.29 (C.26:2I-24), including, without limitation, extended care and parking facilities.

12. Section 27 of P.L.1972, c.29 (C.26:2I-27) is amended to read as follows:

C.26:2I-27 Powers exercised by resolution of governing body, trustees.

27. To the extent not otherwise expressly provided under existing law, all powers and duties conferred upon any State institution or the University of Medicine and Dentistry of New Jersey or any county, city or municipal health care organization pursuant to this act shall be exercised and performed by resolution of its governing body and all powers and duties

conferred upon any of these health care organizations pursuant to this act shall be exercised and performed by resolution of its board of trustees or governing body.

13. Section 28 of P.L.1972, c.29 (C.26:2I-28) is amended to read as follows:

C.26:2I-28 Additional powers of authority relative to health care organizations.

28. In addition to the foregoing powers, the authority with respect to health care organizations shall have power:

a. Upon application of the health care organization to construct, acquire or otherwise provide projects for the use and benefit of the health care organization and the patients, employees and staff of the health care organization. The health care organization for which such a project is undertaken by the authority shall approve the plans and specifications of such project.

b. To operate and manage any project provided pursuant to this section, or the authority may lease any such project to the health care organization for which such project is provided. At such time as the liabilities of the authority incurred for any such project have been met and the bonds of the authority issued therefor have been paid, or such liabilities and bonds have otherwise been discharged, the authority shall transfer title to all the real and personal property of such project vested in the authority, to the health care organization in connection with which such project is then being operated, or to which such project is then leased; provided, however, that if at any time prior thereto the health care organization ceases to offer health services, then such title shall vest in the State of New Jersey.

Any lease of a project authorized by this section shall be a general obligation of the lessee and may contain provisions, which shall be a part of the contract with the holders of the bonds of the authority issued for such project, as to:

(i) pledging all or any part of the moneys, earnings, income and revenues derived by the lessee from such project or any part or parts thereof, or other personal property of the lessee, to secure payments required under the terms of such lease;

(ii) the rates, rentals, fees and other charges to be fixed and collected by the lessee, the amounts to be raised in each year thereby, and the use and disposition of such moneys, earning, income and revenues;

(iii) the setting aside of reserves and the creation of special funds and the regulation and disposition thereof;

(iv) the procedure, if any, by which the terms of such lease may be amended;

(v) vesting in a trustee or trustees such specified properties, rights, powers and duties as shall be deemed necessary or desirable for the security of the holders of the bonds of the authority issued for such projects;

(vi) the obligations of the lessee with respect to the replacement, reconstruction, maintenance, operation, repairs and insurance of such project;

(vii) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the lessee, and providing for the rights and remedies of the authority and of its bondholders in the event of such default;

(viii) any other matters, of like or different character, which may be deemed necessary or desirable for the security or protection of the authority or the holders of its bonds.

14. Section 29 of P.L.1972, c.29 (C.26:2I-29) is amended to read as follows:

C.26:2I-29 Additional powers of authority in respect to loans.

29. The authority also shall have power:

a. To make loans to any health care organization for the construction or acquisition of projects in accordance with a loan agreement. No such loan shall exceed the total cost of such project. Each such loan shall be promised upon an agreement between the authority and the health care organization as to payment, security, maturity, redemption, interest and other appropriate matters.

b. To make loans to any health care organization to refund existing bonds, mortgages or advances given or made by the health care organization for the construction of projects to the extent that this will enable the health care organization to offer greater security for loans for new project construction.

15. Section 30 of P.L.1972, c.29 (C.26:2I-30) is amended to read as follows:

C.26:2I-30 Power of health care organization to mortgage, pledge property, income.

30. For the purpose of obtaining and securing loans under section 29 of P.L.1972, c.29 (C.26:2I-29), every health care organization shall have power to mortgage and pledge any of its real or personal property, and to pledge any of its income from whatever source to repay the principal of and interest on any loan made to it by the authority or to pay the interest on and principal and redemption premium, if any, of any bond or other evidence of indebtedness evidencing the debt created by any such loan; provided that the foregoing shall not be construed to authorize actions in conflict with specific

legislation, trusts, endowment, or other agreements relating to specific properties or funds.

16. Section 31 of P.L.1972, c.29 (C.26:2I-31) is amended to read as follows:

C.26:2I-31 Deposit of moneys received from health care organizations.

31. Moneys of the authority received from any health care organization in payment of any sum due to the authority pursuant to the terms of any loan or other agreement or any bond, note or other evidence of indebtedness, shall be deposited in an account in which only moneys received from health care organizations shall be deposited and shall be kept separate and apart from and not commingled with any other moneys of the authority. Moneys deposited in such account shall be paid out on checks signed by the chairman of the authority or by such other person or persons as the authority may authorize, and countersigned by one other member of the authority.

17. Section 32 of P.L.1972, c.29 (C.26:2I-32) is amended to read as follows:

C.26:2I-32 Responsibility of authority relative to projects.

32. a. Whenever the authority under section 28 of P.L.1972, c.29 (C.26:2I-28) undertakes to construct, acquire or otherwise provide and operate and manage a project, the authority shall be responsible for the direct operation and maintenance costs of such projects, but each health care organization in connection with which such a project is provided and operated and managed shall be responsible at its own expense for the overall supervision of each project, for the overhead and general administrative costs of the health care organization which are incurred because of such project and for the integration of each project operation into the health care organization's health care program.

b. Whenever the authority under section 28 of P.L.1972, c.29 (C.26:2I-28) undertakes to construct, acquire or otherwise provide a project and to lease the same to a health care organization, the lessee shall be responsible for the direct operation and maintenance costs of such project and, in addition, shall be responsible for the overall supervision of each project, for the overhead and general administrative costs of the lessee which are incurred because of such project and for the integration of each project operation into the lessee's health care program.

c. Whenever the authority under section 29 of P.L.1972, c.29 (C.26:2I-29) makes loans for the construction of a project, the health care organization at which such project is located shall be responsible for the direct operation and maintenance costs of such project and, in addition, shall be

responsible for the overall supervision of each project, for the overhead and general administrative costs of the health care organization which are incurred because of such project and for the integration of each project operation into the health care organization's health care program.

18. Section 33 of P.L.1972, c.29 (C.26:2I-33) is amended to read as follows:

C.26:2I-33 Pledges of health care organizations.

33. Any pledge of moneys, earnings, income or revenues authorized with respect to health care organizations, pursuant to the provisions of this act, shall be valid and binding from the time when the pledge is made. The moneys, earnings, income or revenues so pledged and thereafter received by the pledgor shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the pledgor irrespective of whether such parties have notice thereof. No instrument by which such a pledge is created need be filed or recorded in any manner.

19. Section 34 of P.L.1972, c.29 (C.26:2I-34) is amended to read as follows:

C.26:2I-34 Participation in or acquisition of existing projects.

34. a. Whenever any health care organization has constructed or acquired any work or improvement which would otherwise qualify as a project under the preceding portions of this act except for the fact that such construction or acquisition was undertaken and financed without assistance from the authority, the authority may purchase such work or improvement, and lease the same to the health care organization, or may lend funds to the health care organization for the purpose of enabling the latter to retire obligations incurred for such construction or acquisition, provided that the amount of any such purchase price or loan shall not exceed the project cost as herein defined, irrespective of such work or improvement. All powers, rights, obligations and duties granted to or imposed upon the authority, health care organizations, State departments and agencies or others by this act in respect to projects shall apply to the same extent with respect to transactions authorized by this section, provided that any action otherwise required to be taken at a particular time in the progression of a project may, where the circumstances so required in connection with a transaction under this section be taken nunc pro tunc.

b. Acquisition of health care facilities from counties or municipalities. Notwithstanding the provisions of any law to the contrary, the authority may

authorize the acquisition, and any county or municipality by resolution or ordinance may authorize a private sale and conveyance or leasing to the authority, of any interest of the county or municipality in any lands and existing health care facilities which are then being operated by a health care organization upon such terms and conditions as may be agreed upon by the authority and the county and municipality. The authority may use its funds for the acquisition by providing for the retirement of obligations incurred for the acquisition of the land, and for the acquisition and construction of the existing health care facilities, provided that the amount of the purchase price shall not exceed the project costs. Upon acquisition of the lands and existing health care facilities, the authority may convey or lease the lands and existing health care facilities to a health care organization under such terms and conditions as the authority and health care organization may agree.

20. Section 38 of P.L.1972, c.29 (C.26:2I-38) is amended to read as follows:

C.26:2I-38 Inapplicability of inconsistent laws.

38. All laws, or parts thereof, inconsistent with this act are hereby declared to be inapplicable to the provisions of this act, except as otherwise provided.

C.26:2I-5.1 Authority financing not required.

21. The provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) shall not be construed to require a health care organization as defined in section 3 of P.L.1972, c.29 (C.26:2I-3) which is seeking to finance a project, to obtain financing from the New Jersey Health Care Facilities Financing Authority.

C.26:2I-5.2 HCFFA, EDA powers relative to for profit projects.

22. Notwithstanding the provisions of P.L.1972, c.29 (C.26:2I-1 et seq.) to the contrary, nothing in that act shall be construed to provide the New Jersey Health Care Facilities Financing Authority with greater authority to finance a project undertaken by a for-profit health care organization than the New Jersey Economic Development Authority has under P.L.1974, c.80 (C.34:1B-1 et seq.).

Repealer.

23. Sections 6 and 26 of P.L.1972, c.29 (C.26:2I-6 and C.26:2I-26, respectively) are repealed.

24. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 436

AN ACT concerning insurance for certain out-of-state motor vehicles in this State and amending P.L.1985, c.520.

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

1. Section 18 of P.L.1985, c.520 (C.17:28-1.4) is amended to read as follows:

C.17:28-1.4 Mandatory coverage.

18. Any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or section 19 of P.L.1983, c.362 (C.17:28-1.3) for any New Jersey resident who is not required to maintain personal injury protection coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) and who is not otherwise eligible for such benefits, whenever the automobile or motor vehicle insured under the policy is used or operated in this State. In addition, any insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, or controlling or controlled by, or under common control by, or with, an insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage, or any similar coverage, in any other state or in any province of Canada, shall include in each policy coverage to satisfy at least the liability insurance requirements of section 1 of P.L.1972, c.197 (C.39:6B-1) or section 3 of P.L.1972, c.70 (C.39:6A-3), the uninsured motorist insurance requirements of subsection a. of section 2 of P.L.1968, c.385 (C.17:28-1.1), and personal injury protection benefits coverage pursuant to section 4 of P.L.1972, c.70 (C.39:6A-4) or of section 19 of P.L.1983, c.362 (C.17:28-1.3), whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

Any liability insurance policy subject to this section shall be construed as providing the coverage required herein, and any named insured, and any immediate family member as defined in section 14.1 of P.L.1983, c.362

(C.39:6A-8.1), under that policy, shall be subject to the tort option specified in subsection a. of section 8 of P.L.1972, c.70 (C.39:6A-8).

Each insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State and subject to the provisions of this section shall file and maintain with the Department of Banking and Insurance written certification of compliance with the provisions of this section.

"Automobile" means an automobile as defined in section 2 of P.L.1972, c.70 (C.39:6A-2).

2. This act shall take effect immediately.

Approved January 19, 1998.

CHAPTER 437

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, 1998 and regulating the disbursement thereof," approved June 27, 1997 (P.L.1997, c.131).

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

1. In addition to the amounts appropriated under P.L.1997, c.131, there is appropriated out of the General Fund the following sum for the purpose specified:

DIRECT STATE SERVICES
98 JUDICIARY
10 Public Safety and Criminal Justice
15 Judicial Services
9730 Family Courts

05-9730 Personal Services.....		$2,250,000
Salaries and wages.....	($2,250,000)	

9740 Probation Services

07-9740 Personal Services.....		$750,000
Salaries and wages.....	($750,000)	

9760 Field Operations

11-9760 Personal Services.....		$2,000,000
Salaries and wages.....	($2,000,000)	
Total Appropriation.....		$5,000,000

From the funds appropriated hereinabove for Family Courts, the Judiciary shall hire and assign to each county, as needed, certified public accountants to review child support order payments in cases where the payor has requested court review of the order and alleges the inability to comply with the existing order due to changes in financial circumstances, and provide advisory services and make recommendations to the family court with regard to the request.

2. This act shall take effect immediately.

Approved January 19, 1998.

JOINT RESOLUTIONS

(2291)

Joint Resolutions

JOINT RESOLUTION NO. 1

A JOINT RESOLUTION memorializing the government of Switzerland to promptly and fully disclose all information regarding funds deposited in Swiss banks by Jewish Holocaust victims, calling for the return of these assets to Holocaust survivors and their heirs, and commending the efforts of the United States Senate Banking Committee.

WHEREAS, Because of the efforts of the United States Senate Banking Committee, it has come to the world's attention that, in the words of Senator Alfonse D'Amato, Switzerland "blatantly benefitted from the Holocaust"; and

WHEREAS, Switzerland benefitted by using the funds of European Jews deposited in Swiss banks during World War II to compensate Swiss citizens for property expropriated by former communist regimes; and

WHEREAS, In a 1949 secret agreement with Poland, Switzerland used the assets of Polish Jews to compensate Swiss citizens for the nationalization of their property by that country; and

WHEREAS, The Swiss government later entered into similar agreements with the nations of Hungary and Czechoslovakia; and

WHEREAS, Swiss banks have refused to help Jewish Holocaust survivors locate bank accounts, demanding that they produce death certificates for relatives who perished in Nazi concentration camps; and

WHEREAS, The Swiss government has refused to deal with these issues and is attempting to stall justice by establishing a commission that will take five years to report its findings on assets stolen by Germans and deposited in Switzerland during World War II; and

WHEREAS, It is time for complete disclosure by the Swiss government of all funds deposited in Swiss banks by Jewish Holocaust victims and for a full accounting of all unclaimed assets of these victims; now, therefore,

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

1. The government of Switzerland is memorialized to promptly and fully disclose all information regarding funds deposited in Swiss banks by Jewish Holocaust victims and to make a full accounting of all unclaimed assets of these victims.

2. The Swiss government is called upon to expedite the prompt return of these assets to Holocaust survivors and their heirs.

3. The United States Senate Banking Committee is commended for its efforts in bringing this dark chapter in Swiss history to light and in attempting to help Holocaust survivors and their families.

4. Duly authenticated copies of this joint resolution shall be transmitted to the Swiss Ambassador to the United States and to the Chairman and members of the United States Senate Banking Committee.

5. This joint resolution shall take effect immediately .

Approved March 7, 1997.

JOINT RESOLUTION NO. 2

A JOINT RESOLUTION designating the week including March 17 of every year as Irish-American History and Heritage Week.

WHEREAS, The history of the United States and the State of New Jersey has been significantly influenced by the rich heritage of Ireland and her people; and

WHEREAS, Irish men and women first came to this State while it was still a British colony and they sought political and religious freedom and economic opportunity to escape the grinding poverty, political oppression and religious persecution of their homeland; and

WHEREAS, With tremendous determination, strength and risk to their lives, Irish immigrants helped build the canals, railroads and bridges of this country and State and toiled as servants and in the sweatshops of our cities; and

WHEREAS, Despite these bitter obstacles, many nameless Irish immigrants became fervent patriots, fighting fiercely and dying bravely for this

county in all of its wars, especially during the Civil War and at the battles of Antietam, Fredericksburg and Gettysburg; and

WHEREAS, Today, almost 39 million Americans claim Irish ancestry, according to the most recent federal decennial census; and

WHEREAS, Irish-American men and women have become recognized leaders in all areas of American life and culture, including business, organized labor, politics, education, the arts and entertainment; and

WHEREAS, Each year on March 17, the feast of St. Patrick, the patron saint of Ireland, is celebrated throughout the State and all over the country in observances that include large, colorful parades, traditional Irish music and the wearing of green clothing; and

WHEREAS, It is fitting and proper to honor the significant accomplishments and contributions of the Irish-American community in this State by designating the week including March 17 of every year as Irish-American History and Heritage Week; and

WHEREAS, It is appropriate to encourage American history classes in this State to highlight the contributions to this nation that Irish-Americans have made throughout American history; now, therefore,

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

C.36:2-43 Irish-American History and Heritage Week designated.

1. The week including March 17 of every year is designated as Irish-American History and Heritage Week.

2. The Governor and Legislature of the State of New Jersey encourage American history classes throughout the State to discuss and examine the contributions that Irish-Americans have made to the history of this country during Irish-American History and Heritage Week.

3. This joint resolution shall take effect immediately.

Approved March 17, 1997.

JOINT RESOLUTION NO. 3

A JOINT RESOLUTION designating a portion of State Highway Route No.47 as the "Nello Melini Memorial Highway."

WHEREAS, The late Nello Melini, of the City of Vineland in Cumberland County, was the owner and operator of the largest chick hatchery in the State of New Jersey, and was a major contributor to the spectacular post-World War II growth of the State's poultry industry; and

WHEREAS, In recognition of his leadership in the industry, Mr. Melini was elected by his colleagues to the presidency of the Jersey Chick Association and the Chairmanship of the Vineland Egg Festival, served as chairman of the Hatchery Division of the Northeastern Poultry Producers Council, and was designated the 1962 recipient of the Golden Egg Award; and

WHEREAS, Upon his retirement from thirty years as a poulterer, Mr. Melini undertook a second career, in public service, commencing in 1964 with his accession to the clerkship of the City of Vineland, continuing with his elevation in 1967 to the post of Cumberland County Treasurer, and including his tenure as leader of his political party in Cumberland County from 1969 to 1975, ending just three years before his death; now, therefore,

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

1. That portion of State Highway Route No.47 which passes through the City of Vineland, Cumberland County, beginning at the intersection of Route 47 and Landis Avenue, at milepost 46.4, and extending northward past the intersection of Route 47 and Oak Road, to milepost 47.6, shall be designated the "Nello Melini Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing that name.

3. This joint resolution shall take effect immediately

Approved May 8, 1997.

JOINT RESOLUTION NO. 4

A JOINT RESOLUTION designating that portion of State Highway Route 440 located in the city of Perth Amboy, Middlesex County, as the "Edward J. Patten Memorial Highway."

WHEREAS, The Honorable Edward J. Patten who passed away on September 19, 1994, at the age of 89, was a well-beloved person with a long and productive career of dedicated service in federal, State and local government; and

WHEREAS, Mr. Patten served as mayor of Perth Amboy from 1934 to 1940, the city's youngest-ever mayor, and as Middlesex County Clerk from 1940 to 1954; and

WHEREAS, He served as campaign manager to former Governor Robert B. Meyner in 1953 and 1957 and was appointed to serve as New Jersey Secretary of State in 1954 and was reappointed in 1958, serving until 1962; and

WHEREAS, Mr. Patten was elected to Congress in 1962, from the 15th District in Middlesex County and was re-elected eight times, serving until 1981 during which time he devoted himself to the service of his constituents; and

WHEREAS, During his tenure in Congress, Mr. Patten served on the House Appropriations Committee and its Subcommittee on Labor, Health, Education and Welfare and the House Science, Space and Aeronautics Committee and was instrumental in providing millions of dollars in federal grants to Middlesex County and its communities for education, scientific research, hospitals and the handicapped, and also sponsored several laws which benefit many Americans, including students, senior citizens and the disabled; and

WHEREAS, In 1980, Mr. Patten was bestowed the Rutgers University Award, its highest honor, for his service and leadership as one of the greatest supporters of higher education in the United States and as a strong and consistent advocate of federal support of student aid programs and university research activities; and

WHEREAS, Congressman Patten took a leadership role in a wide range of civic, fraternal and charitable programs in Perth Amboy, Middlesex County and this State, including service as president of the Perth Amboy and Middlesex County Bar Associations, and as director of the State League of Municipalities, and received many civic, cultural, and other awards; and

WHEREAS, It is most fitting and proper that the portion of State Highway Route 440 located in Perth Amboy, Middlesex County, be designated in memory of the Honorable Edward J. Patten, in recognition of his life of devoted public service to the people of Perth Amboy, Middlesex County, this State and this nation; now, therefore,

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

1. The Commissioner of Transportation shall designate that portion of State Highway Route 440 in the city of Perth Amboy, Middlesex County, as the "Edward J. Patten Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing that name.

3. This joint resolution shall take effect immediately.

Approved July 3, 1997.

JOINT RESOLUTION NO. 5

A JOINT RESOLUTION designating that portion of State Highway Route No. 57 located in Warren County as the "Admiral John D. Bulkeley Memorial Highway."

WHEREAS, Admiral John D. Bulkeley who passed away on April 6, 1996, at the age of 84, was a nationally recognized military hero, with a long and distinguished record of service in the Navy that included combat service in two wars and a bewildering variety of other meritorious service; and

WHEREAS, A pioneer in patrol torpedo (PT) boat tactics, Bulkeley's outstanding exploits during World War II included the defense of the Philippines during the beginning of the war in the Pacific Theater, involving a series of stunning attacks on Japanese shipping with the legendary Motor Torpedo Boat Squadron Three, which he commanded, and with which he accomplished the daring rescue of General Douglas MacArthur and his staff from the Philippines as the islands fell to the Japanese; and

WHEREAS, In recognition of his valiant efforts during the early stages of the war in the Pacific, President Roosevelt decorated Bulkeley with the Congressional Medal of Honor, the nation's highest military award, and one of more than two dozen combat decorations, citations, service awards and campaign medals received from the United States and from foreign nations during his extraordinary military career; and

WHEREAS, After serving in several Pacific Theater operations, Bulkeley was called to England where he further distinguished himself through his contributions to the D-Day invasion of German-occupied France on June 6, 1944; and

WHEREAS, Admiral Bulkeley saw additional wartime action as a ship commander during the Korean War at the Inchon landings, and thereafter served some ten years later as commander of the Guantanamo Naval Base in Cuba during the 1960's where he successfully confronted Fidel Castro over the issue of potable water for the base; and

WHEREAS, In addition to receiving the nation's highest military award, the Medal of Honor, Admiral Bulkeley's other distinguished military decorations included the Navy Cross, two Distinguished Service Crosses, the Distinguished Service Medal, two Silver Stars, two Legion of Merits with combat "V" and the Purple Heart, thereby making him one of New Jersey's--and the nation's--premier war heros; and

WHEREAS, Admiral Bulkeley's record of accomplishment throughout his 55-year military career has served as a model of excellence and devotion to duty for many thousands of midshipmen at the Naval Academy who have looked up to him as an inspiring leader and tireless defender of freedom for our country; and

WHEREAS, It is altogether fitting and proper to designate that portion of State Highway Route No. 57 located in Warren County in memory of Admiral John D. Bulkeley, who resided for many years in Mansfield Township while attending the primary and secondary school system serving the township, in order to accord proper recognition by the State of his distinguished record of military service to his country; now, therefore,

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

1. The Commissioner of Transportation shall designate that portion of State Highway Route No. 57 in Warren County as the "Admiral John D. Bulkeley Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate signage bearing that name.

3. This joint resolution shall take effect immediately.

Approved August 13, 1997.

JOINT RESOLUTION NO. 6

A JOINT RESOLUTION designating that portion of New Jersey Highway Route 120 which runs through the Meadowlands Sports Complex in East Rutherford Borough, Bergen County as the "Larry Doby Highway."

WHEREAS, It is the 50th anniversary of the year Larry Doby broke the American League color line and became the first African-American to play in the American League; and

WHEREAS, Larry Doby attended Paterson Eastside High School in Passaic County and was a three-sport star, receiving all-star mention for his performance on the football team, and was offered a college scholarship for basketball in addition to playing baseball; and

WHEREAS, Larry Doby started his career with the Newark Eagles in the "Negro League" before joining the Cleveland Indians in mid-season 1947 and becoming the first African-American to play in the American League, and during an eleven-year career in that league he played with the Indians, the Detroit Tigers and the Chicago White Sox; and

WHEREAS, Larry Doby had an outstanding career as a power hitter leading the Cleveland Indians to a World Series championship in 1948 and a second World Series appearance in 1954, leading the league in home runs in 1952 and 1954 and driving in 100 or more runs five times, and was a seven-time All-Star player, playing in six consecutive All-Star games; and

WHEREAS, In addition to his distinguished career as a major league player, Larry Doby served as a coach with the Cleveland Indians and Montreal Expos, and as Manager of the Chicago White Sox, and is currently a special assistant to the American League President; and

WHEREAS, In addition to his outstanding sports career, Larry Doby deserves special recognition for his commitment to youngsters and his service to Project Pride, a volunteer organization serving Newark's youngsters and college-bound high school seniors; and

WHEREAS, It is altogether fitting and proper that the State of New Jersey recognize Larry Doby, the first African-American to play in the American League, by designating that portion of New Jersey Highway Route 120 which runs through the Meadowlands Sports Complex in East Rutherford Borough, Bergen County as the "Larry Doby Highway;" now, therefore,

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

1. That section of the New Jersey Highway Route 120 which runs through the Meadowlands Sports Complex in East Rutherford Borough, Bergen County is hereby designated as the "Larry Doby Highway."

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing that name.

3. This joint resolution shall take effect immediately.

Approved September 9, 1997.

JOINT RESOLUTION NO. 7

A JOINT RESOLUTION creating a commission to select a proposed design for the State coin which will be part of the federal "50 States Commemorative Coin Program."

WHEREAS, The "50 States Commemorative Coin Program Act" is currently pending before the United States Congress as H.R. 2414, and provides for the redesign and issuance of quarter dollar coins to commemorate each of the 50 states; and

WHEREAS, Pursuant to this bill, beginning in January 1999 and for 10 years thereafter, five new quarter dollar coins will be issued annually representing five states, selected in the order in which the states ratified the United States Constitution or were admitted into the Union, as the case may be; and

WHEREAS, The "50 States Commemorative Coin Program" will promote state pride, help educate the youth of the United States about the history and geography of the individual states and raise as much as five billion dollars in federal government revenue; and

WHEREAS, It is appropriate to establish a mechanism by which to select a design for New Jersey's coin and present that proposal to the Governor and Legislature for transmittal to the Secretary of the United States Treasury for approval as New Jersey's coin; and

WHEREAS, It is therefore, fitting and proper, and within the public interest, to create a special commission to select a proposed design for the coin which will be issued to honor New Jersey as part of the federal "50 States Commemorative Coin Program;" now, therefore

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

1. There is hereby created a commission to be known as the "New Jersey Commemorative Coin Design Commission." The commission shall consist of fifteen members to be appointed from the general public, as follows: five each by the Governor, the President of the Senate, and the Speaker of the General Assembly. The members shall be residents of the State and have backgrounds in history, art and numismatics. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties. Any vacancy in the membership of the commission shall be filled by appointment in the same manner as the original appointment was made.

2. The commission shall organize as soon as may be practicable after the appointment of its members and shall select a chair from among its members and a secretary, who need not be a member of the commission.

3. It shall be the duty of the commission to select and submit a proposed design of the New Jersey quarter dollar coin to the Governor and Legislature for transmittal to the Secretary of the United States Treasury.

4. The commission is entitled to the assistance and services of the employees of the Office of Legislative Services and any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistants and incur traveling and other miscellaneous expenses necessary to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

5. The commission shall select a proposed design within 120 days of its first meeting and submit the proposed design to the Governor and Legislature for transmittal to the Secretary of the United States Treasury.

6. This joint resolution shall take effect immediately.

Approved December 30, 1997.

JOINT RESOLUTION NO. 8

A JOINT RESOLUTION creating the Task Force on the Availability of Homeowners Insurance in the Coastal Region.

WHEREAS, Over the past several years, homeowners and home buyers have experienced increased difficulty in obtaining personal property insurance, such as homeowners insurance, in the coastal areas of the State, and in particular, the barrier islands; and

WHEREAS, Beginning in 1993, storms causing millions of dollars in insured losses underscored the need for reliable personal property insurance, at the same time that some insurers began to restrict writing or nonrenew policies in those areas of the State hit hardest by the storms, namely those communities located between the Garden State Parkway and the Atlantic Ocean; and

WHEREAS, These practices constricted the coastal personal property and homeowners insurance market and forced many property owners into the State's property insurance pool of last resort, the New Jersey Insurance Underwriting Association, more commonly referred to as the "FAIR Plan," established by P.L.1968, c.129 (C.17:37A-1 et seq.); and

WHEREAS, In December of 1993, citing these conditions, the Legislature enacted a 90-day moratorium on the cancellation or nonrenewal of

personal property insurance policies, including homeowners or secondary residence insurance policies, on the basis of proximity to water or the risk of windstorm related claims, in an effort to stabilize the market while the then Department of Insurance completed its study of this situation; and

WHEREAS, The voluntary program which resulted from that study, the Windstorm Market Assistance Program, only began operation on January 2, 1997, and there has been insufficient time to evaluate its effectiveness; and

WHEREAS, The market for personal property insurance, including homeowners insurance, in the coastal areas continues to be restricted and an unacceptably high number of risks continue to be insured in the Fair Plan; now, therefore,

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

1. The Task Force on the Availability of Homeowners Insurance in the Coastal Region is hereby created and shall consist of 15 members to be appointed as follows: two members of the Senate to be appointed by the President thereof, both of whom shall represent coastal constituencies; two members of the General Assembly to be appointed by the Speaker thereof, both of whom shall represent coastal constituencies; the Commissioner of Banking and Insurance or her designee, who shall serve ex-officio; the Commissioner of Community Affairs or his designee, who shall serve ex-officio; and nine public members who are citizens of the State to be appointed by the Governor with the advice and consent of the Senate. Of the nine public members appointed, two shall represent insurers writing homeowners insurance in this State; two shall represent real estate brokers doing business in the coastal region of the State; two shall be licensed insurance producers authorized to transact property-liability insurance and doing business in the coastal region; two shall be homeowners with primary or secondary homes located in the coastal region; and one shall represent mortgage bankers doing business in the coastal region. The members shall be appointed within 60 days of the effective date of this joint resolution. Any vacancy in the membership of the task force shall be filled in the same manner as the original appointment was made.

2. The task force shall organize as soon as may be practicable after the appointment of its members and shall select a chair from among its

members and a secretary, who need not be a member of the task force. Members of the task force shall serve without compensation, but shall be reimbursed by the Department of Banking and Insurance for expenses actually incurred in the performance of their duties.

3. The task force shall:

a. Study and review the availability of personal property insurance in the coastal areas of this state;

b. Study and review the voluntary Windstorm Market Assistance Program in order to evaluate its effectiveness in making homeowners insurance more readily available in the coastal region, including recommendations to improve its operations;

c. Review and make recommendations to create incentives to encourage insurers to increase their voluntary writing of homeowners risks in the coastal areas, including, but not limited to, changes in insurers' rating systems that might be appropriate to mitigate losses and provide more accurate methods for ratemaking;

d. Review and evaluate the extent to which there has been growth in the coastal areas, the degree to which local building codes are enforced effectively and how such growth and building code enforcement may affect insurance losses in the coastal areas;

e. Review and evaluate incentives that may be offered to communities and homeowners to mitigate against potential losses that may occur in the event of a windstorm; and

f. Review and compare other states with similar coastal area property insurance problems and evaluate the effectiveness of mechanisms those states have instituted to address issues of the availability of property insurance in the coastal regions of their states, as well as the appropriateness of considering the possible application of these mechanisms in New Jersey.

4. The task force is entitled to the assistance and services of the employees of any State, county or municipal department, board bureau, commission or agency as it may require and as may be available to it for its purposes, and incur traveling and other miscellaneous expenses necessary to perform its duties, within the limits of funds made available to it for its purposes through the Department of Banking and Insurance.

5. The task force may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Governor and the Legislature, no later than 180 days after the task force is organized.

6. This joint resolution shall take effect immediately and shall expire upon the submission of the task force's report as required by section 5 of this joint resolution.

Approved January 6, 1998.

JOINT RESOLUTION NO. 9

A JOINT RESOLUTION designating the month of March in each year as "Hepatitis C Awareness Month."

WHEREAS, The hepatitis C virus is a largely symptomless, blood-borne virus which slowly attacks the liver and causes such liver diseases as cirrhosis and cancer of the liver; and

WHEREAS, Over four million Americans are currently infected with chronic viral hepatitis C, with 150,000 new cases of infection occurring each year in the United States; and

WHEREAS, Some 10,000 persons die each year due to hepatitis C, which is the leading cause of liver transplantation in the United States and thereby factors into the shortage of healthy organs available for transplantation; and

WHEREAS, The death rate from hepatitis C in the United States will soon exceed that from HIV, the virus which is the probable causative agent of AIDS; and

WHEREAS, Unwitting carriers of the hepatitis C virus may unintentionally endanger themselves and infect others through otherwise harmless behaviors; and

WHEREAS, Treatment of the hepatitis C virus is most efficacious if the virus is caught early before the onset of liver disease; and

WHEREAS, It is estimated that approximately 144,000 New Jersey residents are infected with the hepatitis C virus; however, the federal Centers for Disease Control and Prevention does not require the State to report chronic hepatitis C infection, and, therefore, the true extent of hepatitis C infection in New Jersey is unknown; and

WHEREAS, The National Institutes of Health Consensus Conference on Hepatitis C recognized the emerging public health issue of hepatitis C and recommended an increased effort to promote education and public awareness by the public health community; and

WHEREAS, The United States Public Health Service Blood Advisory Committee has recognized the public health consequences of undiagnosed hepatitis C infection and recommended that a massive public health campaign be undertaken to notify all recipients of blood transfusions prior to 1992 to obtain a test for hepatitis C; and

WHEREAS, The Council of State and Territorial Epidemiologists has recommended that a federal pilot project be made available to state health departments for state and county surveillance activities to identify and investigate cases of acute and chronic hepatitis C and for the development of state-based educational programs including the dissemination of materials on identification, reporting and counseling to public health and health care professionals and the general public, including high-risk groups; and

WHEREAS, In the absence of a vaccine for this serious epidemic illness, emphasis must be placed on other means of disease prevention such as research, education, screening - especially targeted screening of high-risk New Jersey residents, and treatment; now, therefore,

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

C.36:2-44 "Hepatitis C Awareness Month" designated.

1. The month of March in each year is designated as "Hepatitis C Awareness Month" in the State of New Jersey.

C.36:2-45 Determination of prevalence, implementation of education programs.

2. The Department of Health and Senior Services and all other public and private entities entrusted with the health of the citizens of this State are urged to determine the prevalence of hepatitis C in the general population and to implement education programs for the general public and health care professionals in the prevalence, prevention, screening - especially targeted screening of high-risk New Jersey residents, and treatment of this disease.

3. This joint resolution shall take effect immediately.

Approved January 12, 1998.

JOINT RESOLUTION NO. 10

A JOINT RESOLUTION making additional designations to the Korean War Memorial Highway.

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 and 134 were wounded in action; and even today American troops are stationed in Korea; and

WHEREAS, Joint Resolution No. 3 of 1995, approved April 11, 1995, designates Interstate Highway Route 287 as the "Korean War Memorial Highway," with additional designations as the route passes through Bergen, Passaic and Morris counties in honor of three Korean War veterans and residents of this State who distinguished themselves in battle during that war, with Ex POW and Army Staff Sergeant Walter Bray designated for the Bergen County portion of the highway, former U.S. Air Force gunner Clarence "Red" Mosley designated for the Passaic County portion of the highway, and former Marine Hector Cafferata, Jr. designated for the Morris County portion of the highway; and

WHEREAS, At that time, it was intended that two additional Korean War veterans and New Jersey residents who also distinguished themselves in battle, one each for Somerset and Middlesex counties, would be named at a later date by the Korean War Veterans of New Jersey, Inc., and who would then propose the names of these Korean War veterans for consideration by this Governor and Legislature as additional designations to the highway; and

WHEREAS, Captain Joseph Azzolina, U.S. Navy (Ret.), served in Korea in 1951, as a Lieutenant, Junior Grade, Intelligence Officer aboard the destroyer USS Toledo, and was a fire control officer for ship at the Wonsong Harbor battle and later at the Inchon invasion, covering and pinpointing the fire support for the troops on shore, and who during the battle of the Han River crossing, directed the support fire for the besieged 25th Infantry Division where his pinpoint fire control played a major part in the relief of those in combat on shore while engaging in a difficult land battle against a superior number of troops; and

WHEREAS, Lieutenant Colonel Richard F. Lauer, U.S. Army (Ret.) served in Korea from November 1950 through December 1951 as an Infantry Platoon Leader and Company Commander, and, for his extraordinary heroism in military operations against armed enemies, was recommended for the Congressional Medal of Honor, and was decorated with the Distinguished Service Cross, Legion of Valor, Purple Heart, Combat Infantryman's Badge, and the Korean Service Medal; and

WHEREAS, Captain Azzolina and Colonel Lauer have been proposed for consideration by the Korean War Veterans of New Jersey, Inc., with the intention that each of the five final additional designations would be represented by a living Korean War veteran from each of the four services of the U.S. Armed Forces, plus a living Korean War veteran who is a former prisoner of war, and that all five of these veterans would be a testament to all of those Korean War veterans being memorialized, both living and deceased, under this type of memorial dedication, the first type of memorial dedication of its kind; and

WHEREAS, It is altogether fitting and proper to recognize those who served in the Korean War, and in particular to recognize the service of Captain Azzolina and Colonel Lauer during that conflict, by naming the Korean War Memorial Highway (Interstate Highway Route 287) as the Korean War Memorial Highway/Joseph Azzolina, Captain, Retired, U.S. Navy, where Route 287 passes through Somerset County and the Korean War Memorial Highway/Richard F. Lauer, Lt. Colonel, Retired, U.S. Army, where Route 287 passes through Middlesex County; now, therefore,

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

1. The Korean War Memorial Highway is designated as the Korean War Memorial Highway/Joseph Azzolina, Captain, Retired, U.S. Navy,

New Jersey State Library

where Interstate Highway Route 287 passes through Somerset County and the Korean War Memorial Highway/Richard F. Lauer, Lt. Colonel, Retired, U.S. Army, where Interstate Highway Route 287 passes through Middlesex County.

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing those names.

3. This joint resolution shall take effect immediately.

Approved January 19, 1998.

EXECUTIVE ORDERS

(2311)

EXECUTIVE ORDER NO. 65

WHEREAS, On December 18, 1991, the United States Congress enacted P.L.102-240, entitled the "Intermodal Surface Transportation Efficiency Act of 1991" and added section 28 to the Federal Transit Act (codified at 49 U.S.C. s.1994) which required the Federal Transit Administration to issue regulations creating a State oversight program for rail fixed guideway systems; and

WHEREAS, On December 27, 1995, the Federal Transit Administration promulgated a final rule codified at 49 CFR Part 659, and entitled, Rail Fixed Guideway Systems; State Safety Oversight; Final Rule; and

WHEREAS, These federal regulations require each state having an operational fixed guideway system that is not regulated by the Federal Railroad Administration (FRA) to designate a State Oversight Agency to be responsible for overseeing the rail fixed guideway system's safety practices; and

WHEREAS, The designated State safety oversight agency must develop fixed guideway system safety oversight standards, investigate accidents and hazardous conditions, and conduct periodic safety audits; and

WHEREAS, The State safety oversight agency must make annual reports and certify compliance to the Federal Transit Administration (FTA) of the State's progress in safety oversight, or the State risks loss of up to 5 percent of a fiscal year's apportionment of federal funding under FTA's formula program for urbanized areas;

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 New Jersey Department of Transportation (NJDOT) is hereby designated as the agency to carry out the provisions of the FTA's State Safety Oversight of Fixed Guideway Systems in the State of New Jersey. It is empowered to protect and promote the public health, safety

and welfare and is responsible for the oversight of Fixed Guideway Systems not regulated by the Federal Railroad Administration (FRA).

2. The NJDOT shall carry out its responsibilities as directed by and in compliance with 49 CFR Part 659, and shall promulgate Fixed Guideway Safety Standards for use by agencies in developing their safety programs.

3. The NJDOT is authorized to enter into such agreements and delegate its powers as necessary to effectuate the purposes of this Order.

4. Each light, heavy, rail rapid transit system, monorail, inclined plane, funicular, trolley, street car, or automated guideway (people mover) that is not regulated by the FRA and is operating within the State of New Jersey, or between the State of New Jersey and adjoining states, shall comply with the NJDOT Standards for Fixed Guideway Safety Oversight as established by the NJDOT and shall comply with all NJDOT rules, directives, and requirements issued pursuant thereto.

5. This Order shall take effect immediately.

Dated January 31, 1997.

EXECUTIVE ORDER NO. 66

WHEREAS, Reorganization Plan No. 001-1997 (hereinafter "the Plan") was submitted to the Senate and General Assembly on January 14, 1997; and

WHEREAS, Paragraph 1 of the Plan establishes within the Department of the Treasury a Division of Revenue; and

WHEREAS, Paragraph 2 of the Plan transfers the Bureau of Revenue of the Division of Financial Management and General Services in the Department of Environmental Protection to the Division of Revenue; and

WHEREAS, Paragraph 3 of the Plan transfers the Cash Control and Revenue Processing Units of the Bureau of Revenue Administration of the Division of Accounting and Auditing in the Department of Transportation to the Division of Revenue; and

WHEREAS, Paragraph 4 of the Plan transfers the Compliance Activity within the Division of Taxation in the Department of the Treasury to the Division of Revenue; and

WHEREAS, The Plan shall become effective in 60 days on March 15, 1997, 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 March 15, 1997, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order; and

WHEREAS, The administrative burden on the Department of the Treasury and the Department of Environmental Protection in implementing paragraph 2 of the Plan and on the Department of the Treasury and the Department of Transportation in implementing paragraph 3 of the Plan will be greatly diminished by delaying the effective date of paragraphs 2 and 3 of the Plan until August 1, 1997; and

WHEREAS, I conclude that an effective date later than March 15, 1997, for paragraphs 2 and 3 of the Plan is necessary for the orderly and effective implementation of paragraphs 2 and 3 of the Plan; and

WHEREAS, The administrative burden on the Division of Taxation in the Department of the Treasury will be greatly diminished by delaying the effective date of a portion of paragraph 4 of the Plan so that only the Telecollection Function of the Office Collections Branch within the Compliance Activity in the Division of Taxation is transferred when the Plan becomes effective on March 15, 1997, unless disapproved by each House of the Legislature as noted above; and

WHEREAS, I conclude that an effective date later than March 15, 1997, for the portion of paragraph 4 of the Plan concerning the Compliance Activity, other than the Telecollection Function, is necessary for the orderly and effective implementation of paragraph 4 of the Plan; and

WHEREAS, I have directed the Treasurer to prepare a report recommending the time at which the transfer of the balance of the Compliance

Activity within the Division of Taxation may take place without creating an administrative burden on the Division of Taxation;

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. Unless Reorganization Plan No. 001-1997 is disapproved by the Legislature by March 15, 1997, paragraphs 2 and 3 of Reorganization Plan No. 001-1997 shall be effective on August 1, 1997.

2. Unless Reorganization Plan No. 001-1997 is disapproved by the Legislature by March 15, 1997, paragraph 4 of Reorganization Plan No.001-1997, other than as it applies to the Telecollection Function of the Office Collections Branch within the Compliance Activity in the Division of Taxation, shall be effective on such date as set by Executive Order, following the report and recommendation by the Treasurer as provided herein.

3. This Order shall take effect immediately.

Dated March 7, 1997.

EXECUTIVE ORDER NO. 67

WHEREAS, The Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., authorizes the Governor to designate areawide planning agencies for the purpose of developing, adopting, updating and amending areawide water quality management plans and where no such planning agencies are designated, authorizes the New Jersey Department of Environmental Protection (NJDEP) to take such actions; and

WHEREAS, The Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C.A. 1251 et seq., as amended, and the regulations promulgated pursuant thereunder by the United States Environmental Protection Agency (USEPA) require that the Governor of each State certify water quality management plans for submittal to the USEPA and designate management agencies to carry out such plans; and

WHEREAS, The NJDEP has served as the areawide planning agency for the Monmouth County Water Quality Management Plan in the absence of the designation of an areawide planning agency; and

WHEREAS, The Monmouth County Board of Chosen Freeholders on February 22, 1996 petitioned the Governor to designate the Board as the areawide planning agency for the Monmouth Water Quality Management Plan, and

WHEREAS, It is beneficial wherever possible to develop partnerships between the State of New Jersey, including the NJDEP, and the various counties through designation of the county board of chosen freeholders as the areawide planning agency; and

WHEREAS, The Monmouth County Board of Chosen Freeholders has shown exceptional leadership in its development of watershed-based environmental planning programs in cooperation with the municipalities of the county and many citizens, and has developed a strong, cooperative working relationship with the NJDEP;

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 Monmouth County Board of Chosen Freeholders is designated as the areawide planning agency for the Monmouth County Water Quality Management Plan pursuant to the Water Quality Planning Act, N.J.S.A.58:11A-1 et seq.

2. The Department of Environmental Protection shall consult with the Monmouth County Board of Chosen Freeholders to effect an orderly and efficient transfer of the planning responsibility for the Monmouth County Water Quality Management Plan.

3. The Commissioner of Environmental Protection shall provide assistance to the Monmouth County Board of Chosen Freeholders as necessary and available regarding its new responsibilities as designated planning agency.

4. This Order shall take effect immediately.

Dated April 15, 1997.

EXECUTIVE ORDER NO. 68

WHEREAS, Sustainability is a concept which provides for economic growth without an adverse impact upon the environment; and

WHEREAS, Sustainable businesses provide a unique opportunity to marry economic development goals with environmental protection goals; and

WHEREAS, It is recognized that pursuing sustainability is a means to improve the quality of life for all New Jerseyans and should be embraced as an economic tool in this State; and

WHEREAS, Promoting this sector of the economy gives us a unique opportunity to create jobs while also advancing the State's environmental goals;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created the Office of Sustainability to be located in the Department of Commerce and Economic Development.

2. The Office of Sustainability shall assist in the development of sustainable businesses in New Jersey. Sustainable businesses are defined as those which: a) obtain their raw materials from sustainable sources; b) employ manufacturing processes which do not have a significant negative impact on the environment; and c) produce products which are environmentally benign or provide a solution to an environmental problem or problems.

3. The Office of Sustainability shall pursue three major objectives: a) materially promote sustainable business development in New Jersey; b) assist New Jersey's State government in providing institutional support for sustainable businesses; and c) assist State government in incorporating the elements of sustainability in its policies and programs.

4. Consistent with its objectives, the Office will: a) identify areas in the New Jersey economy which can benefit from sustainable business development; b) assist in the expansion of sustainable businesses currently located in New Jersey; c) assist in the conversion of existing traditional

businesses to sustainable practices; d) create new sustainable businesses in New Jersey; e) develop comprehensive public procurement policy recommendations and guidelines for the purchasing of sustainable products by government agencies; f) coordinate State agency activities to support sustainability; and g) seek the expertise of individuals and entities in the private sector to assist the Office in attaining its goals.

5. The Office is hereby authorized to appoint such staff as may be required to fulfill the mandates of this Order, subject to the provisions of Title 11A (Civil Service Act) of the New Jersey Statutes, other applicable statutes when relevant, and within the limits of the appropriations provided to the Office. Any persons appointed by this Office shall be designated employees of the Department of Commerce and Economic Development.

6. The Commissioner of the Department of Commerce and Economic Development shall provide necessary facilities for the operation of the Office.

7. The Office is authorized to call upon any department, office, division or agency of this State to supply it with data and other information or assistance as deemed necessary to discharge the duties of the Office under this Order.

8. Each agency of State government shall, to the degree possible, embrace sustainability as an operating principle. Sustainable activities, programs, and initiatives are those that enhance the health of the ecosystem and maintain or promote environmental protection.

9. Each department shall appoint a liaison to the Office. The liaison shall work with the Office and his or her department to promote sustainability as a working philosophy for that department.

10. A study to evaluate the sustainable business sector of the New Jersey economy shall be undertaken. The study shall evaluate State programs and policies and how they affect sustainable businesses, identify opportunities for the further development and growth of sustainable businesses, and make recommendations regarding how to target and assist sustainable businesses for the purpose of broadening this sector of the economy. Subject to available appropriations, the Office may engage an appropriate institute of higher education to conduct the study under the Office's direction.

11. Subject to an appropriation being made by the Legislature for this purpose, the New Jersey Economic Development Authority shall provide low- or no-interest loans to sustainable businesses. The Office of Sustainability will receive and evaluate loan applications; the Office will make loan recommendations to the Economic Development Authority based on the ability of the applicant's business to promote the goals of sustainability. Upon receipt of the recommendation, the Economic Development Authority will evaluate the financial health and viability of the sustainable business requesting funding, determine whether to approve the loan, and if approved, provide loan closing services.

12. The Department of Commerce and Economic Development and the New Jersey Economic Development Authority shall consult and promulgate rules and regulations necessary to effectuate the purposes of this Order.

13. This Order shall take effect immediately.

Dated April 22, 1997.

EXECUTIVE ORDER NO. 69

WHEREAS, Chapter 73, P.L.1963, as amended, finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State for the protection of the public interest except as otherwise provided in said law; and

WHEREAS, Some limitation upon the right to examine and copy records provided by Chapter 73 is essential and not detrimental to the public interest as recognized by existing statutory and common law; and

WHEREAS, Disclosure of information must be consistent with existing statutory law regarding confidentiality in certain areas; and

WHEREAS, Said Chapter 73 provides that records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of said law, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor; and

WHEREAS, Section 3(e) of Executive Order No. 9, issued by Governor Richard Hughes in 1963, and reaffirmed by Executive Order No. 123, issued by Governor Thomas H. Kean in 1983, states that fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73; and

WHEREAS, The Attorney General has undertaken a complete review of this subject area, seeking input from prosecutors, police, representatives of the news media, and victims' rights organizations, and has recommended that certain aspects of the system be clarified;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby order and direct:

1. Executive Order No. 9 of Governor Richard J. Hughes and Executive Order No. 123 of Governor Thomas H. Kean are modified as hereinafter set forth, and any regulations adopted and promulgated under those prior Executive Orders shall be deemed null and void to the extent such regulations are inconsistent with the provisions of this Executive Order.

2. The following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P.L.1963, as amended: fingerprint cards, plates and photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

3. Notwithstanding the above section 2, the following information shall be available to the public within 24 hours, or sooner if practicable, of a request for such information:

(a) where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

(b) if an arrest has been made, information as to the name, address and age of any victims, unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary

to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

(c) if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and the identity of the complaining party, unless the release of such information is contrary to existing law or court rule;

(d) information as to the text of any charges, such as the complaint, accusation and indictment, unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

(e) information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

(f) information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and

(g) information as to circumstances surrounding bail, whether it was posted and amount thereof.

The term "request" shall mean either a written or oral request; provided, however, that all requests are made with sufficient clarity so as to enable a reasonable person to understand the information that is being sought. The law enforcement official responding to oral requests should make best efforts to respond orally over the telephone; however, it shall not be unreasonable to require the requester to appear in person to receive the information. Unless the parties note otherwise, it shall be understood that there is no duty to release or obtain information that is not in the possession of the law enforcement agency at the time of request.

4. Notwithstanding any other provision of this Executive Order, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This section is intended to be narrowly construed to prevent disclosure of information which would be truly harmful to a bona fide law enforcement purpose or public safety if released. It is also intended to prevent such release that would violate existing law regarding confidentiality in areas including, but not limited to, domestic violence and juveniles.

5. Each county prosecutor shall prepare a plan outlining the procedures for providing and/or disseminating the information required by this Executive Order and shall submit same to the Division of Criminal

Justice for its review and filing. Each prosecutor shall consult with the police departments within his or her county and to the extent possible, include within the prosecutor's plan the local procedures for responding to informational requests. The Division of State Police shall submit its plan to the Office of the Attorney General. Whenever any changes are made in any such plan, said changes shall immediately be forwarded to the appropriate county prosecutor and/or the Division of Criminal Justice or Office of the Attorney General for review and filing. In addition, each county prosecutor's office shall designate a person(s) who is(are) responsible for responding to requests for public information by the media on nights, weekends and holidays. The name of the person(s) so designated shall be available at the communication center in each county.

6. The Attorney General, as chief law enforcement officer of the State, or his designee, or where appropriate, the county prosecutor, as chief law enforcement officer of the county, shall promptly resolve all disputes as to whether or not the release of records would be "otherwise inappropriate" between the custodian of any records referred to herein and any person seeking access thereto or similar disputes. Where the Attorney General or the county prosecutor determines that the release of records would be "otherwise inappropriate," he or she shall issue a brief statement explaining the decision.

7. The terms of this Order shall be carried out in the spirit of Chapter 73, P.L.1963, as amended, and shall not relate to requests pursuant to Chapter 60, Section 4, of P.L.1994. It shall be carried out by keeping in mind the right of citizens to be aware of events occurring in their community.

8. This Order shall take effect immediately.

Dated May 15, 1997.

EXECUTIVE ORDER NO. 70

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 (hereinafter referred to as "Agreement") 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 (hereinafter referred to as "Commission") by Executive Order No. 208 (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 (Florio) through and including May 31, 1995; and

WHEREAS, The Commission was continued in 1995 by Executive Order No. 37 through and including May 31, 1997; 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;

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 New Jersey-Israel Commission shall continue in existence through and including January 1, 2002.

2. All other provisions of Executive Order No. 208 (Kean), Executive Order Nos. 35 and 90 (Florio) and Executive Order No. 37 (Whitman) which are not inconsistent with the foregoing shall remain in full force and effect.

3. This Order shall take effect immediately.

Dated May 28, 1997.

EXECUTIVE ORDER NO. 71

WHEREAS, The Office of the Business Ombudsman was created to assist businesses in dealing efficiently with various State regulations

governing various commercial, industrial and residential projects or activities in this State; and

WHEREAS, The Office of the Business Ombudsman is presently located in the Department of State pursuant to Executive Order No. 15 (1994); and

WHEREAS, The Department of Commerce and Economic Development will, commencing on or about July 1, 1997, establish an Account Management System (hereinafter referred to as "AMS"); and

WHEREAS, The AMS is a proactive, integrated business retention and expansion strategy focused on providing professional, coordinated services to existing New Jersey businesses so that they remain competitive, and become more competitive, in their respective markets; and

WHEREAS, There is a need for a single point of operations to exclusively coordinate an efficient and timely process for submission, evaluation and resolution of applications for business permits, licenses, certificates and other approvals, and for the maintenance and attraction of business in New Jersey; and

WHEREAS, The establishment of the AMS dictates that the Office of the Business Ombudsman will more efficiently serve the business community if it is located in the Department of Commerce and Economic Development;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 15 is hereby rescinded effective July 1, 1997.

2. All functions of the Office of the Business Ombudsman previously established in the Department of State by Executive Order No. 15 shall be transferred to the Department of Commerce and Economic Development, and may be merged with departmental operations including the Account Management System, as deemed appropriate by the Commissioner of the Department of Commerce and Economic Development.

3. The Commissioner of the Department of Commerce and Economic Development, or his designee, shall replace the Secretary of State on the Cabinet Committee on Permit Coordination (hereinafter "Cabinet Committee"), which Cabinet Committee was reconstituted pursuant to Executive Order No. 100 (Kean). Moreover, the Commissioner, or his designee, shall replace the Secretary of State as Chairperson of the Cabinet Committee. The Commissioner shall appoint an Executive Director of the Cabinet Committee.

3. This Order shall take effect July 1, 1997.

Dated June 27, 1997.

EXECUTIVE ORDER NO. 72

WHEREAS, The New Jersey Death Penalty Act was signed into law by then Governor Thomas H. Kean and became effective on August 6, 1982, fifteen years ago; and

WHEREAS, In the case of The State of New Jersey v. Thomas C. Ramseur, decided March 5, 1987, the New Jersey State Supreme Court found that capital punishment as set forth in the Death Penalty Act is constitutional; and

WHEREAS, Since the time that the Death Penalty Act became effective forty-six murderers have been sentenced to receive capital punishment; thirty have had their convictions and/or their death sentences overturned by the State courts; fourteen remain on death row at various stages of the appellate process; and two have died while on death row; and

WHEREAS, The State has yet to implement a sentence of capital punishment as imposed by the jury system under the Death Penalty Act;

NOW, THEREFORE, I, Christine Todd Whitman, 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 the Study Commission on the Implementation of the Death Penalty (the "Commission") to examine the death penalty process in New Jersey.

2. The Commission shall identify areas in which the death penalty process in our State can be improved, and shall, where appropriate, make specific recommendations for change that would expedite the death penalty process while ensuring that the death penalty is administered in a just manner.

Among the issues that the Commission shall address are:

(a) Whether, and if so, in what manner, the appellate and post-conviction relief process can be streamlined;

(b) Whether, and if so, in what manner, the rules of evidence applicable to the death penalty phase of a capital trial should be modified;

(c) Whether a death penalty jury should be allowed to consider additional aggravating factors, such as whether the victim was physically or mentally impaired and whether the defendant has prior violent convictions other than murder. Under current law, a jury making a death penalty decision is not permitted to consider these factors; and

(d) Any other issues the Commission finds to be relevant to improving the death penalty process in our State.

3. The Commission shall consist of up to fifteen members including the Attorney General or his designee; the Public Defender or her designee; one Senator to be appointed by the Senate President; one Assembly member to be appointed by the Assembly Speaker; one public member to be appointed by the Senate President; one public member to be appointed by the Assembly Speaker; a county or assistant county prosecutor to be appointed by the Governor; a crime victims' advocate to be appointed by the Governor; a retired State judge to be appointed by the Governor; and up to six members of the public, also to be appointed by the Governor. The Governor shall designate a chair from among the members of the Commission. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties subject to the availability of funds therefor.

4. The Commission shall organize and meet as soon as possible after the appointment of its members. The chair shall appoint a secretary who need not be a member of the Commission. Vacancies on the Commission shall be filled in the same manner as the original appointment.

5. The Commission is authorized to call upon any department, offices or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, officer, division and agency of this State is hereby required to cooperate with the Commission and to respond to such requests for information, personnel and assistance as is necessary to accomplish the purposes of this Order.

6. The Commission shall file a report with the Governor and the Legislature with its recommendations within six months after the first meeting of the Commission.

7. This Order shall take effect immediately.

Dated August 6, 1997.

EXECUTIVE ORDER NO. 73

WHEREAS, Beginning on Wednesday morning, August 20, 1997 and continuing through August 21, 1997, torrential rains amounting to as much as 13.5 inches fell within the counties of Atlantic, Burlington, Cape May, Cumberland and Ocean; and

WHEREAS, This heavy precipitation resulted in severe flooding in these counties, causing several thousand homes and businesses to be flooded, seven bridges to be washed out, other bridges to be damaged, and the closing and washing out of roads throughout these areas; and

WHEREAS, Shelters were opened to care for residents displaced from their homes, and the client-residents of flooded healthcare facilities were moved to safety and cannot yet return; and

WHEREAS, Local rail and bus services were and continue to be disrupted and have not returned to normal operating conditions; and

WHEREAS, Atlantic City International Airport was closed due to flooding, has suffered damage to its electrical system, and has not returned to normal operating conditions; and

WHEREAS, Water control facilities were damaged, and waste and potable water treatment plants were flooded; and

WHEREAS, The circumstances above constitute a disaster from a natural cause which threatens and endangers the health, safety and resources of the residents of one or more municipalities or counties of this State, and, which is, in some parts of the State, too large in scope to be handled in its entirety by normal municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A.38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A.38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey:

1. Do declare and proclaim that a State of Emergency has occurred and presently exists in the counties of Atlantic, Burlington, Cape May, Cumberland and Ocean.

2. Authorize the Adjutant General, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1), to order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid and recovery assistance to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

3. Empower the State Director of Emergency Management, who is the Superintendent of State Police, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) as supplemented and amended, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute

or divert any or all traffic and to prevent ingress or egress from any area, that, in the State Director's discretion, is deemed necessary for the protection of the health, safety and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

4. Authorize the State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

5. Authorize and empower the State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure or vehicle during the course of this emergency.

6. Reserve, in accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended, the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

7. Declare that this Order shall take effect immediately and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated August 22, 1997.

EXECUTIVE ORDER NO. 74

WHEREAS, Changes in federal law which occurred on August 22, 1996, have resulted in a large number of legal immigrant children and legal immigrants who are aged, blind or disabled, living in New Jersey prior to August 22, 1996, losing their access to federal food stamp assistance; and

WHEREAS, Federal law was subsequently amended on June 12, 1997, to allow states to retain, at their own expense, certain former aspects of this food stamp program; and

WHEREAS, The vast majority of these legal immigrants depend upon the food stamp assistance to feed themselves and their dependents; and

WHEREAS, The health and welfare of the approximately 10,000 households which include children and the aged, blind or disabled persons affected by the cessation of federal assistance will be detrimentally impacted; and

WHEREAS, The Department of Human Services' total budget for Fiscal Year 1998 contains funds in anticipation of changes in federal law and the loss of federal assistance for certain populations which could be made available to provide food stamp assistance to these legal immigrants; and

WHEREAS, It is my intention that the benefits should continue without disruption to assist the affected children and those recipients who are aged, blind or disabled and that this program be administered in an efficient and effective manner;

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 Commissioner of the Department of Human Services shall take all necessary action to insure that those legal immigrant children and those legal immigrants who are aged, blind or disabled who were bona fide residents of New Jersey prior to August 22, 1996, and who have lost federal food stamp assistance as a result of the June 1997 changes in federal law, be granted State food stamp assistance for the duration of this Order.

2. Pursuant to Paragraph 11 of the General Provisions of the Fiscal Year 1998 Appropriations Act, the Commissioner, through the Office of Management and Budget, shall apply to the Joint Budget Oversight Committee for permission to specifically transfer the necessary funding to support this Order.

3. The Commissioner of the Department of Human Services shall have full authority to adopt such rules, regulations, orders and directives as he shall deem necessary to effect the above provisions.

4. This Order shall take effect immediately and shall remain in effect until June 30, 1998, unless superseding legislation is enacted sooner.

Dated August 26, 1997.

EXECUTIVE ORDER NO. 75

WHEREAS, In 1867, the New Jersey Training School for Boys in Monroe Township (the "Training School for Boys") was opened in an agricultural area of the State of New Jersey to provide a location for the rehabilitation of juvenile delinquents; and

WHEREAS, Since 1867, juvenile crime has greatly increased, at the same time becoming more serious and often more violent; and

WHEREAS, Since 1867, communities throughout the State of New Jersey, including the community surrounding the New Jersey Training School for Boys, have experienced population growth and development; and

WHEREAS, The State of New Jersey seeks to maintain secure juvenile facilities for the housing and care of juveniles committed to the custody of the Juvenile Justice Commission; and

WHEREAS, The State of New Jersey seeks to maintain the safety and security of its communities and neighborhoods;

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 creation of the Advisory Committee to Study the Future of the New Jersey Training School for Boys in Monroe Township (the "Advisory Committee").

2. The Advisory Committee is charged with providing input to the Juvenile Justice Commission (the "Commission") during the Commission's study of the feasibility of closing the Training School for Boys, which study has been ordered by the Legislature pursuant to the Annual Appropriations Act, P.L.1997, c.131, page 140, lines 12 through 14. Among the issues the Advisory Committee shall address are: public

safety as it relates to security at the Training School for Boys; whether the current physical facility meets the needs of the Commission in the context of its responsibility for the custody and care of juveniles; the impact that closure of the facility would have upon the Commission in the context of its responsibility for the custody and care of juveniles; the cost effectiveness of closure, including a fiscal analysis of whether the current facility should be renovated and/or whether the State should undertake new construction elsewhere; and, if new construction is recommended, possible alternative locations.

3. The Advisory Committee shall conduct at least one public hearing in order to obtain the positions and viewpoints of the members of the community surrounding the Training School for Boys.

4. The Advisory Committee shall be composed of up to twelve members including the Attorney General or his designee; the Executive Director of the Commission or his designee; the State Treasurer or his designee; the Director of the Office of Management and Budget or her designee; the Superintendent of the Training School for Boys or her designee; a Senator to be appointed by the Senate President; an Assembly member to be appointed by the Assembly Speaker; a member of the Advisory Council to the Juvenile Justice Commission to be appointed by the Governor; a member from the Monroe Training School for Boys Citizens Review Board to be appointed by the Governor; and no more than three members of the public to be appointed by the Governor based upon professional experience and expertise in juvenile justice or upon demonstrated involvement in and concern for the local communities surrounding the Training School for Boys. The Governor shall designate a chair and vice-chair from among the members of the Advisory Committee. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties subject to the availability of funds therefor.

5. The Advisory Committee shall organize and meet as soon as possible after the appointment of its members. The chair shall appoint a secretary who need not be a member of the Advisory Committee. Vacancies on the Advisory Committee shall be filled in the same manner as the original appointment.

6. All State departments and agencies are hereby directed, to the extent not inconsistent with law and within budget constraints, to cooperate with the Advisory Committee and to respond to requests for such information, personnel and assistance as are necessary to accomplish the purposes of this Order.

7. The Advisory Committee shall assist the Commission by providing recommendations in a timely fashion, in order to allow the Commission

to fully consider the Advisory Committee's views prior to presenting the Legislature with the Commission's findings and conclusions on the feasibility of closing the Training School for Boys. Pursuant to the Annual Appropriations Act, P.L.1997, c.131, page 140, lines 12 through 14, that presentation is to be completed no later than December 31, 1997. The Advisory Committee and the Commission are directed to coordinate their efforts to ensure compliance with this deadline.

8. This Order shall take effect immediately.

Dated September 29, 1997.

EXECUTIVE ORDER NO. 76

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 28, 1997, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 28, 1997.

Dated November 14, 1997.

EXECUTIVE ORDER NO. 77

WHEREAS, Torrential rains amounting to as much as 13.5 inches fell within the counties of Atlantic, Burlington, Cape May, Cumberland and Ocean, beginning on the morning of August 20, 1997 and continuing through August 21, 1997; and

WHEREAS, Conditions and issues related to the rainfall required that I invoke the emergency powers vested in the Governor by the Constitution and Statutes of this State, including, but not limited to, the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4); and

WHEREAS, I issued Executive Order No. 73 on August 22, 1997, declaring a State of Emergency, which Order provided, among other things, that members of the New Jersey National Guard be ordered to active duty to provide aid and recovery assistance to those localities where there was a threat to the public health, safety and welfare and authorized the employment of any supporting vehicles, equipment, communications or supplies as were necessary to support the members so ordered; and

WHEREAS, Shelters were opened to care for residents displaced from their homes, and the client-residents of flooded healthcare facilities were moved to safety;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of Emergency that prompted the issuance of Executive Order No. 73 having subsided, Executive Order No. 73 is hereby rescinded.

2. Nevertheless, the State Director of Emergency Management remains authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need shelter as a consequence of the emergency.

3. The State Director of Emergency Management remains authorized to order the evacuation of all persons from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by the emergency.

4. The Department heads of the various agencies of State government who are called upon to provide assistance in the aftermath of the emergency shall continue to lend assistance to ensure the protection of the health, safety and resources of the residents of Atlantic, Burlington, Cape May, Cumberland and Ocean Counties and the State of New Jersey.

5. This Order shall take effect immediately.

Dated November 14, 1997.

REORGANIZATION PLANS

(2337)

REORGANIZATION PLAN NO. 001-1997
A PLAN FOR THE TRANSFER OF THE RESPONSIBILITIES FOR DEBT COLLECTION AND RECEIPTS PROCESSING FUNCTIONS FROM VARIOUS STATE AGENCIES AND CONSOLIDATING THEM IN A NEW DIVISION OF REVENUE WITHIN THE DEPARTMENT OF THE TREASURY

PLEASE TAKE NOTICE that on January 14, 1997, Governor Christine Todd Whitman hereby issues this Reorganization Plan No. 001-1997 (the Plan), to provide for the transfer of responsibilities for certain debt collection and receipts processing functions as well as all or a portion of the organizational units responsible for such debt collection and receipts processing from the Department of Environmental Protection, the Department of Transportation and the Division of Taxation in the Department of the Treasury to the Division of Revenue in the Department of the Treasury.

The Plan also provides for the transfer of responsibility for certain debt collection and receipts processing functions, without transferring organizational units, from the Department of Corrections, the Department of Law and Public Safety, the Department of Transportation and the Division of Taxation in the Department of the Treasury to the Division of Revenue in the Department of the Treasury.

This Plan furthers an ongoing effort to streamline and make more effective the operations of the Executive Branch in the interests of efficiency by consolidating certain debt collection and receipts processing functions and consolidating all or portions of certain organizational units into a single organization.

GENERAL STATEMENT OF PURPOSE

The Plan is designed to create a single organization with responsibility for revenue management, including processing of cash receipts, management of accounts receivable and collection of debts. Certain receivables are excepted from this Plan, namely (1) interagency receivables, (2) loans and notes receivables and (3) grants and contracts receivables.

There are a number of reasons why consolidation of collection activity on receivables is in the best interest of the State. At present, each Executive Branch agency manages its own receivables and performs its own debt collection activity. These activities vary widely, ranging from the sophisticated to the rudimentary. Receivables and collection activity are given less

than full attention when an agency does not have adequate resources (either people or technology) to manage delinquent receivables. Delinquent receivables often are not considered a high priority within an agency because they are not central to the agency's mission or there is a lack of understanding about how delinquent receivables should be managed most efficiently. Few agencies use the full range of enforcement actions and tools available to help collect debt. The result is that, for debts owed the State, enforcement actions vary widely and are based on the specific agency responsible for collecting the debt. In sum, receivables represent a major asset of the State of New Jersey, yet the State has no way to measure, monitor or control this asset at an appropriate level of detail.

Centralizing revenue management will allow a single organization with State-wide responsibility and authority to define and control the policies and procedures governing revenue management, specifically the processing of cash receipts, the management of accounts receivable and collection of delinquent receivables. This centralized collections entity will assist State agencies in the recovery and resolution of their accounts receivable by providing specialized collection services in an efficient and cost-effective manner.

To more efficiently direct, administer and control the State's revenue management functions, specifically the processing of cash receipts, the management of accounts receivable and the collection of billings with accounts receivable, this Plan provides for the consolidation and coordination of certain of these activities into a single organization, the Division of Revenue within the Department of the Treasury. This consolidation will improve the State's overall ability to collect revenue and reduce receivable balances. Moreover, the consolidation will eliminate duplication of effort in the area of receipts processing and debt collection.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.) (the Act), I find, with respect to the reorganization, transfer and consolidation provided for in this Plan, that each aspect of the Plan is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. promote the 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 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 agencies and functions of the Executive Branch, as nearly as may be, 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 thereof as may not be necessary for the efficient conduct of the Executive Branch; and

6. eliminate overlapping and duplication of effort.

PROVISIONS OF THE REORGANIZATION PLAN

Therefore, I hereby order the following reorganization:

A. ORGANIZATIONAL UNITS

1. a. There is hereby established within the Department of the Treasury a Division of Revenue for the purpose of consolidating all of the functions, powers, duties and units reorganized pursuant to this Plan.

b. The Division of Revenue shall be headed by a director who shall be appointed by, and serve at the pleasure of, the Treasurer, as provided by N.J.S.A. 52:14C-5(b). The director shall receive such salary as may be provided by law applicable to comparable officers in the Executive Branch. I find and declare that the appointment and compensation of the director is necessary to effectuate the reorganization made by this Plan.

c. The Division of Revenue shall be under the immediate supervision of the director who shall administer the work of the Division and who may exercise all of the powers, duties and functions transferred to the Division pursuant to this Plan, provided that nothing in this Plan shall be construed to grant the Division any functions, powers and duties with regard to (1) interagency receivables, (2) loans and notes receivables and (3) grants and contracts receivables. Nothing in the Plan shall be construed to diminish or modify the Attorney General's powers, duties or role pursuant to the Constitution, the common or statutory law, including but not limited to the Attorney General's powers, duties and role pursuant to P.L.1944, c.20, as amended (C.52:17A-1 et seq.) to act as sole legal advisor, attorney and

counsel for all officers, departments, boards, bodies, commissions and instrumentalities of the State government and to represent them in all proceedings or actions of any kind which may be brought for or against them in any court of this State; to interpret all statutes and legal documents, inspect and approve contracts and titles and otherwise control their legal activities; to attend generally to all legal matters in which the State or any officer, department, board, body, commission or instrumentality of the State government is a party or in which its rights or interests are involved; and to appoint, employ, supervise and dismiss special counsel.

d. The specific organization, names and functions of the bureaus, offices, sections and programs of the Division of Revenue shall be determined by the Treasurer, and may be modified thereby from time to time as the Treasurer deems appropriate in order to effectuate the purposes and provisions of this Plan.

2. The Bureau of Revenue of the Division of Financial Management and General Services in the Department of Environmental Protection, including the functions, powers and duties assigned to it by the Commissioner of the Department of Environmental Protection are continued and are transferred to the Division of Revenue. Such programmatic, administrative and support staff presently comprising the Bureau of Revenue of the Division of Financial Management and General Services within the Department of Environmental Protection as may be agreed upon by the Commissioner of the Department of Environmental Protection and the Treasurer are transferred to the Division of Revenue, with all of their present functions, powers and duties. A proportionate share of those support services or funds to purchase such services utilized for the support of the Bureau of Revenue of the Division of Financial Management and General Services within the Department of Environmental Protection shall be transferred to the Division of Revenue. These transfers shall be made as determined by agreement between the Commissioner of the Department of Environmental Protection and the Treasurer after considering the number and type of positions presently utilized for support of the Bureau of Revenue of the Division of Financial Management and General Services and the appropriateness of transferring personnel, positions or funding.

3. The Cash Control and Revenue Processing Units of the Bureau of Revenue Administration of the Division of Accounting and Auditing in the Department of Transportation, including the functions, powers and duties assigned to it by the Commissioner of the Department of Transportation, are continued and are transferred to the Division of Revenue. Such programmatic, administrative and support staff presently comprising the Cash

Control and Revenue Processing Units of the Bureau of Revenue Administration, of the Division of Accounting and Auditing in the Department of Transportation, as may be agreed upon by the Commissioner of the Department of Transportation and the Treasurer are transferred to the Division of Revenue, with all of their present functions, powers and duties. A proportionate share of those support services or funds to purchase such services utilized for the support of the Cash Control and Revenue Processing Units of the Bureau of Revenue Administration of the Division of Accounting and Auditing in the Department of Transportation shall be transferred to the Division of Revenue. These transfers shall be made as determined by agreement between the Commissioner of the Department of Transportation and the Treasurer after considering the number and type of positions presently utilized for support of the Bureau of Revenue Administration and the appropriateness of transferring personnel, positions or funding.

4. The Compliance Activity within the Division of Taxation in the Department of the Treasury together with all the functions, powers and duties assigned to it by the Director of Taxation pursuant to P.L.1931, c.336, as amended (C.54:1-6 et seq.) is continued and is transferred to the Division of Revenue. These functions, powers and duties shall include but not be limited to those, such as the administration and enforcement of the confidentiality provisions of P.L.1936, c.23, ss.408 and 409 (C.54:50-8 and -9), specifically delegated to the Director of Taxation by the Uniform Tax Procedure Act, P.L.1936, c.163, as amended (C.54:48-1 et seq.).

5. The Processing Activity within the Division of Taxation in the Department of the Treasury together with all the functions, powers and duties assigned to it by the Director of Taxation pursuant to P.L.1931, c.336, as amended (C.54:1-6 et seq.) is continued and is transferred to the Division of Revenue. These functions, powers and duties shall include but not be limited to those, such as the administration and enforcement of the confidentiality provisions of P.L.1936, c.23, ss.408 and 409 (C.54:50-8 and -9), specifically delegated to the Director of Taxation by the Uniform Tax Procedure Act, P.L.1936, c.163, as amended (C.54:48-1 et seq.).

B. FUNCTIONS, POWERS AND DUTIES

6. The functions, powers and duties assigned to the Commissioner of the Department of Corrections pursuant to P.L.1979, c.396, §3, as amended (C.2C:46-4), or pursuant to any other law to collect fees, fines, assessments, restitution and penalties from those offenders who have been discharged

from parole and from those offenders who are released without parole after serving their sentences are continued and transferred to the Division of Revenue. In all other respects the functions, powers and duties assigned to the Commissioner of the Department of Corrections to collect fees, fines, assessments, restitution and penalties pursuant to P.L.1979, c.396, §3, as amended (C.2C:46-4) or pursuant to any other law shall remain with the Commissioner of the Department of Corrections.

7. The functions, powers and duties assigned to the Director of the Division of Consumer Affairs and to the various professional boards in the Department of Law and Public Safety pursuant to the statutes set forth below and in P.L.1978, c.73, as amended, to bill and collect delinquent fees, costs and penalties are continued and transferred to the Division of Revenue:

Professional Board	Citation
Accountancy	P.L.1977, c.144, as amended (C.45:2B-1 et seq.)
Acupuncture	P.L.1983, c.7, as amended (C.45:2C-1 et seq.)
Acupuncture Research	P.L.1975, c.358, as amended (C.45:9B-1 et seq.)
Architects	P.L.1902, c.29, as amended (C.45:3-1 et seq.)
Audiology and Speech Language Pathology	P.L.1983, c.420, as amended (C.45:3B-1 et seq.)
Cemetery Board	P.L.1971, c.333, as amended (C.8A:1-1 et seq.)
Chiropody	P.L.1930, c.125, as amended (C.45:5-1 et seq.)
Chiropractic Examiners	P.L.1953, c.233, as amended (C.45:9-41.4 et seq.)
Cosmetology and Hairstyling	P.L.1984, c.205, as amended (C.45:5B-1 et seq.)
Dentistry	P.L.1915, c.146, as amended (C.45:6-1 et seq.)
Electrical Contractors	P.L.1962, c.162, as amended (C.45:5A-1 et seq.)
Hearing Aid Dispensers	P.L.1973, c.19, as amended (C.45:9A-1 et seq.)

Landscape Architects	P.L.1983, c.337 (C.45:3A-1 et seq.)
Marriage Counselor Examiners	P.L.1968, c.401, as amended (C.45:8B-1 et seq.)
Master Plumbers	P.L.1968, c.362, as amended (C.45:14C-1 et seq.)
Medical Examiners	R.S. 45:9-1, as amended (C.45:9-1 et seq.)
Midwifery	P.L.1910, c.280, as amended (C.45:10-1 et seq.)
Mortuary Science	P.L.1952, c.340, as amended (C.45:7-32 et seq.)
Nursing	P.L.1947, c.262, as amended (C.45:11-23 et seq.)
Occupational Therapist and Assistants	P.L.1993, c.85 (C.45:9-37.51 et seq.)
Ophthalmic Dispensers and Technicians	P.L.1952, c.336, as amended (C.52:17B-41.1 et seq.)
Optometrists	P.L.1914, c.222, as amended (C.45:12-1 et seq.)
Orthotics and Prosthetics	P.L.1991, c.512, as amended (C.45:12B-1 et seq.)
Pharmacy	P.L.1901, c.51, as amended (C.45:14-1 et seq.)
Physical Therapy	P.L.1983, c.296 (C.45:9-37.11 et seq.)
Physician Assistant	P.L.1991, c.378, as amended (C.45:9-27.10 et seq.)
Professional Engineers and Land Surveyors	P.L.1938, c.342, as amended (C.45:8-27 et seq.)
Professional Planners	P.L.1962, c.109, as amended (C.45:14A-1 et seq.)
Psychological Examiners	P.L.1966, c.282, as amended (C.45:14B-1 et seq.)
Public Movers and Warehousemen	P.L.1981, c.311, as amended (C.45:14D-1 et seq.)
Real Estate Appraisers	P.L.1991, c.68, as amended (C.45:14F-1 et seq.)
Respiratory Care	P.L.1991, c.31 (C.45:14E-1 et seq.)
Shorthand Reporting	P.L.1940, c.175, as amended (C.45:15B-1 et seq.)
Social Workers	P.L.1991, c.134, as amended (C.45:15BB-1 et seq.)

Veterinarian Medical Examiners	P.L.1902, c.18, as amended (C.45:16-1 et seq.)

8. The functions, powers and duties to bill and collect delinquent fees, fines, costs and penalties imposed pursuant to the statutes set forth below are continued and transferred to the Division of Revenue.

Activity	Citation
Amusement Games Control	P.L.1959, c.108 and 109, as amended (C.5:8-78 et seq., and 5:8-100 et seq.)
Charitable Registration and Investigation Act	P.L.1994, c.16 (C.45:17A-18 et seq.)
Consumer Fraud	R.S. 56:8-1 et seq., as amended (C.56:8-1)
Controlled Dangerous Substances Act	P.L.1970, c.226, as amended (C.24:21-1 et seq.)
Private Employment Agencies	P.L.1989, c.331, as amended (C.34:8-43 et seq.)
Securities Enforcement	P.L.1967, c.93, as amended(C.49:3-47 et seq.) and P.L.1985, c.405 (C.49:3-66.1 et seq.)
Weights and Measures	R.S. 51:1-1 et seq., as amended (C.51:1-54 et seq.)

9. The functions, powers and duties assigned to the Director of the Division of Motor Vehicles in the Department of Transportation pursuant to P.L.1983, c.65, as amended (C.17:29A-35), to bill and collect merit rating plan surcharges and to collect delinquent merit rating plan surcharges are continued and transferred to the Division of Revenue.

10. The functions, powers and duties assigned to the Director of the Division of Motor Vehicles in the Department of Transportation pursuant to P.L.1990, c.8, ss.66 and 68, as amended (C.17:33B-61, -63) and Chapters 3, 4, 5, 6, 6B, 7, 8, 10, 10A, 11, 12 and 13 of Title 39 of the Revised Statutes, as amended, to process and deposit fees, charges and penalties, including but not limited to driver license, vehicle registration and other license fees, and to collect delinquent fees and penalties, are continued and transferred to the Division of Revenue.

11. The functions, powers and duties assigned to the Director of the Division of Taxation pursuant to the following laws to collect delinquent taxes and penalties are continued and transferred to the Division of Revenue; provided that the Director of the Division of Taxation shall retain

the functions, powers and duties pursuant to P.L.1936, c.263, s.313, as amended (C.54:49-12), P.L.1987, c.76, s.8 (C.54:49-12.1), P.L.1992, c.172 (C.54:49-12.2 et seq.), P.L.1936, c.263, s.314, as amended (C.54:49-13), P.L.1981, c.392, s.1, as amended (C.54:49-13a).

Tax	Citation
Alcoholic Beverage Tax	P.L.1933, c.434, as amended (C.54:41-1 et seq.)
Alcoholic Beverage Wholesale Sales Tax	P.L.1980, c.62, as amended (C.54:32C-1 et seq.)
Atlantic City Casino Parking Fee	P.L.1993, c.159 (C.5:12-173.1 to -173.5)
Atlantic City Luxury Sales Tax	P.L.1947, c.71, as amended (C.40:48-8.15 et seq.) P.L.1980, c.60 (C.54:32B-24.1)
Business Personal Property Tax	P.L.1966, c.136, as amended (C.54:11A-1 et seq.) (repealed P.L.1993, c.174)
Cape May County Tourism Sales Tax	P.L.1992, c.165 (C.40:54D-1 to -10)
Cigarette Tax	P.L.1948, c.65, as amended (C.54:40A-1 et seq.) P.L.1952, c.247, as amended (C.56:7-18 et seq.)
Corporation Business (Net Income and Net Worth) Tax	P.L.1945, c.162, as amended (C.54:10A-1 et seq.)
Corporation Business Tax Banking Corporation	P.L.1975, c.170, as amended (C.54:10A-1 et seq.)
Corporation Business Tax Financial Corporation	P.L.1975, c.171 (C.54:10A-1 et seq.)
Corporation Income Tax	P.L.1973, c.170, as amended (C.54:10E-1 et seq.)
Financial Business Tax	P.L.1946, c.174, as amended (C.54:10B-1 et seq.)
Gross Income Tax	P.L.1976, c.47, as amended (C.54A:1-1 et seq.)
Insurance Premiums Taxes	P.L.1928, c.38, as amended (C.54:16-1 et seq.) P.L.1952, c.227, repealed P.L.1981, c.183 (C.54:16A-1 et seq.) P.L.1945, c.132, as amended (C.54:18A-1 et seq.)

Landfill Closure and Contingency Tax	P.L.1981, c.306, as amended (C.13:1E-100 et seq.)
Litter Control Tax	P.L.1981, c.278, as amended (C.13:1E-92 et seq.)
Motor Fuels Tax	P.L.1935, c.319, as amended (C.54:39-1 et seq.)
Petroleum Products Gross Receipts Tax	P.L.1990, c.42, as amended (C.54:15B-1 et seq.)
Public Community Water System Tax	P.L.1983, c.443, as amended (C.58:12A-21 et seq.)
Public Utility Taxes:	
Public Utility Excise Taxes	P.L.1940, c.4, as amended (C.54:30A-16 et seq.)
	P.L.1940, c.5, as amended (C.54:30A-49 et seq.)
Railroad Franchise Tax	P.L.1941, c.291, as amended (C.54:29A-13 et seq.)
Railroad Property Tax	P.L.1941, c.291, as amended (C.54:29A-7 et seq.)
Realty Transfer Fee	P.L.1968, c.49, as amended (C.46:15-5 et seq.)
Resource Recovery Investment Tax	P.L.1985, c.38, as amended (C.13:1E-136 et seq.)
Sales and Use Tax	P.L.1966, c.30, as amended (C.54:32B-1 et seq.)
Sanitary Landfill Facility Tax	P.L.1981, c.306, as amended (C.13:1E-100 et seq.)
Savings Institution Tax	P.L.1973, c.31, as amended (C.54:10D-1 et seq.)
Solid Waste Importation Tax	P.L.1985, c.38, as amended (C.13:1E-136 et seq.)
Solid Waste Recycling Tax	P.L.1981, c.278, as amended (C.13:1E-92 et seq.)
Solid Waste Services Tax	P.L.1985, c.38, as amended (C.13:1E-136 et seq.)
Spill Compensation and Control Tax	P.L.1976, c.141, as amended (C.58:10-23.11(h))
Tobacco Products Wholesale Sales and Use Tax	P.L.1990, c.39 (C.54:40B-1 et seq.)

Transfer Inheritance and Estate Taxes:	
Transfer Inheritance Tax	P.L.1909, c.228, as amended (C.54:33-1 et seq.)
Estate Tax	P.L.1934, c.243, as amended (C.54:38-1 et seq.)

These functions, powers and duties shall include but not be limited to those, such as the administration and enforcement of the confidentiality provisions of P.L.1936, c.23, ss.408 and 409, as amended (C.54:50-8 and -9), specifically delegated to the Director of Taxation by the Uniform Tax Procedure Act, P.L.1936, c.263, as amended (C.54:48-1 et seq.).

GENERAL PROVISIONS

I find that each aspect of this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, the reorganization will more efficiently direct, administer and control the State's revenue management functions, in particular the processing of cash receipts, the management of accounts receivable and the collection of billings with accounts receivable. This Plan provides for the consolidation and coordination of these activities into a single organization, the Division of Revenue within the Department of the Treasury. This consolidation will improve the State's overall ability to collect revenue and reduce receivable balances. Moreover, the consolidation will eliminate duplication of effort in the area of receipts processing and debt collection.

Monies collected or received by the Division of Revenue shall be deposited in such accounts or funds as may be provided by law for deposit of such monies.

Except as otherwise provided by law or by this Plan, the Treasurer shall determine delinquency in consultation with the Attorney General, the Commissioner of the Department of Corrections, the Commissioner of the Department of Environmental Protection or the Commissioner of the Department of Transportation, as appropriate.

All acts or parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

Unless otherwise specified in this Plan, all transfers directed by this Plan shall be affected pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

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 this 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 provision not contrary to law. To this end, the provisions of this Plan are declared to be severable.

This Plan is intended to make the operations of the Executive Branch more efficient and effective with regard to revenue management practices and shall be liberally construed to attain the objectives and effect the purposes thereof.

A copy of this Reorganization Plan was filed on January 14, 1997 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days, on March 15, 1997, 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 March 15, 1997, 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 January 14, 1997.
Effective March 15, 1997 (paragraphs 2, 3 and 4, see Executive Order No. 66).

REORGANIZATION PLAN NO. 002-1997
A PLAN FOR THE TRANSFER, CONSOLIDATION AND RE-ORGANIZATION OF THE BUREAU OF CHILD NUTRITION PROGRAMS INTO THE DEPARTMENT OF AGRICULTURE

PLEASE TAKE NOTICE that on May 8, 1997, Governor Christine Todd Whitman hereby issues this Reorganization Plan No. 002-1997 (hereinafter noted as the "Plan"), to provide for the transfer, consolidation and

reorganization of the Bureau of Child Nutrition Programs from the Department of Education (DOE) to the Department of Agriculture (DOA).

The Plan is part of a continuing effort to consolidate and align the structure of the Executive Branch in the interest of efficiency and economy, without qualitative or quantitative diminution of services to the public.

GENERAL STATEMENT OF PURPOSE

This Plan will foster the efficient implementation of a coherent public policy for all State-administered Federal child nutrition and school lunch programs. Two Departments of the Executive Branch currently are responsible for the administration of Federal child nutrition programs and school lunch programs. The Department of Education, through its Bureau of Child Nutrition Programs, operates five child nutrition programs which provide financial and technical assistance to public and non-public schools, residential and non-residential child care institutions, day care centers, recreation centers and other eligible participants listed in the applicable Federal statutes and regulations (7 C.F.R.). These funds support various child nutrition programs.

The Department of Agriculture, through its Commodity Food Distribution Programs, annually distributes over 30 million pounds of nutritious, Federally donated food commodities to an almost identical constituent base as the DOE's child nutrition programs.

Citizens of this State will benefit from having one Department in State government distribute both food commodities and cash reimbursements. This integration of functions will result in improved efficiency and will enable public and non-public schools, residential and non-residential child care institutions, day care centers, recreation centers and other recipients to receive commodities and/or cash reimbursement from one agency. Anticipated benefits of the consolidation include:

- Improvement in the timely certification of programs and coordination of services.

- Enhanced availability of program information and improved response time due to merged data systems.

- Streamlined accounting and report processes due to one fiscal system for all programs, providing a potential savings to the State.

- Coordination of monitoring and inspection schedules to ease burdens on school districts by causing fewer interruptions in service and clients' schedules.

- Simplification of the certification process for school districts for reimbursement and commodities.

- Development of regional food purchasing groups between eligible clients, as well as improving the economy of the local and State agriculture industry.

- Consolidation and coordination of a system to identify and assist eligible schools and agencies in their efforts to supply commercially processed USDA foods to recipients throughout the State.

- Expansion of education and training services to reach appropriate school food service personnel.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L. 1969, c.203 (C.52:14C-1 et seq.), I find, that the transfer, consolidation and reorganization provided for in this Plan, is necessary to accomplish the purpose set forth in Section 2 of the Act in that the Plan will:

1. promote more effective management of the Executive Branch by consolidating food distribution and the administration of child nutrition functions and activities within one agency;

2. promote better and more efficient execution of the laws and provide for the expeditious administration of the public business by consolidating and integrating similar functions within one agency;

3. group, coordinate and consolidate functions in a more consistent and practical manner;

4. increase the efficiency of the operations of the Executive Branch to the fullest extent practicable; and

5. eliminate duplication and overlapping of effort that has resulted from the distribution of food commodities and the administration of all child nutrition programs to identical constituencies by two separate State agencies of the Executive Branch.

PROVISIONS OF THE REORGANIZATION PLAN

Therefore, I hereby order the following reorganization:

1. a. The authority conferred upon the Department of Education, pursuant to N.J.S.A. 18A:33-4 and N.J.S.A. 18A:58-7.1 to provide reimbursement for all meals served to children meeting Statewide eligibility criteria, shall henceforth be exercised by the Department of Agriculture.

b. The authority conferred upon the Department of Education, pursuant to N.J.A.C.6:20-9 et seq. to administer the State's Child Nutrition Programs, shall henceforth be exercised by the Department of Agriculture.

c. The powers, functions and duties hereby transferred in subsections a. and b. above shall be organized and implemented within the Department of Agriculture.

d. All employees of the Department of Education who are employed to administer child nutrition programs under the authority of State statutes and regulations shall be employees of the Department of Agriculture and shall be transferred to that Department pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

e. All records, property, appropriations and any unexpended balance of funds appropriated or otherwise available to the Department of Education in connection with the administration of child nutrition programs shall be transferred to the Department of Agriculture pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

f. Whenever any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise relating to child nutrition programs, refers to the Department of Education, the same shall mean the Department of Agriculture.

GENERAL PROVISIONS

I find that each aspect of this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203. Specifically, this reorganization will promote the more effective management of the Executive Branch and its agencies; promote economy to the fullest extent consistent with the efficient operation of the Executive Branch according to major purposes; reduce the number of agencies by consolidating those

having a similar function under a single head; and eliminate overlapping and duplication of effort.

This Plan, or any section or part thereof, that conflicts with Federal law or regulation shall be considered null and void unless and until addressed and corrected through an interagency agreement, Federal waiver or other means.

All Acts and parts of Acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

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.

This Plan is intended to protect and promote the public health, safety and welfare and shall be liberally construed to attain the objectives and effect the purposes thereof.

All transfers directed by this Plan shall be effectuated pursuant to the "State Agency Transfer Act," P.L.1971, c.373 (C.53:14D-1 et seq.).

A copy of this Plan was filed on May 8, 1997 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days, on July 7, 1997, 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 July 7, 1997, 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 May 8, 1997.
Effective July 7, 1997.

REORGANIZATION PLAN NO. 003-1997
A PLAN FOR THE REORGANIZATION OF THE DEPARTMENT OF THE TREASURY AND PROVIDING FOR THE ABOLITION OF THE GENERAL SERVICES ADMINISTRATION

PLEASE TAKE NOTICE that on May 8, 1997, Governor Christine Todd Whitman hereby issues this Reorganization Plan No. 003-1997 (the Plan) to provide for increased efficiency and effectiveness of the Department of the Treasury by the reorganization and coordination of the Division of Purchase and Property and the Division of Building and Construction, by the abolition of the General Services Administration and the Office of General Services Administrator, and by renaming the Division of Building and Construction as the Division of Property Management and Construction.

This Plan furthers an ongoing effort to streamline and make more effective the operations of the Executive Branch by abolishing the General Services Administration, by abolishing the Office of General Services Administrator, and by reallocating all the functions, powers and duties of the General Services Administration between the Division of Purchase and Property and the renamed Division of Property Management and Construction.

GENERAL STATEMENT OF PURPOSE

The General Services Administration was created in 1984 by P.L.1984, c.34. It was created to supervise and coordinate the functions of the Division of Purchase and Property and the Division of Building and Construction, providing a better functional relationship within the Department in terms of management control. The Division of Data Processing and Telecommunications was abolished, and certain of its duties were transferred to the General Services Administration. Also, the General Services Administrator was given authority to supervise the operations of the Financial Management and Data Center and was authorized to exercise certain powers of the Treasurer relating to the procurement of goods and services and other State contracts and property, as delegated by the Treasurer.

More recently, under P.L.1992, c.130, the Office of Leasing Operations was established in the General Services Administration and placed under the supervision of the General Services Administrator. This Office was

empowered to develop a space utilization plan, to negotiate leases for all State agencies and to determine requirements and arrange for construction or renovation of leased space. All leases and space utilization plans must be approved by the State Leasing and Space Utilization Committee. The Treasurer is a member of that Committee.

The act creating the General Services Administration did not abolish the Division of Purchase and Property or the Division of Building and Construction. Instead, it created a new, intermediate level of governmental supervision and control between these divisions and the Treasurer. The time has passed when such an intermediate level of supervision and control is required. The time has come to re-establish direct lines of supervision and control to the Treasurer, who is ultimately responsible for the efficient and effective operation of the department.

This Plan will streamline and make more effective and efficient the operations of the Executive Branch by abolishing organizational units no longer necessary for the efficient operation of government. Abolishing the General Services Administration created pursuant to P.L.1984, c.34 will result in a reduction of expenditures of $836,367 and will increase the effectiveness and efficiency of the Department of the Treasury by removing levels of supervision and control, thereby re-establishing direct lines of responsibility and reporting between the Treasurer and the Division of Purchase and Property, and the Division of Building and Construction, which will be renamed the Division of Property Management and Construction.

Through this reorganization, the two Divisions will better serve their respective clientele. The Division of Purchase and Property will now streamline its operations with similar functions handled by the now-abolished General Services Administrator, and will provide day-to-day coordination of direct-service functions to other State agencies and members of the public. These functions include, but are not limited to, procurement, risk management, printing services, postal services, warehousing of inventory and supplies, and vehicular services.

The Division of Property Management and Construction will bring under one roof all real property matters that were once spread among various divisions, which was confusing for other State agencies and the State's clients. The new Division will oversee functions including, but not limited to, property acquisition, property disposal, construction, renovation, restoration, operation and maintenance.

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 each reorganization provided for in this Plan that each aspect of the Plan is necessary to accomplish the purposes set forth in section 2 of the Act and that each aspect will:

(1) promote the 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 promote economy to the fullest extent consistent with the efficient operation of the Executive by removing intermediate levels of supervision and control;

(3) increase the efficiency of the operations of the Executive to the fullest extent practicable;

(4) group and coordinate agencies and functions of the Executive according to major purposes, as nearly as may be, by consolidating property management and construction functions and responsibilities in a Division of Property Management and Construction;

(5) reduce the number of agencies by abolishing such agencies or functions thereof as are no longer necessary for the efficient conduct of the Executive; and

(6) eliminate overlapping and duplication of effort by removing levels of supervision and control and by re-establishing direct lines of reporting and responsibility to the Treasurer.

PROVISIONS OF THE REORGANIZATION PLAN

Therefore, I hereby order the following reorganization:

1. The General Services Administration established pursuant to P.L.1984, c.34 and the functions, powers and duties of the General Services Administration pursuant to section 4 of P.L. 1984, c.34 are abolished.

2 The Office of the General Services Administrator created pursuant to section 5 of P.L. 1984, c.34 is abolished.

3. The Division of Purchase and Property, as constituted by section 16 of the "Department of the Treasury Act of 1948," P.L.1948, c.92 (C.52:18A-16), and as consolidated under the General Services Administration, pursuant to P.L.1984, c.34, section 7, is continued with all the functions, powers and duties conferred upon it by law or by this Plan, as the Division of Purchase and Property in the Department of the Treasury. The functions, powers and duties of the Division of Purchase and Property transferred to the General Services Administration pursuant to P.L.1984, c.34 are continued and transferred to the Division of Purchase and Property.

4. The Division of Building and Construction, as established by section 1 of P.L.1970, c.95 (C.52:18A-151), and as consolidated under the General Services Administration pursuant to P.L.1984, c.34, section 7, is continued with all the functions, powers and duties conferred upon it by law or by this Plan, and is renamed the Division of Property Management and Construction in the Department of the Treasury. The functions, powers and duties of the Division of Building and Construction transferred to the General Services Administration pursuant to P.L.1984, c.34 are continued and transferred to the Division of Property Management and Construction. The title "Director of the Division of Building and Construction" is hereby changed to Director of the Division of Property Management and Construction.

5. The functions, powers and duties of the Administrator of the General Services Administration, pursuant to sections 5, 6 and 7 of P.L.1984, c.34 are abolished.

6. The functions, powers and duties of the General Services Administration, under sections 9, 10, 11, 12 and 13 of P.L.1984, c.34 relating to procurement of data processing and telecommunications equipment and services, are continued and are transferred to the Division of Purchase and Property.

7. The functions, powers and duties of the General Services Administrator under section 14 of P.L.1984, c.34, except those regarding the acquisition or disposition of real property, are continued and are transferred to the Director of the Division of Purchase and Property.

8. The functions, powers and duties of the General Services Administrator, under section 14 of P.L.1984, c.34 regarding the acquisition or disposition of real property are continued and are transferred to the Director of the Division of Property Management and Construction.

9. The functions, powers and duties of the General Services Administrator, under section 2 of P.L.1954, c.48, as amended by section 1 of P.L.1985, c.349, are continued and are transferred to the Director of the Division of Purchase and Property or the Director of the Division of Property Management and Construction, as appropriate.

10. The Office of Leasing Operations in the General Services Administration, along with its functions, powers and duties pursuant to P.L.1992, c.130, is continued and, along with all records, property and personnel, is transferred to the Division of Property Management and Construction. The functions, powers and duties of the General Services Administrator under P.L.1992, c.130, are continued and are transferred to the Director of the Division of Property Management and Construction.

11. Nothing in this Plan shall be construed to diminish or modify the powers of the Treasurer pursuant to section 30 of P.L.1984, c.92, as amended, to supervise the organization of the department and changes in the organization thereof.

GENERAL PROVISIONS

I find that each aspect of this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will streamline and make more effective and efficient the operations of the Department of the Treasury, the Division of Purchase and Property and the Division of Property Management and Construction by removing intermediate levels of supervision and control and by re-establishing direct lines of responsibility and reporting between the Treasurer and these divisions, thereby promoting better execution of the laws and the more effective management of the department. It will also consolidate procurement functions for goods, services, capital projects and leases in the agencies charged with statutory responsibility for and having expertise in such procurement. It will reduce expenditures for the department and eliminate duplication of effort by removing an organizational unit that is no longer required for the efficient conduct of the department.

All files, books, papers, records, equipment and other property of the General Services Administration are transferred to the Division of Purchase and Property or the Division of Property Management and Construction, as directed by the Treasurer. All personnel of the General Services Administration, are transferred to the Division of Purchase and Property or the

Division of Property Management and Construction, as directed by the Treasurer.

All unexpended balances of appropriations, grants and other funds available for use in connection with or available to the General Services Administration are transferred to the Division of Purchase and Property or the Division of Property Management and Construction, as directed by the Treasurer, and are available for the objects and purposes for which appropriated, subject to any terms, restrictions, limitations or other requirements imposed by State or Federal law.

Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the General Services Administration in the Department of the Treasury, the same shall mean the Division of Purchase and Property or the Division of Property Management and Construction, as appropriate, in the Department of the Treasury.

This Plan shall not affect any action or proceeding, civil or criminal, brought by or against the General Services Administration or the Administrator or by any agency, the functions, powers and duties of which have been transferred or abolished pursuant to this Plan, nor shall the Plan affect any order or recommendation made by, or other matters or proceedings before, any agency, the functions, powers and duties of which have been transferred or abolished pursuant to this Plan.

All acts or parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

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.).

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 provision not contrary to law. To this end, the provisions of this Plan are declared to be severable.

This Plan is intended to make the operations of the Executive Branch more efficient and effective and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Plan was filed on May 8, 1997 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days, on July 7, 1997 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 later date than July 7, 1997, 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 May 8, 1997.
Effective July 7, 1997.

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Visitation order, noncompliance; sanctions, C.2A:34-23.2 et seq., Ch.300.

DRUGS
Controlled dangerous substances, certain, prescribing 30-day supply, certain circumstances; permitted, C.45:9-22.19 et seq., Ch.249.
Ketamine hydrochloride, designation as controlled dangerous substance, amends C.24:21-7, Ch.193.

ELECTIONS
School elections, poll workers, increased pay rate; permitted, amends R.S.19:45-6, Ch.48.

ENVIRONMENT
"Brownfield and Contaminated Site Remediation Act," C.58:10B-1.1 et al., amends C.13:1K-8 et al., Ch.278.
Dredging, dredged material disposal, projects, various; authorized, C.12:6B-1 et al., Ch.97.
Dry cell batteries, certain; exempt from "Dry Cell Battery Management Act," amends C.13:1E-99.61, Ch.91.
Ecotourism Development and Strategic Planning Task Force, established, Ch.65.
Farm underground storage tanks, certain; exempt from regulations, amends C.58:10A-24.1 et seq., Ch.430.

ENVIRONMENT (Continued)
Hazardous substances, certain, use, storage in proximity to children; prohibited, C.34:5A-10.1 et seq., Ch.364.
Maritime history, marine life preservation projects, special license plates; funding, C.13:11A-1 et al., Ch.74.
Natural resources inventory, establishment; required, C.13:1B-15.159 et seq., Ch.64.
New Jersey Environmental Infrastructure Trust for financing wastewater treatment system, water supply projects; established, C.58:11B-10.1 et al., amends C.58:11B-1 et al., Ch.224.
Pinelands Development Credit Bank, powers, certain; extended, amends C.13:18A-47 et seq., Ch.282.
Pinelands, economic development pilot program; established, C.13:18A-56 et seq., Ch.233.
"Rahway River Intergovernmental Cooperation Committee Act," C.58:1A-18 et seq., Ch.342.
Riparian lands, conveyance; laws changed, C.12:3-12.1 et seq., amends C.13:1B-10 et al., Ch.239.
Shore protection projects, legislative oversight, priority list; provided, C.13:19-16.2, amends C.13:19-16.1, Ch.384.
Stream cleaning, flood prevention, permit procedures; expedited, C.58:16A-68, amends C.58:16A-67, Ch.286.
"Toxic Packaging Reduction Act," provisions, certain; changed, amends C.13:1E-99.46 et al., Ch.307.
"Watershed Protection and Management Act of 1997," C.58:29-1 et seq., Ch.261.

ESTATES
"Prudent Investor Act"; laws revised, C.3B:20-11.1 et seq., amends N.J.S.3B:20-1 et al., repeals N.J.S.3B:20-2 et al., Ch.26.
Wills of nonresident decedents, certain, probate by surrogate's court; permitted, amends N.J.S.3B:3-28, Ch.20.

EXECUTIVE ORDERS
Advisory Committee to Study the Future of the New Jersey Training School for Boys in Monroe Township; created, No.75.
Criminal investigation, records, information; designation as public or confidential, earlier executive orders modified, No.69.
Department of Transportation, designated to carry out provisions of federal State Safety Oversight of Fixed Guideway Systems, No.65.
Immigrants, certain, food stamp assistance; provided, No.74.

EXECUTIVE ORDERS (Continued)
Monmouth County Board of Chosen Freeholders, areawide planning agency for Monmouth County Water Quality Management Plan; designation, No.67.
New Jersey - Israel Commission; continued, No.70.
Office of Sustainability in Department of Commerce and Economic Development; created, No.68.
Office of the Business Ombudsman, transfer to Department of Commerce and Economic Development, Executive Order No.15; rescinded, No.71.
Reorganization Plan No. 001-1997, effective date; August 1, 1997, No.66.
State employees, November 28, 1997; granted as a day off, No.76.
State of emergency, severe weather conditions in Atlantic, Burlington, Cape May, Cumberland, and Ocean counties; declared, No.73; terminated, No.77.
Study Commission on the Implementation of the Death Penalty; established, No.72.

FIRE SAFETY
Holiday display of vegetation, laws concerning; revised, C.52:27D-198.6, Ch.428.
New Jersey State Firemen's Association, payments by insurers, certain, collection, distribution, procedures; revised, C.54:18-8, amends R.S.54:18-1 et al., repeals N.J.S.54:17-4 et al., Ch.41.

FISH, GAME AND WILDLIFE
Division of Fish, Game and Wildlife personnel, use of weapons when controlling, researching wildlife; permitted, amends N.J.S.2C:39-6, Ch.393.
Hunting of deer with bait, conditions permitted; expanded, C.23:4-24.4, Ch.424.
Venison donation demonstration program; established, repeals C.24:16B-61.1, Ch.268.
Wildlife, sale, purchase; law revised, amends R.S.23:1-1 et al., repeals R.S.23:5-4 et al., Ch.291.

FOOD
Frozen desserts plant; exclusion of retail stores in definition, amends C.24:10-73.5 et al., Ch.337.

GAMES AND GAMBLING
Casinos, poker dealers, separate pool of tips; permitted, amends C.5:12-100, Ch.83.
"Charity Racing Day for the Horse Park of New Jersey and for the Care of Retired Horses," authorized, C.5:5-44.9, amends C.5:5-66 et al., repeals C.5:5-44.7, Ch.80.
Lottery prizes, certain, use for payment of defaulted student loans; provided, C.5:9-13.10 et seq., Ch.306.
New Jersey Racing Commission; funding from unclaimed tickets, certain, C.5:5-68.1, amends C.5:5-64 et al., Ch.29.
Raffles, laws; changed, C.5:8-60.1 et seq., amends C.5:8-59, Ch.386.

HANDICAPPED PERSONS
"Mental incompetent," designation changed to "incapacitated person," amends N.J.S.3A:36-2 et al., Ch.379.

HEALTH
Advisory Council on Adolescent Pregnancy; established, C.26:2-170 et seq., Ch.229.
Breast feeding in public, permitted; enforcement, C.26:4B-4 and C.26:4B-5, Ch.101.
Certificate of need application fees, certain; changed, amends C.26:2H-10, Ch.392.
Charity, health care, funding; provided, laws; revised, C.26:2H-18.58e et al, amends C.26:2H-18.52 et al., Ch.263.
Clinical laboratories, billing procedures; changed, C.45:9-42.21a et seq., amends C.45:9-42.42 et seq., Ch.156.
Conscientious employee protections for health care professionals; provided, amends C.34:19-2 et seq., Ch.98.
Criminal history background checks for nurse aide, personal care assistant, homemaker-home health aide certification applicants; required, amends C.26:2H-83 et al., repeals C.26:2H-82, Ch.284.
Criminal history record background checks for employees who care for the elderly, certain; required, C.26:2H-82 et al, Ch.100.
"Health Care Quality Act," C.26:2S-1 et al., amends C.26:2J-24 et al., Ch.192.
Health officers, local, certain, titles, duties; revised, C.26:1A-42.1, amends R.S.24:2-3 et al., repeals R.S.26:3-28 et al., Ch.416.
Health service corporations, rate-setting for payments, certain; eliminated, amends C.26:2H-18, Ch.304.
HIV test for semen donors; required, C.26:5C-21 et seq., Ch.246.

HEALTH (Continued)
Home health patients, administration of noncontrolled drugs, certain, by home health care agency; permitted, C.45:11-49.1, Ch.66.
Hospices, licensing program; established, C.26:2H-79 et seq., Ch.78.
Invalid coach service changed to mobility assistance vehicle service under Medicaid program; C.30:4D-3a, amends C.30:4D-6.2 et seq., Ch.102.
Mastectomy, minimum inpatient care following, coverage by health insurers; required, C.17:48-6q et al., Ch.149.
New Jersey Health Care Facilities Financing Authority, organizations, projects eligible for funding; expanded, C.26:2I-5.1 et seq., amends C.26:2I-1 et al., repeals C.26:2I-6 et al., Ch.435.
"Osteoporosis Prevention and Education Program Act," C.26:2R-1 et seq., Ch.191.
PACE, Pre-PACE programs, contract with Department of Health and Senior Services; authorized, C.26:2H-88 et seq., Ch.296.
"Partial-Birth Abortion Ban Act of 1997," C.2A:65A-5 et seq., Ch.262.
Radon testing at childcare centers; required, C.30:5B-5.2, Ch.44.
Sexual Assault Nurse Examiner Program; established, Ch.328.
Syphilis, test for, requirements; changed, amends C.26:4-49.1 et al., repeals C.37:1-20 et seq., Ch.230.
Tattoo parlors, regulation of sanitary conditions by Public Health Council; permitted, amends C.26:1A-7, Ch.326.
Tick-borne illness, designation of agencies, commissions to institute management programs, C.26:2P-7, amends C.26:2P-1 et al., Ch.52.

HIGHWAYS
"Admiral John D. Bulkeley Memorial Highway"; designated, J.R.5.
"Edward J. Patten Memorial Highway"; designated, J.R.4.
Korean War Memorial Highway; additional designations, J.R.10.
"Larry Doby Highway"; designated, J.R.6.
"Nello Melini Memorial Highway"; designated, J.R.3.
New Jersey Highway Authority, towing contracting procedures, certain; changed, amends C.27:12B-5.2, Ch.390.
Signs, motorist services, directional; permitted on State right-of-way, C.27:7-21.12 et al., Ch.144.
State highway system:
Routes, certain; changed, C.27:6-1.1, amends C.27:6-1, repeals P.L.1955, c.255 et al., Ch.143.
Toll roads, certain, 65 MPH speed limit; designated, C.39:4-98.3 et seq., amends R.S.39:4-98, Ch.415.
Toll roads, electronic collection of tolls; authorized, C.27:12B-18.2 et al., Ch.59.

HOLIDAYS
"Hepatitis C Awareness Month," March; designated, C.36:2-44 et seq., J.R.9.
"Irish-American History and Heritage Week"; designated, C.36:2-43, J.R.2.

HOSPITALS
Charity, health care, funding; provided, laws; revised, C.26:2H-18.58e et al, amends C.26:2H-18.52 et al., Ch.263.
Conscientious employee protections for health care professionals; provided, amends C.34:19-2 et seq., Ch.98.
Identifying badges worn by certain hospital employees; required, C.26:2H-12.9a et al., amends C.26:2H-12.8, Ch.76.
"Partial-Birth Abortion Ban Act of 1997," C.2A:65A-5 et seq., Ch.262.

HOUSING
Affordable housing, determination of fair share; definition of vacant land, amends C.52:27D-310.1, Ch.49.
Criminal history record background checks, employees of public housing authorities, certain; permitted, C.40A:12A-22.1 et seq., Ch.265.
Life safety improvement loans to boarding houses, purposes; expanded, amends C.55:14K-3, Ch.31.
Hotel and Multiple Dwelling Law, certain condominiums, cooperatives; exemption provided, amends C.55:13A-3, Ch.311.
Public housing projects, eviction of drug offenders, certain, process; facilitated, amends C.2A:18-61.1 et seq., Ch.228.
Rental of cooperative units, certain, unreasonable restrictions; prohibited, C.46:8D-13.1, Ch.366.
Rent control, leveling ordinances, exemption for new multiple dwellings; permanent, amends P.L.1987,c.153,s.7, Ch.56.

HUMAN SERVICES
"Community Mental Health and Developmental Disability Services Investment Act," C.30:4-177.53 et seq., Ch.258.
Developmentally disabled, certain, consent to treatment by regional administrator; permitted, amends C.30:4-7.1 et seq., Ch.208.
Division of Developmental Disabilities, community residential, day program waiting lists, plan for elimination; submission required, C.30:6D-42, Ch.17.
Division of Youth and Family Services, expungement of records regarding unfounded child abuse allegations; required, C.9:6-8.40a, Ch.62.
Human Services police officers, certain, specific training regarding patient abuse, violent patients; required, amends C.30:4-14.2, Ch.72.

HUMAN SERVICES (Continued)
Medicaid, eligibility of legal aliens, requirements; changed, C.30:4D-6f, amends C.30:4D-3, Ch.352.
Nursing Home Administrator's Licensing Board; membership, modified, amends C.30:11-20, Ch.110.
Repayment to State, structured, for maintenance costs for mentally ill, developmentally disabled persons, certain; required, Ch.398.
State facilities for mentally ill and developmentally disabled, employees, criminal history background checks at least every two years; required, amends C.30:4-3.5, Ch.71.
State psychiatric facilities, unannounced site visits, surveillance; required, C.30:1-12a et seq., Ch.68.
State psychiatric hospital employees, certain, supervision of family members; prohibited, reporting of outside employment; required, C.30:4-3.12 et seq., Ch.69.
State psychiatric hospitals, blood testing of adult patients for diseases, certain; required, C.30:4-7.7 et seq., Ch.361.
State psychiatric hospitals, patient abuse, professional misconduct by employees; required, reporting program; established, C.30:4-3.15 et seq., Ch.70.

INSURANCE
Automobile insurance:
"At-fault accident," physicians responding to medical emergencies, certain circumstances; exception, amends C.17:33B-14, Ch.381.
Out-of-State vehicles, coverage compliance requirement; clarified, amends C.17:28-1.4, Ch.436.
PIP benefits, certain, denial; permitted, amends C.39:6A-7, Ch.270.
Policy nonrenewal, 60 days' notice; required, amends C.17:29C-9, Ch.240.
Regulations, various; revised, C.17:33B-64 et al., amends C.17:33A-3 et al., repeals C.17:33B-46 et al., Ch.151.
Bail, representatives authorized to write; registration with court, C.17:22A-16.1, Ch.429.
"Children's Health Care Coverage Act," C.30:4I-1 et seq., amends C.30:4D-3, Ch.272.
Clinical laboratories, billing procedures; changed, C.45:9-42.21a et seq., amends C.45:9-42.42 et seq., Ch.156.
Fraternal benefit societies, sale of life, health insurance to members, regulation, licensure; provided, C.17:44B-1 et seq., amends C.17:22A-3, repeals C.17:44A-1 et seq., Ch.322.

INSURANCE (Continued)
Health benefits plans, individual, preexisting condition limitations, certain; waived, Ch.271.
"Health Care Quality Act," C.26:2S-1 et al., amends C.26:2J-24 et al., Ch.192.
Health coverage, foods, food products for inherited metabolic diseases; provided, C.17:48-6s et al., Ch.338.
Health insurance, various, portability; regulations changed to comply with federal law, C.17B:27-54 et seq., amends C.17B:27A-2 et al., repeals C.17B:27A-23.1, Ch.146.
Health insurers, coverage, audiologists, speech-language pathologists; services, certain, C.17:48E-35.17 et al., amends C.17:48E-1 et al., Ch.419.
Health insurers, coverage for reconstructive breast surgery; required, C.26:2J-4.14, amends C.17:48-6b et al., Ch.75.
Insurance fraud prevention expenditures, included; special purpose apportionment; changed, C.17:1C-20.1, amends C.17:1C-31, Ch.154.
Mastectomy, minimum inpatient care following, coverage by health insurers; required, C.17:48-6q et al., Ch.149.
Medical savings accounts, standards; established, tax advantages; provided, C.54A:3-4 et al., amends C.17B:27A-7 et al., Ch.414.
Prepaid prescription service organizations, certificate of authority; required, C.17:48F-1 et seq., Ch.380.
State Health Benefits Program, coverage for inpatient care for mastectomies; required, C.52:14-17.29b, Ch.94.
Task Force on the Availability of Homeowners Insurance in the Coastal region; created, J.R.8.

INTERNATIONAL RELATIONS
Swiss government, disclosure of information regarding funds deposited by Jewish Holocaust victims; memorialized, J.R.1.

INTERSTATE RELATIONS
"Port Unification and Financing Act," C.34:1B-144 et seq., amends C.12:11A-1 et al., Ch.150.
"The Northeast Interstate Dairy Compact Act," C.32:35-1 et seq., Ch.402.
"Waterfront Commission Compact," stevedores, licenses, duration; extended, amends C.32:23-23.1, Ch.285.
Waterfront Commission, longshoremen; permanent registration, certain, amends C.32:23-114, Ch.433.

JOINT RESOLUTIONS
"Admiral John D. Bulkeley Memorial Highway"; designated, J.R.5.
"Edward J. Patten Memorial Highway"; designated, J.R.4.
"Hepatitis C Awareness Month," March; designated, C.36:2-44 et seq., J.R.9.
"Irish-American History and Heritage Week"; designated, C.36:2-43, J.R.2.
Korean War Memorial Highway; additional designations, J.R.10.
"Larry Doby Highway"; designated, J.R.6.
"Nello Melini Memorial Highway"; designated, J.R.3.
"New Jersey Commemorative Coin Design Commission"; created, J.R.7.
Swiss government, disclosure of information regarding funds deposited by Jewish Holocaust victims; memorialized, J.R.1.
Task Force on the Availability of Homeowners Insurance in the Coastal region; created, J.R.8.

LABOR
Council on Undocumented Aliens; established, C.34:1A-81 et seq., Ch.87.
Wages, withholding for insurance, annuity programs, certain; authorized, amends C.34:11-4.4, Ch.35.

LANDLORD AND TENANT
Public housing projects, eviction of drug offenders, certain, process; facilitated, amends C.2A:18-61.1 et seq., Ch.228.

LEGISLATURE
General Assembly, organization, joint session of Legislature for inaugural ceremony, holding outside of Trenton; permitted, Ch.298.

MOTOR VEHICLES
Autocab, certain counties, definition; changed, C.48:16-13.1, amends R.S.48:16-13, Ch.356.
Auto insurance identification cards, possession, sale of fraudulent; offenses, C.2C:21-2.1a, amends C.39:3-38.1, Ch.385.
Barnegat Bay Decoy and Baymen's Museum license plates; issuance, C.39:3-27.86 et al., Ch.74.
Commercial construction vehicles, certain, speed limit; increased, amends R.S.39:3-20, Ch.313.
Commercial vehicles used by pharmacy, identifying sign, removal; permitted, amends R.S.39:4-46, Ch.158.
"Conquer Cancer" license plates; issuance, C.39:3-27.90, Ch.92.
"Disabled Vet" license plates for leased vehicles; permitted, amends C.39:3-27.15, Ch.159.

MOTOR VEHICLES (Continued)

Disaster control, equipment operators, commercial drivers' license requirements; exempt, certain circumstances, amends C.39:3-10j et seq., Ch.269.
DMV surcharges, certain; collection through enforcement program, C.2B:19-10, amends C.2B:19-2 et al., Ch.280.
Driver's license, registration, use of post office box, different address, certain circumstances; permitted, C.39:3-9c, amends R.S.39:3-4 et al., Ch.189.
"Driver's Privacy Protection Act," federal statute; implemented, C.39:2-3.3 et seq., Ch.188.
DWI convictions, out-of-State, constitute prior conviction, amends R.S.39:4-50 et al., Ch.277.
Handicapped driver certification by physicians at military installations, certain; permitted, amends C.39:4-204 et al., Ch.267.
Ice dislodged from vehicle, injury, damage; penalty, C.39:4-77.1, Ch.124.
Interior light, activation at request of police officer when stopped at night; required, C.39:4-57.1, Ch.374.
"Lemon Law," used cars, leased vehicles, certain; exempt, C.56:8-67.1, amends C.56:8-67, Ch.22.
Liberty State Park license plates; issuance, C.39:3-27.91 et seq., Ch.195.
Motor vehicle accidents, hit and run, certain; criminal penalties, established, C.2C:11-5.1 et al., Ch.111.
Motor vehicle towing, storage charges, local authority; increased, C.40:48-2.54 et al., amends C.40:48-2.49 et al., repeals C.17:33B-47, Ch.387.
Pursuits, injuries occurring, liability of law enforcement officers; limited, amends R.S.39:4-91 et al., Ch.423.
Roadway solicitations by charitable organizations, certain; permitted, C.59:2-1.1, amends R.S.39:4-60, Ch.82.
School buses, use of liquefied petroleum gas for fuel; permitted, C.39:3B-13 et seq., Ch.367.
State highway system, toll roads, certain, 65 MPH speed limit; designated, C.39:4-98.3 et seq., amends R.S.39:4-98, Ch.415.
Submarine Veterans, twin dolphin emblem on special license plate; permitted, C.39:3-27.98 et seq., Ch.289.

MUNICIPALITIES

Affordable housing, determination of fair share; definition of vacant land, amends C.52:27D-310.1, Ch.49.
Collection services, contracts with private firms, types of municipal penalties eligible; expanded, amends C.40:48-5a, Ch.212.

MUNICIPALITIES (Continued)
Employee severance liabilities, certain; special emergency appropriation permitted, amends N.J.S.40A:4-53, Ch.128.
"Energy Tax Receipts Property Tax Relief Act," C.52:27D-438 et al., Ch.167.
Gypsies, reference in licensing statute, certain; removed, amends R.S.40:52-1, Ch.320.
Housing authorities, criminal history record background checks, employees,certain; permitted, C.40A:12A-22.1 et seq., Ch.265.
Housing authority, executive director; exemption from educational requirements, certain, amends C.40A:12A-18, Ch.431.
Housing authority police force, establishment, certain; permitted, C.40A:14-146.19 et seq., amends N.J.S.2C:39-6, Ch.210.
Improvement assessments, acceptance of quarterly installment payments; permitted, amends R.S.40:56-35, Ch.5.
Investments, certain, regulations; changed, amends C.40A:5-14 et al., Ch.148.
Joint municipal lien pools, establishment; permitted, C.54:5-130 et seq., Ch.274.
Leases, certain, authority to regulate; limited, amends R.S.40:52-1, Ch.317.
Licensing of premises for rooming, boarding houses; law revised, amends C.40:52-10 et al., Ch.344.
Local housing authority, municipal redevelopment agency members, course requirements, completion deadlines; changed, amends C.40A:12A-46 et al., Ch.27.
Mayor-council plan, business administrator; removal, circumstances, amends C.40:69A-43, Ch.418.
Municipal clerk, appointment, reappointment, requirements; changed, C.40A:9-133.9 et seq., amends N.J.S.40A:9-133 et al., Ch.279.
Municipal court administrators, tenure requirements; changed, amends C.2A:8-13.1 et al., Ch.389.
Municipal property tax levy, public sale to highest bidder; permitted, C.40A:4-40.1 et al., amends R.S.54:4-65 et al., Ch.99.
Open space, farmland tax referendum laws; revised, C.40:12-15.1 et seq., amends R.S.40:12-14 et al., repeals R.S.40:12-10 et al., Ch.24.
Police, fire mutual aid agreement with interstate authority; permitted, amends C.40A:14-156.1 et seq., Ch.79.
Property owners, certain, address registration; authorized, C.40:48-2.53, Ch.85.
Tourism improvement, development authorities, Wildwood convention center facility, funding; provided, additional projects; authorized, C.40:54D-25.1 et al., amends C.40:54D-3 et al., Ch.273.

MUNICIPALITIES (Continued)
Town of Boonton, Morris county, special charter; permitted, Ch.198.
Uncollected taxes, reserve, consideration of tax appeal judgments; permitted, amends N.J.S.40A:4-41, Ch.28.

NURSING HOMES, ROOMING AND BOARDING HOUSES
Contracts; required, other provisions concerning Medicare or Medicaid, C.30:13-3.1 et al., amends C.30:13-3 et al., Ch.241.
Licensing of premises for rooming, boarding houses; law revised, amends C.40:52-10 et al., Ch.344.
Nursing Home Administrator's Licensing Board; membership, modified, amends C.30:11-20, Ch.110.
Rooming, boarding houses for individuals with Alzheimer's, similar diseases, regulations; provided, C.55:13B-10.1, amends C.55:13B-3 et al., Ch.260.

PENSIONS AND RETIREMENT
Deferred compensation plan assets, income, held in trust for participating employees, beneficiaries; provided, amends C.43:15B-3 et al., Ch.116.
Dental insurance premiums, certain, deduction from TPAF, PERS retirement allowance, pensions, certain; required, amends N.J.S.18A:66-54 et al., Ch.332.
"Emergency Services Volunteer Length of Service Award Program Act," C.40A:14-183 et seq., amends C.40A:4-45.3 et al., Ch.388.
Judicial Retirement System:
Certain members borrowing against accumulated deductions; permitted, C.43:6A-34.3 et seq., Ch.25.
Death benefit coverage, optional; permitted, C.43:6A-17.1, Ch.205.
Pension Bond Financing Act of 1997, C.34:1B-7.45 et seq., Ch.114.
Police and Firemen's Retirement System:
Calculation of accidental disability retirement allowance, alternate basis; established, C.43:16A-7.3 et al., amends C.43:16A-7, Ch.281.
Criminal investigators, certain, transfer from PERS; permitted, Ch.89.
Employment beyond age 65, certain cases; permitted, Ch.137.
Members, purchase of service credit for public employment, certain; permitted, C.43:16A-11.12, Ch.43.
Public Employees' Retirement System:
Newark retirees, certain, enrollment; permitted, Ch.394.
Reemployment of retirees without suspension of benefits, certain circumstances; permitted, amends C.43:15A-7 et al., Ch.23.
State health benefits, paid, early retirement, certain DHS employees; permitted, Ch.404.

PENSIONS AND RETIREMENT (Continued)
Retirement systems, State-administered, administration, conformed to Internal Revenue Code requirements; nonforfeitable, pension rights, certain, established, C.43:3C-9.1 et seq., Ch.113.
Retirement systems, valuation, funding provisions, revised, amends N.J.S.18A:66-18 et al., Ch.115.
State-administered retirement systems, purchase of service credit by retirees, certain; authorized, Ch.397.
State Health Benefits Program benefits, certain retirees; provided, C.52:14-17.32i et seq., amends C.34:13A-18, Ch.330.
State paid health benefits; provision to certain State police retirees, dependents, amends C.52:14-17.32, Ch.335.
Teachers' Pension and Annuity Fund, members of board of trustees, certain; staggered terms, C.18A:66-56.1, amends N.J.S.18A:66-56, Ch.63.

PLANNING AND ZONING
Hospices, certain; permitted, compliance with federal statute; provided, amends C.40:55D-66.1 et seq., Ch.321.
Release of performance guarantee, formula; clarified, amends C.40:55D-53, Ch.126.
Senior citizens, rental of room to one person, certain circumstances; permitted use, C.40:55D-68.4 et seq., Ch.339.
Variances, inherently beneficial use; consideration, amends C.40:55D-70, Ch.145.

POLICE
Body Armor Replacement fund, created, C.52:17B-4.4, amends R.S.39:5-41, Ch.177.
DNA testing, certain persons; required, amends C.53:1-20.18 et al., Ch.341.
Pursuits, injuries occurring, liability of law enforcement officers; limited, amends R.S.39:4-91 et al., Ch.423.
State Police, transfer into the Division, retirement system, certain; authorized, C.53:1-8.2 et al., amends R.S.53:2-1 et al., Ch.19.

PROFESSIONS AND OCCUPATIONS
"Accountancy Act of 1997," C.45:2B-42 et seq., repeals C.45:2B-1 et al., Ch.259.
"Alcohol and Drug Counselor Licensing and Certification Act," C.45:2D-1 et seq., amends C.45:8B-9, Ch.331.
Architects, continuing education for license renewal; required, C.45:3-24 et seq., Ch.95.

PROFESSIONS AND OCCUPATIONS (Continued)
Certified school psychologist, social worker, provision of services to nonpublic school pupils, certain; permitted, amends C.45:14B-6 et al., Ch.140.
Counselors, professional, associate, licensure requirements; changed, rehabilitation counselor, licensure requirements; established, C.45:8B-41.1 et seq., amends C.45:8B-35 et al., Ch.155.
"Electrology Practice Act," C.45:9-37.76 et seq., Ch.347.
"Home Inspection Professional Licensing Act," C.45:8-61 et seq., Ch.323.
Interior designers, entry into business relationships with architects, certain circumstances; permitted, amends C.45:3-1.1 et al., Ch.403.
Locksmiths, burglar alarm, fire alarm, electronic security businesses; licensure; required, C.45:5A-23 et seq., amends C.45:5A-2 et al., Ch.305.
Notaries public, certain, obligations; clarified, amends R.S.41:2-3, Ch.340.
Physicians, podiatrists, certain, malpractice insurance, letter of credit; required, C.45:9-19.17 et al., Ch.365.
"Real Estate Appraisers Act"; revised, C.45:14F-10.1 et seq., amends C.45:14F-7 et al., Ch.401.

PUBLIC CONTRACTS
Architectural, engineering, land surveying services, State procedure; changed, C.52:34-9.1 et seq., Ch.399.
Local public contracts:
Construction disputes, certain; submission to alternate dispute resolution procedure, C.40A:11-50, Ch.371.
Lease of firefighting equipment; 10 years allowed, amends C.40A:11-15, Ch.288.
Notice of revisions or addenda to ads; changed, amends C.40A:11-23, Ch.243.
Subcontractors, specific information from public bidders, certain; required, amends C.40A:11-16, Ch.408.
Motor vehicle towing, storage charges, local authority; increased, C.40:48-2.54 et al., amends C.40:48-2.49 et al., repeals C.17:33B-47, Ch.387.

PUBLIC EMPLOYEES
Certified disaster services volunteers of American Red Cross, leave of absence from State service; permitted, C.11A:6-11.1, Ch.417.
"Police and Fire Public Interest Arbitration Reform Act," technical correction, amends C.34:13A-16, Ch.183.

PUBLIC EMPLOYEES (Continued)
Police and Firemen's Retirement System mortgage loan program; permanent, amends P.L.1992, c.78, s.11, Ch.184.

PUBLIC UTILITIES
Board of Public Utilities, jurisdiction over consumer-owned water companies, certain; limited, C.48:2-13.2, Ch.203.
Gas, electric, telecommunications public utilities, taxation; laws revised, C.54:10A-5.25 et al., amends C.54:10A-3 et al., repeals C.48:2-29.37 et al., Ch.162.
Railroad-related injuries, certain, railroad immunity act prevails, amends R.S.48:12-152 et al., Ch.309.
Telephone messages, recorded, certain; prohibited, amends C.48:17-28, Ch.345.
Underground facilities, five-year interim period for system operator, disorderly persons offense; established, amends C.48:2-77 et al., Ch.7.

REAL PROPERTY
Maps, approval, filing, regulations; changed, condominium law; conformed, amends C.46:23-9.10 et al., Ch.211.
Mortgage loans; methods of disbursing proceeds regulated, C.17:46B-10.1, amends C.17:11C-22, Ch.290.
Mortgage loans, modified, certain; priority, C.46:9-8.5, amends C.46:9-8.1, Ch.427.
Records, certain, methods of preservation; alternatives, amends R.S.46:19-1, Ch.391.
Rental of cooperative units, certain, unreasonable restrictions; prohibited, C.46:8D-13.1, Ch.366.
Rentals, seasonal, security deposit requirements; "seasonal use", amends C.46:8-19, Ch.310.
Uniform Federal Lien Registration Act; adopted, C.46:16-15 et seq., amends C.22A:4-4.1, Ch.412.

RECREATION
Equestrian activities, participants, operators, responsibilities; established, C.5:15-1 et seq., Ch.287.
Roller skates, skateboards, helmets; required, C.39:4-10.5 et seq., amends C.39:4-10.1 et seq., Ch.411.

REORGANIZATION PLANS
Bureau of Child Nutrition Programs, transfer, consolidation, reorganization to Department of Agriculture, No.002-1997.

REORGANIZATION PLANS (Continued)
Debt collections, receipts processing functions, transfer from departments, various, to Division of Revenue in the Department of the Treasury, No.001-1997; effective date, see Executive Order No.66.
Department of the Treasury, reorganization, General Services Administration, abolition, No.003-1997.

SCHOOLS
Certified school psychologist, social worker, provision of services to nonpublic school pupils, certain; permitted, amends C.45:14B-6 et al., Ch.140.
Drug, alcohol abuse counseling, family confidentiality, certain circumstances; required, C.18A:40A-7.1 et seq., Ch.362.
Employee, certain, dismissal for cause, notice to State Board; required, C.18A:16-1.3, Ch.200.
Epinephrine by epi-pen, administration by school nurse, trained employee; permitted, C.18A:40-12.5 et seq., Ch.368.
Investments, certain, by school boards, regulations; changed, amends C.18A:20-37 et al., Ch.148.
Nonpublic school pupils, certain, self-administration of medication; permitted, amends C.18A:40-12.3, Ch.21.
Pupil assaults upon public school employees, filing of written report; required, amends C.18A:37-2.1, Ch.372.
Pupil transportation, certain, cooperative, regionalized; use, certain, C.18A:39-11.1, Ch.53.
Pupils, examination by nurse practitioner/clinical nurse specialist; permitted, amends N.J.S.18A:40-4, Ch.47.
School buses, use of liquefied petroleum gas for fuel; permitted, C.39:3B-13 et seq., Ch.367.
School districts, monitoring, evaluation; alternative program, C.18A:7A-14.3 et seq., Ch.432.
State aid for public schools, certain; restored, C.18A:7F-5.1, amends C.18A:7F-10, Ch.232.
Strip, body cavity searches of pupils; prohibited, C.18A:37-6.1, Ch.242.
Teachers, increment, withholding, due to sick leave, certain; prohibited, amends N.J.S.18A:30-2.1, Ch.112.
Tuition for children, certain, special education, payment by State; required, amends C.18A:7B-12, Ch.202.

SENIOR CITIZENS
Crime prevention program; established, C.52:17B-77.4 et seq., Ch.73.

SENIOR CITIZENS (Continued)
Criminal history record background checks for employees who care for the elderly, certain; required, C.26:2H-82 et al, Ch.100.
PACE, Pre-PACE programs, contract with Department of Health and Senior Services; authorized, C.26:2H-88 et seq., Ch.296.

STATE GOVERNMENT
Construction code enforcement, elevator devices, alternate means for testing, inspecting, certain, C.52:27D-126f, Ch.336.
Council on Local Mandates, public retirants as members, employees, enrollment in PERS; ineligible, amends C.52:13H-10, Ch.209.
Great Seal of New Jersey, display by county clerks, surrogates; permitted, amends C.52:2-3, Ch.294.
Investment, management of funds by Director of Division of Investment; laws revised, C.3B:20-11.1 et seq., amends N.J.S.3B:20-1 et al., repeals N.J.S.3B:20-2 et al., Ch.26.
New Jersey Human Relations Council; created, C.52:9DD-8 et seq., Ch.257.
New Jersey Tourism Advisory Council, representative of eco-tourism; added, amends C.34:1A-51, Ch.10.
Property, real, surplus, certain, lease, sale; authorized, Ch.141.
Real property, sale by State, State House Commission, law revised, C.52:31-1.8 et al, amends C.52:31-1.3 et al., Ch.135.
Red Bank Armory, sale by Department of Military and Veterans' Affairs, certain circumstances; authorized, repeals P.L.1991, c.88, Ch.168.
Transportation, Department, inventory of lands acquired for transportation purposes not under construction; required, C.27:1A-5.15, Ch.4.

STATUTES
Uniform Securities Law (1997); law revised, C.49:3-52.1 et al., amends C.49:3-47 et al., repeals C.49:3-45 et al., Ch.276.

TAXATION
Apple ciders, certain, tax rate per gallon; changed, amends R.S.54:41-2 et al., Ch.153.
Armed forces personnel in "qualified hazardous duty area," gross income tax filing extension; provided, amends N.J.S.54A:9-16, Ch.207.
Cigarette tax licensing requirements, drug store employees, certain; clarified, amends C.54:40A-4, Ch.373.
Cigarette, tobacco products tax rates; increased, C.26:2H-18.58g, amends C.54:40A-8 et al., Ch.264.

TAXATION (Continued)

Corporation business tax benefit certificate transfer program, certain companies; provided, C.34:1B-7.42a et al., Ch.334.
"Energy Tax Receipts Property Tax Relief Act," C.52:27D-438 et al., Ch.167.
Foreign national corporations, certain circumstances; exemption from shipping and aircraft operation income, amends C.54:10A-4, Ch.413.
Gas, electric, telecommunications public utilities, taxation; laws revised, C.54:10A-5.25 et al., amends C.54:10A-3 et al., repeals C.48:2-29.37 et al., Ch.162.
Gross income tax, military pensions, survivor's benefits; excluded, C.54A:6-26, Ch.409.
Homestead property tax reimbursement, certain homeowners; provided, C.54:4-8.67 et seq., amends C.54A:3A-17, Ch.348.
Medical savings accounts, standards; established, tax advantages; provided, C.54A:3-4 et al., amends C.17B:27A-7 et al., Ch.414.
Municipal liens, redemption, laws regarding; clarified, amends C.17:12B-11 et al., Ch.190.
Municipal property tax levy, public sale to highest bidder; permitted, C.40A:4-40.1 et al., amends R.S.54:4-65 et al., Ch.99.
Municipalities, reimbursement for tax deduction programs, certain; increased, C.54:4-8.24, amends C.54:4-8.12 et al., Ch.30.
Net operating loss deduction carryforward, corporation business tax, certain; extended, C.54:10A-4.3, Ch.350.
Research, development corporation business tax credit, carryforward; extended, certain, C.54:10A-5.24b, Ch.351.
S corporations, business tax rate; changed, amends C.54:10A-5, Ch.40.
Sales tax, imprinting services on manufacturing equipment, certain; exempt, C.54:32B-8.48, Ch.333.
Sales tax, tangible personal property used on farms, certain; exempt, C.54:32B-8.16a, amends C.54:32B-8.16, Ch.293.
"Small New Jersey-based High-Technology Business Investment Tax Credit Act," C.54:10A-5.28 et seq., Ch.349.
Tax due for transfers of hazardous substances, formula, certain; changed, amends C.58:10-23.11h, Ch.134.
Victims of Crime Compensation Board, collection of tax refunds, rebates to pay delinquent assessments, restitution; provided, amends C.54A:9-8.1, Ch.226.

TRADE REGULATION

Trademark counterfeiting, criminal offense; established, C.2C:21-32, Ch.57.

TRANSPORTATION
Demonstration projects, development; authorized, C.27:1D-1 et seq., amends C.27:1A-5 et al., Ch.136.
New Jersey Railroad and Transportation Museum Commission, allocated to Department of Transportation, amends C.52:16A-43 et al., Ch.50.
Rail passenger service from Weehawken to Northvale using Northern Line, feasibility study, cost estimate by New Jersey Transit Corporation; required, Ch.196.
Rail passenger service, NJT, violations, certain; penalties, C.27:25-5.6 et seq., amends N.J.S.2B:12-16, Ch.357.
State Transportation Infrastructure Bank; established, C.27:1B-21.10 et seq., Ch.142.

UNEMPLOYMENT COMPENSATION
Employer charges, certain; eliminated, amends R.S.43:21-3 et al., Ch.255.
Temporary disability insurance benefit overpayments, certain, repayment; provided, C.43:21-55.1, amends C.43:21-55, Ch.318.

UNIFORM COMMERCIAL CODE
Investment securities; law revised, N.J.S.12A:8-101 et al., amends N.J.S.12A:9-103 et al., repeals C.14:18-1 et al., Ch.252.
Letters of Credit; law revised, N.J.S.12A:5-101 et seq., amends N.J.S.12A:1-105 et al., repeals N.J.S.12A:5-101 et seq., Ch.395.
Purchase money security interest, period for perfection; extended, amends N.J.S.12A:9-301 et al., Ch.248.

VALIDATING ACTS
Fire district bond proceedings, Ch.18.
School bond proceedings, Ch.354.

WATER SUPPLY
New Jersey Environmental Infrastructure Trust for financing wastewater treatment system, water supply projects; established, C.58:11B-10.1 et al., amends C.58:11B-1 et al., Ch.224.
"Rahway River Intergovernmental Cooperation Committee Act," C.58:1A-18 et seq., Ch.342.
Suppliers of water, annual notification to customers of results of water test; required, C.58:12A-8.1, Ch.314.
"Underground Storage Tank Finance Act," C.58:10A-37.1 et seq., repeals C.58:10A-36 et seq., Ch.235.
"Watershed Protection and Management Act of 1997," C.58:29-1 et seq., Ch.261.

WEAPONS
Division of Fish, Game and Wildlife personnel, use of weapons when controlling, researching wildlife; permitted, amends N.J.S.2C:39-6, Ch.393.
Firearm, temporary transfer for training purposes; permitted, C.2C:58-3.2, amends N.J.S.2C:39-5, Ch.375.
Retired law enforcement officers, carrying handgun, certain circumstances; permitted, C.2C:39-6.1, amends N.J.S.2C:39-6, Ch.67.

WEIGHTS AND MEASURES
Timers on commercial clothes dryers, certain; exempt from regulation, amends C.51:1-54.2, Ch.329.

WELFARE
Reforms, various; supportive services, etc., C.44:10-34 et seq., amends C.30:4D-6c et al., Ch.13; program eligibility, etc., C.44:10-44 et seq., amends C.44:8-111.1 et seq., Ch.14.
"Work First New Jersey Act," C.44:10-55 et seq., repeals R.S.34:15-43.1 et al., Ch.38.
Work First New Jersey Program, time limit on benefits, administration; provided, C.44:10-71 et seq., amends C.2C:20-35 et al., Ch.37.

WORKERS' COMPENSATION
New Jersey Horse Racing Injury Compensation Board, membership increased, amends C.34:15-132, Ch.103.
Records, retention period; increased, amends C.34:15-121 et al., Ch.9.
Volunteers, environmental, certain, coverage; provided, amends R.S.34:15-10 et al., Ch.199.