

ACTS
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OF THE
Two Hundred and Eleventh Legislature
OF THE
STATE OF NEW JERSEY



2005

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CHAPTER 194

AN ACT revising the standard nonforfeiture law for individual deferred annuities and supplementing chapter 25 of Title 17B of the New Jersey Statutes and P.L.1981, c.285 (C.17B:25-20).

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

C.17B:25-21 Short title.

1. This act shall be known and may be cited as the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities."

C.17B:25-22 Inapplicability of act.

2. This act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.408), as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this State through an agent or other representative of the company issuing the contract.

C.17B:25-23 Required provisions for contract of annuity.

3. a. No contract of annuity to which this act applies shall be delivered or issued for delivery in this State on or after the second anniversary of the effective date of this act, or any earlier date as elected by the company pursuant to section 14 of this act, unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner of Banking and Insurance are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of that value provided by sections 5, 6, 7, 8 and 10 of this act;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit in the amount provided by sections 5, 6, 8 and 10 of this act. The company may reserve the right to defer the payment of the

cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitableness to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

b. Notwithstanding the requirements of this section, a deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than \$20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

C.17B:25-24 Minimum values.

4. The minimum values provided by sections 5, 6, 7, 8 and 10 of this act of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

a. (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection b. of this section of the net considerations, as defined in paragraph (2) of this subsection, paid prior to that time, decreased by the sum of subparagraphs (a) through (d) below:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection b. of this section;

(b) An annual contract charge of \$50, accumulated at rates of interest as indicated in subsection b. of this section;

(c) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection b. of this section; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

(2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year, except that in the case of a single premium contract, net considerations shall consist of 90% of the gross considerations credited to the contract during that contract year.

b. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of 3% per annum or the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve Board as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under paragraph (4) of this section;

(2) Reduced by 125 basis points;

(3) Where the resulting interest rate is not less than 1% per annum; and

(4) The interest rate shall apply for an initial period, and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

c. During the period or term that a contract provides a substantive participation in an equity indexed benefit, it may increase the reduction described in paragraph (2) of subsection b. of this section by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If that demonstration is not acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

d. The commissioner may adopt rules to implement the provisions of subsection c. of this section which provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

C.17B:25-25 Paid-up annuity benefit.

5. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value

shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

C.17B:25-26 Cash surrender benefits, determination of present value.

6. For contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender, reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, which present value shall be calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

C.17B:25-27 Determination of present value.

7. For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, present values shall be calculated on the basis of that interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

C.17B:25-28 Determination of benefits.

8. a. For the purpose of determining the benefits calculated under sections 6 and 7 of this act, in the case of annuity contracts for which the maturity date is stated, that maturity date shall not be after the later of: (1) the

anniversary of the contract next following the annuitant's seventieth birthday; or (2) the tenth anniversary of the contract. In the case of annuity contracts under which an election may be made to have annuity payments begin at optional maturity dates, the maturity date shall be deemed to be the latest date for which election is permitted by the contract, but shall not be deemed to be later than the latest date permitted for an annuity contract with a stated maturity date.

b. The amount of benefits calculated under sections 6 and 7 of this act on or after the stated or deemed maturity date shall not be reduced by any surrender charge. The amount of the benefits calculated under sections 6 and 7 of this act on or after the stated or deemed maturity date shall not be less than the greater of: (1) the present value of annuity benefits available on or after the maturity date, computed according to the assumptions stated in section 5 of this act; and (2) the amount available on or after the maturity date to be applied to the purchase of an annuity on a basis stated in a contract.

c. Contracts providing for flexible considerations may have separate surrender charge schedules associated with each consideration, provided that the nonforfeiture values are at least as great as they would be if each consideration had been a separate single consideration contract based on the requirements of subsection a. of section 4 of this act. For the purpose of determining the maturity date, the tenth anniversary of the contract shall be determined separately for each consideration.

The provisions of this section shall apply notwithstanding section 1 of P.L.2001, c.237 (C.17B:25-18.4), shall take precedence over that section of law, and shall apply to annuity contracts regardless of whether the requirements of that section have been met.

C.17B:25-29 Notice of benefits not provided in contract.

9. A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

C.17B:25-30 Benefits allowance for lapse of time and payments beyond schedule.

10. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

C.17B:25-31 Minimum nonforfeiture benefits.

11. For a contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum forfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sections 5, 6, 7, 8 and 10 of this act, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this act. The inclusion of those benefits shall not be required in any paid-up benefits unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

C.17B:25-32 Rules.

12. The Commissioner of Banking and Insurance may adopt rules to implement the provisions of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.17B:25-20.1 Supersedure of standard nonforfeiture law, certain.

13. Effective on the second anniversary of the effective date of the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.), the standard nonforfeiture law for individual deferred annuities as provided in section 5 of P.L.1981, c.285 (C.17B:25-20) shall continue to govern a contract of annuity issued pursuant thereto, but shall not apply to, and shall be superseded with respect to, a contract of annuity subject to the provisions of the "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.) as provided therein.

C.17B:25-33 Effective date, applicability.

14. This act shall take effect immediately and shall apply as follows:

a. Before the second anniversary of the effective date of this act, on a contract form-by-contract form basis, to those annuity contracts for which the company has filed a notice of election of applicability with the Commissioner of Banking and Insurance. A company that elects not to file using the "Indexed Standard Forfeiture Law for Individual Deferred Annuities," P.L.2005, c.194 (C.17B:25-21 et al.), may continue to use contract forms

which use the interest rate of 1 1/2% per annum for minimum nonforfeiture values as specified by paragraph (4) of subsection g. of section 5 of P.L.1981, c.285 (C.17B:25-20).

b. In all other instances, to all annuity contracts issued by the company on or after the second anniversary of the effective date.

Approved August 18, 2005.

CHAPTER 195

AN ACT concerning certain enforcement powers of the Department of Banking and Insurance, supplementing Title 17 of the Revised Statutes and repealing parts of the statutory law.

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

C.17:1-25 Findings, declarations relative to enforcement powers of Department of Banking and Insurance.

1. The Legislature finds and declares that:
 - a. Financial institutions increasingly influence and affect the lives and livelihood of consumers in this State to such a degree that the actions, and the potential adverse consequences of any possible abuse by those institutions, need to be diligently monitored and, when appropriate, adequately constrained.
 - b. Expanding and strengthening the enforcement powers of the Division of Banking within the Department of Banking and Insurance is needed in order to permit the division to maintain and fulfill its duty of responsible oversight of those financial institutions chartered or operating under New Jersey law.
 - c. Modeling these enhanced enforcement powers on those powers currently provided to and utilized by federal financial regulatory agencies will facilitate a uniform approach to regulatory oversight of all financial institutions and promote consistency in efficient and effective regulatory enforcement.

C.17:1-26 Definitions relative to enforcement powers of Department of Banking and Insurance.

2. As used in this act, and except as otherwise expressly provided in this act:

"Bank" means a bank as defined in subsection (1) of section 1 of P.L.1948, c.67 (C.17:9A-1).

"Commissioner" means the Commissioner of Banking and Insurance.

"Control" means:

(1) (a) Owning, controlling or having power to vote 25% or more of the outstanding shares of any class of voting securities of a covered institution, directly or indirectly, or by acting through one or more persons;

(b) Controlling in any manner the election of a majority of the directors, trustees, general partners or individuals exercising similar functions of the covered institution; or

(c) Exercising or having the power to exercise directly or indirectly a controlling influence over the management or policies of a covered institution.

(2) A person that is a covered institution shall not be deemed to control voting securities or assets of a covered institution acquired:

(a) in good faith, in a fiduciary capacity, except where those voting securities are held in a trust that constitutes a person; or

(b) in the regular course of securing or collecting a debt previously contracted in good faith which securities are disposed of within a period of two years after the date on which they were acquired or after the enactment of this act, whichever is later.

(3) A person is deemed to control voting securities or assets owned, controlled or held directly or indirectly:

(a) by any subsidiary of the person;

(b) in a fiduciary capacity, including by pension and profit-sharing trusts, for the benefit of the shareholders, members, employees or individuals serving in similar capacities, of the person or of any of its subsidiaries; or

(c) in a fiduciary capacity for the benefit of the person or any of its subsidiaries.

"Covered institution" means a bank, savings bank or State association.

"Department" means the Department of Banking and Insurance.

"Director" means a director of a bank and a manager of a mutual savings bank or mutual State association.

"Major shareholder" means anyone who owns voting securities of a covered institution and exercises control as defined in this section, and shall mean a depositor of a mutual State association which exercises control as defined in this section.

"Savings bank" means a savings bank as defined in subsection (13) of section 1 of P.L.1948, c.67 (C.17:9A-1).

"State association" means a State association as defined in subsection (1) of section 5 of P.L.1963, c.144 (C.17:12B-5).

"Subsidiary" means (1) any entity, 25 percent or more of whose voting shares are directly or indirectly owned or controlled by a covered institution or are held by a covered institution with power to vote; (2) any entity, the election of a majority of whose directors, general partners of a partnership

or limited partnership, or members of a limited liability company is controlled in any manner by a covered institution; or (3) any entity, with respect to the management of the policies of which a covered institution has the power, directly or indirectly, to exercise a controlling influence.

"Voting securities" means shares of common or preferred stock, general or limited partnership shares or interests or similar interests if the shares or interests, by statute, charter, or in any manner, entitle the holder:

- (1) To vote for or to select directors, trustees, partners or persons exercising similar functions for the issuing person; or
- (2) To vote on or to direct the conduct of the operations or other significant policies of the issuing person.

Preferred shares, limited partnership shares or interests or similar interests are not "voting securities" if:

- (1) Any voting rights associated with the shares or interests, including the right to select or vote for the selection of directors, trustees or partners or persons exercising similar functions, are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing person, or the payment of dividends by the issuing person when preferred dividends are in arrears, or, entitle the holder thereof to vote for the election of directors, trustees or partners or persons exercising similar functions only as the result of the failure to pay a dividend or to fulfill an obligation or satisfy a condition specified by the terms of the shares or interests; and
- (2) The shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing person.

C.17:1-27 Prohibited actions.

3. No bank, savings bank, State association, or any officer, director, employee, or major shareholder thereof, shall:

- a. Fail to comply with an order or other written instruction of the commissioner or any other financial regulatory agency;
- b. Violate a State or federal law;
- c. Take any action, or fail to take an action, with the result that a material interest of the covered institution is adversely affected;
- d. Be convicted of a crime that would permit adverse action by a governmental agency pursuant to P.L.1968, c.282 (C. 2A:168A-1 et seq.);

- e. Provide incorrect, misleading, incomplete or untrue material information about the covered institution to the commissioner or any federal financial regulatory agency;
- f. Withhold material information from the commissioner or any federal financial regulatory authority about the covered institution; or
- g. Take an action, or fail to take an action, the result of which poses a substantial risk to the safety and soundness of the covered institution or may cause substantial damage to its reputation.

C.17:1-28 Enforcement of, penalties for violations under C.17:1-27.

4. a. In addition to any other penalty provided by law, if the commissioner determines that a bank, savings bank, State association, or any officer, director, employee or major shareholder thereof, has violated a provision of section 3 of this act, the commissioner may impose any one or more of the following penalties and sanctions as he deems appropriate. The commissioner may:

- (1) Impose a civil penalty of up to \$10,000 for each violation, or up to \$50,000 for each willful violation;
- (2) Suspend, revoke or refuse to renew a license issued by the department;
- (3) Temporarily remove a person responsible for a violation of this act from working in that person's present capacity or in any capacity related to activities regulated by the department;
- (4) Prohibit or bar a person responsible for a violation of this act from working in that person's present capacity or in any capacity related to activities regulated by the department;
- (5) Order a person to cease and desist any violation of this act;
- (6) Order a person to make restitution for actual damages;
- (7) Enter an appropriate temporary order, to be effective immediately and until entry of a final order, pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to the covered institution, depositors or the public. Orders issued pursuant to this paragraph shall be subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary order shall be held, in any event, within five days after it is issued, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and
- (8) Impose other sanctions or conditions as the commissioner deems appropriate.

b. Penalties and other sanctions shall be reasonable, based on the nature, extent and frequency of the violation, and the risk to the covered

institution, depositors and the public. In addition to these factors, the commissioner shall consider, when determining the amount of a monetary penalty against an institution pursuant to paragraph (1) of subsection a. of this section, the amount of other monetary penalties, if any, imposed, or to be imposed, by another regulatory agency or through other legal process, and the impact of the total penalties on the institution.

c. A decision of the commissioner shall be a final order of the department and shall be enforceable in a court of competent jurisdiction.

d. The department shall publish the final adjudication issued in accordance with this section, subject to redaction or modification to preserve confidentiality.

e. Orders may be appealed as a final administrative action pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

Repealer.

5. Section 249 of P.L.1948, c.67 (C.17:9A-249) is repealed.

6. This act shall take effect on the 60th day following enactment and shall apply to all actions occurring or continuing on or after that date.

Approved August 18, 2005.

CHAPTER 196

AN ACT appropriating moneys to the Department of Environmental Protection for the purpose of making zero interest loans to project sponsors to finance a portion of the costs of construction of environmental infrastructure projects.

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

1. a. (1) There is appropriated to the Department of Environmental Protection from the Clean Water Fund - State Revolving Fund Accounts (hereinafter referred to as the "Clean Water State Revolving Fund Accounts") an amount equal to the Federal fiscal year 2005 capitalization grant made available to the State for clean water projects pursuant to the "Water Quality Act of 1987" (33 U.S.C. s.1251 et seq.), and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Clean Water Act").

(2) There is appropriated to the Department of Environmental Protection from the Drinking Water State Revolving Fund an amount equal to the Federal fiscal year 2005 capitalization grant made available to the State for drinking water projects pursuant to the "Safe Drinking Water Act Amendments of 1996" Pub.L.104-182, and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Safe Drinking Water Act").

The Department of Environmental Protection is authorized to transfer from the Clean Water State Revolving Fund Accounts to the Drinking Water State Revolving Fund an amount up to the maximum amount authorized to be transferred pursuant to the Federal Safe Drinking Water Act to meet present and future needs for the financing of eligible drinking water projects, and an amount equal to said maximum amount is hereby appropriated to the department for those purposes.

(3) There is appropriated to the Department of Environmental Protection the unappropriated balances from the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329.

(4) Of the sums appropriated to the Department of Environmental Protection from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," P.L.1981, c.261 pursuant to P.L.2001, c.222, the department is authorized to transfer such amounts as needed to the Drinking Water State Revolving Fund for the purpose of providing the State match as required or will be required for the award of the capitalization grants made available to the State for drinking water projects pursuant to the Federal Safe Drinking Water Act.

(5) Of the sums appropriated to the Department of Environmental Protection from the "1992 Wastewater Treatment Fund" established pursuant to section 27 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88 pursuant to P.L.1996, c.85, P.L.1997, c.221, P.L.1998, c.84, P.L.1999, c.174, P.L.2000, c.92, P.L.2001, c.222 and P.L.2002, c.70, the department is authorized to transfer any unexpended balances and any repayments of loans therefrom in such amounts as needed to the Clean Water State Revolving Fund Accounts for the purpose of providing the State match as required or will be required for the award of the capitalization grants made available to the State for clean water projects pursuant to the Federal Clean Water Act.

(6) Of the sums appropriated to the Department of Environmental Protection from the "2003 Water Resources and Wastewater Treatment Fund" established pursuant to subsection a. of section 19 of the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162 pursuant to P.L.2004, c.109, the department is authorized to transfer such amounts as needed to the Clean Water

State Revolving Fund Accounts for the purpose of providing the State match as required or will be required for the award of the capitalization grants made available to the State for clean water projects pursuant to the Federal Clean Water Act.

Any such amounts shall be for the purpose of making zero interest loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance a portion of the cost of construction of clean water projects and drinking water projects listed in sections 2 and 3 of this act, and for the purpose of implementing and administering the provisions of this act, to the extent permitted by the Federal Clean Water Act, and any amendatory and supplementary acts thereto, the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329, the "Water Supply Bond Act of 1981," P.L.1981, c.261, the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181, the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162, the Federal Safe Drinking Water Act, and any amendatory and supplementary acts thereto, and State law.

b. The department is authorized to make zero interest loans to or on behalf of the project sponsors for the environmental infrastructure projects listed in subsection a. of section 2 and subsection a. of section 3 of this act for clean water projects, and subsection b. of section 2 and subsection b. of section 3 of this act for drinking water projects, up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the Commissioner of Environmental Protection pursuant to section 6 of this act, or if a project fails to meet the requirements of section 4 of this act.

c. The department is authorized to make zero interest loans to or on behalf of the project sponsors for the environmental infrastructure projects listed in sections 2 and 3 of this act under the same terms, conditions and requirements as set forth in this section from any unexpended balances of the amounts appropriated pursuant to section 1 of P.L.1987, c.200, section 2 of P.L.1988, c.133, section 1 of P.L.1989, c.189, section 1 of P.L.1990, c.99, section 1 of P.L.1991, c.325, section 1 of P.L.1992, c.38, section 1 of P.L.1993, c.193, section 1 of P.L.1994, c.106, section 1 of P.L.1995, c.219, section 1 of P.L.1996, c.85, section 1 of P.L.1997, c.221, section 2 of P.L.1998, c.84, section 2 of P.L.1999, c.174, or section 2 of P.L.2000, c.92, including amounts resulting from the final building cost reductions authorized pursuant to section 6 of P.L.1987, c.200, section 7 of P.L.1988, c.133, section 6 of P.L.1989, c.189, section 6 of P.L.1990, c.99, section 6 of

P.L.1991, c.325, section 6 of P.L.1992, c.38, section 6 of P.L.1993, c.193, section 6 of P.L.1994, c.106, section 6 of P.L.1995, c.219, section 6 of P.L.1996, c.85, section 6 of P.L.1997, c.221, section 7 of P.L.1998, c.84, section 6 of P.L.1999, c.174, section 6 of P.L.2000, c.92, section 6 of P.L.2001, c.222, section 6 of P.L.2002, c.70, section 6 of P.L.2003, c.158 and section 6 of P.L.2004, c.109, and from any repayments of loans from the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "2003 Water Resources and Wastewater Treatment Fund," or amounts deposited therein during State fiscal year 2005 pursuant to the provisions of section 16 of P.L.1985, c.329, including any Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," and from any repayment of loans from the Drinking Water State Revolving Fund.

2. a. (1) The department is authorized to expend funds for the purpose of making supplemental zero interest loans to or on behalf of the project sponsors listed below for the following clean water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340680-06-1	Middlesex County UA	\$7,675,000
340952-01-1	North Hudson SA	\$5,247,000
340895-06-1	Winslow Township	\$245,000
340547-10-1	Rahway Valley SA	\$31,609,000
342005-01-1	Linden City	<u>\$1,969,000</u>
TOTAL		<u>\$46,745,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to section 6 of this act and the loan amounts certified by the commissioner in State fiscal years 2002, 2003 and 2004 and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 4 of P.L.1985, c.329. The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 4 of this act.

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

b. (1) The department is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following drinking water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
1904002-001/2/3-1	East Brookwood Estates POA	55,000
1209002-003/4-1	Old Bridge MUA	\$1,781,000
0708001-002-1	Glen Ridge Borough	\$125,000
2101002-002-1	Allamuchy Township	<u>\$244,000</u>
TOTAL		<u>\$2,205,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the commissioner in State fiscal years 2002, 2003 and 2004, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the department pursuant to section 5 of P.L.1981, c.261. The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 4 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection b. of section 3 of this act.

3. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2006 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340547-11	Rahway Valley SA	\$9,000,000
340815-05	Newark City	\$11,397,000
340952-04	North Hudson SA	\$6,906,000
340952-05	North Hudson SA	\$978,000

340372-26	Ocean County UA	\$34,314,000
340848-01	East Newark Borough	\$900,000
340111-01	New Jersey City University	\$2,889,000
343045-01	Cape May City	\$3,819,000
340815-07	Newark City	\$12,651,000
340815-08	Newark City	\$7,527,000
343051-01	Hamilton Township	\$7,500,000
343010-02	Brick Township	\$3,171,000
343021-02	Middletown Township	\$2,310,000
340110-01	Bergen County	
	Improvement Authority	\$112,000,000
340399-21	North Bergen MUA	\$14,772,000
340259-03	Kearny Town	\$1,746,000
343054-02	New Jersey Water	
	Supply Authority	\$3,240,000
343063-01	East Windsor Township	\$903,000
343060-01	Burlington Township	\$417,000
343012-01	Clinton Township	\$9,324,000
343064-01	River Vale Township	\$5,460,000
343061-01	Clementon Borough	\$1,056,000
343062-01	East Amwell Township	\$342,000
340030-02	Palmyra Borough	\$440,000
340858-03	Cranford Township	\$2,920,000
340699-06	Middlesex County UA	\$42,025,000
340809-11	Atlantic County UA	\$4,854,000
340325-03	Monmouth County	
	Bayshore OA	\$379,000
340969-04	Berkeley Township SA	\$1,493,000
340701-08	West Milford MUA	\$1,447,000
340316-02	Chatham Township	\$678,000
340296-02	East Rutherford Borough	\$487,000
340856-01	Egg Harbor Township	\$1,258,000
340023-01	Long Beach Township	\$544,000
340259-04	Kearny MUA	\$3,000,000
340850-02	Paterson City	\$18,084,000
340446-08	Edgewater MUA	\$1,626,000
340768-05	Bergen County UA	\$21,492,000
340703-06	Florham Park SA	\$1,663,000
340809-12	Atlantic County UA	\$3,738,000
343065-01	Manasquan Borough	\$2,475,000
343066-01	Cherry Hill Township	\$2,970,000

340110-02	Bergen County	
	Improvement Authority	\$6,554,000
343034-04	Readington Township	\$4,176,000
340620-05	Barnegat Township	\$1,232,000
342010-01	Carteret Redevelopment	
	Agency	\$21,074,000
343067-01	Allendale Borough	\$4,317,000
340656-03	Princeton Sewer	
	Operating Committee	\$319,000
340034-01	Tuckerton Borough	\$574,000
340005-01	Cape May Point Borough	\$103,000
340036-01	Gloucester County	
	Improvement Authority	\$5,507,000
340809-13	Atlantic County UA	\$456,000
340809-14	Atlantic County UA	\$2,488,000
340865-02	West Orange Township	\$1,339,000
340883-02	Asbury Park City	\$275,000
340919-03	Holmdel Township	\$142,000
340446-10	Edgewater MUA	\$1,256,000
340705-04	Carlstadt SA	<u>\$413,000</u>
TOTAL		<u>\$414,420,000</u>

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2006 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
1613001-013	North Jersey District	
	Water Supply Commission	\$29,648,000
0613001-001	Seabrook Water Corporation	\$318,000
0102001-001	Atlantic City MUA	\$5,391,000
0514001-001	Wildwood Water Utility	\$705,000
1111001-004	Trenton City	\$23,844,000
0324001-005	Mount Laurel Township MUA	\$10,715,000
1707001-004	Pennsgrove Water Supply	
	Company	625,000
1415001-001	Fayson Lake Water Company	\$325,000
1344001-001/2/3	Sea Girt Borough	\$1,610,000

1216001-004	Perth Amboy City	\$696,000
1517001-007	Long Beach Township	\$380,000
1505004-001	Berkeley Township MUA	\$4,402,000
1439001-002	Wharton Borough	\$495,000
1509001-001	Harvey Cedars Borough	\$898,000
1438001-001	Cliffside Park Association	\$182,000
1415001-003	Fayson Lake Water Company	\$237,000
1708001-002	Pennsville Township	\$1,349,000
1530004-001	Stafford Township	\$5,868,000
1510001-001	Island Heights Borough	\$228,000
1439001-003	Wharton Borough	\$460,000
0324001-003	Mount Laurel Township MUA	\$960,000
1415001-007	Fayson Lake Water Company	<u>\$110,000</u>

TOTAL**\$89,446,000**

4. Any loan made by the Department of Environmental Protection pursuant to this act shall be subject to the following requirements:

a. The commissioner has certified that the project is in compliance with the provisions of P.L.1977, c.224, P.L.1985, c.329, P.L.1992, c.88, P.L.1997, c.223 or P.L.1997, c.225, and any rules and regulations adopted pursuant thereto;

b. The loan amount shall not exceed 50% of the allowable project cost of the environmental infrastructure facility, except that for (1) projects serving a designated Urban Center or Urban Complex; (2) projects that eliminate, reduce or improve combined sewer overflows; (3) open space land acquisition projects; (4) projects serving a designated Transit Village; (5) brownfields remediation projects located in designated Brownfields Development Areas; or (6) projects to repair or replace on-site septic systems through a Septic Management District, the loan amount shall not exceed 75% of the allowable project cost of the environmental infrastructure facility;

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

d. The loan shall be conditioned upon approval of a loan from the New Jersey Environmental Infrastructure Trust pursuant to P.L.2005, c.197;

e. The loan shall be subject to any other terms and conditions as may be established by the commissioner and approved by the State Treasurer, which may include, notwithstanding any other provision of law to the contrary, subordination of a loan authorized in this act to loans made by the trust pursuant to P.L.2005, c.197, or to administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

5. The priority lists and authorization for the making of loans pursuant to sections 2 and 3 of this act shall expire on July 1, 2006, and any project sponsor which has not executed and delivered a loan agreement with the department for a loan authorized in this act shall no longer be entitled to that loan.

6. The Commissioner of Environmental Protection is authorized to reduce or increase the individual amount of loan funds made available to or on behalf of project sponsors pursuant to sections 2 and 3 of this act based upon final building costs defined in and determined in accordance with rules and regulations adopted by the commissioner pursuant to section 4 of P.L.1985, c.329, section 11 of P.L.1977, c.224 (C.58:12A-11) or section 5 of P.L.1981, c.261, provided that the total loan amount does not exceed the original loan amount.

7. The expenditure of the funds appropriated by this act is subject to the provisions and conditions of P.L.1977, c.224, P.L.1985, c.329, P.L.1992, c.88, P.L.1997, c.223 or P.L.1997, c.225, and the rules and regulations adopted by the commissioner pursuant thereto, and the provisions of the Federal Clean Water Act or the Federal Safe Drinking Water Act, as appropriate.

8. The Department of Environmental Protection shall provide general technical assistance to any project sponsor requesting assistance regarding environmental infrastructure project development or applications for funds for a project.

9. a. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, prior to repayment to the "1992 Wastewater Treatment Fund" pursuant to the provisions of section 28 of P.L.1992, c.88, prior to repayment to the Drinking Water State Revolving Fund, prior to repayment to the "Stormwater Management and Combined Sewer Overflow Abatement Fund" pursuant to the provisions of section 15 of P.L.1989, c.181, prior to repayment to the "2003 Water Resources and Wastewater Treatment Fund" pursuant to the provisions of section 20 of P.L.2003, c.162, or prior to repayment to the "Water Supply Fund" pursuant to the provisions of section 15 of P.L.1981, c.261, repayments of loans made pursuant to these acts may be utilized by the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, under terms and conditions established by the commissioner and trust, and approved by the State Treasurer, and consistent with the provisions of

P.L.1985, c.334 (C.58:11B-1 et seq.) and federal tax, environmental or securities law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.2005, c.197, and to secure the administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the project sponsors receiving trust loans.

b. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, prior to repayment to the "1992 Wastewater Treatment Fund" pursuant to the provisions of section 28 of P.L.1992, c.88, prior to repayment to the "Water Supply Fund" pursuant to the provisions of section 15 of P.L.1981, c.261, prior to repayment to the Drinking Water State Revolving Fund, prior to repayment to the "2003 Water Resources and Wastewater Treatment Fund" pursuant to the provisions of section 20 of P.L.2003, c.162, or prior to repayment to the "Stormwater Management and Combined Sewer Overflow Abatement Fund" pursuant to the provisions of section 15 of P.L.1989, c.181, the trust is further authorized to utilize repayments of loans made pursuant to P.L.1989, c.189, P.L.1990, c.99, P.L.1991, c.325, P.L.1992, c.38, P.L.1993, c.193, P.L.1994, c.106, P.L.1995, c.219, P.L.1996, c.85, P.L.1997, c.221, P.L.1998, c.84, P.L.1999, c.174, P.L.2000, c.92, P.L.2001, c.222, P.L.2002, c.70, P.L.2003, c.158, P.L.2004, c.109 or P.L.2005, c.196 to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71, P.L.2003, c.159, P.L.2004, c.110 or P.L.2005, c.197, and to secure the administrative fees payable to the trust under these loans pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5).

c. To the extent that any loan repayment sums are used to satisfy any trust bond repayment or administrative fee payment deficiencies, the trust shall repay such sums to the department for deposit into the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "Water Supply Fund," the Drinking Water State Revolving Fund, the "2003 Water Resources and Wastewater Treatment Fund," or the "Stormwater Management and Combined Sewer Overflow Abatement Fund," as appropriate, from amounts received by or on behalf of the trust from project sponsors causing any such deficiency.

10. The Commissioner of Environmental Protection is authorized to enter into capitalization grant agreements as may be required pursuant to the Federal Clean Water Act or the Federal Safe Drinking Water Act.

11. There is appropriated to the New Jersey Environmental Infrastructure Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) from repayments of loans deposited in any account, including the Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," the "1992 Wastewater Treatment Fund," the "Water Supply Fund," the "Stormwater Management and Combined Sewer Overflow Abatement Fund," or the Drinking Water State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, such sums as the chairman of the trust shall certify to the Commissioner of Environmental Protection to be necessary and appropriate for deposit into one or more reserve funds established by the trust pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11).

12. This act shall take effect immediately.

Approved August 18, 2005.

CHAPTER 197

AN ACT authorizing the expenditure of funds by the New Jersey Environmental Infrastructure Trust for the purpose of making loans to eligible project sponsors to finance a portion of the cost of construction of environmental infrastructure projects, and supplementing P.L.1985, c.334 (C.58:11B-1 et seq.).

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

1. a. The New Jersey Environmental Infrastructure Trust, established pursuant to P.L.1985, c.334, (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224 and amended by P.L.2004, c.111, is authorized to expend the aggregate sum of up to \$416,000,000, and any unexpended balance of the aggregate expenditures authorized pursuant to section 1 of P.L.2000, c.93, section 1 of P.L.2001, c.224, section 1 of P.L.2002, c.71, section 1 of P.L.2003, c.159 and section 1 of P.L.2004, c.110 for the purpose of making loans, to the extent sufficient funds are available, to or on behalf of local government units or public water utilities (hereinafter referred to as "project sponsors") to finance a portion of the cost of construction of environmental infrastructure projects listed in sections 2 and 4 of this act.

b. The trust is authorized to increase the aggregate sums specified in subsection a. of this section by:

(1) the amounts of capitalized interest and the bond issuance expenses as provided in subsection b. of section 7 of this act;

(2) the amounts of reserve capacity expenses and debt service reserve fund requirements as provided in subsection c. of section 7 of this act;

(3) the interest earned on amounts deposited for project costs pending their distribution to project sponsors as provided in subsection d. of section 7 of this act; and

(4) the amounts of the loan origination fee as provided in subsection e. of section 7 of this act.

c. (1) Of the sums appropriated to the trust from the "Wastewater Treatment Trust Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329 pursuant to P.L.1987, c.198, the trust is authorized to transfer such amounts as needed to the Clean Water Fund - State Revolving Fund Accounts (hereinafter referred to as the "Clean Water State Revolving Fund Accounts") for the purposes of issuing loans or providing the State match as required for the award of the capitalization grants made available to the State for clean water projects pursuant to the "Water Quality Act of 1987" (33 U.S.C. s.1251 et seq.), and any amendatory and supplementary acts thereto (hereinafter referred to as the "Federal Clean Water Act").

(2) Of the sums appropriated to the trust from the "1992 Wastewater Treatment Trust 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 pursuant to P.L.1996, c.86, the trust is authorized to transfer such amounts as needed to the Clean Water State Revolving Fund Accounts for the purpose of providing the State match as required for the award of the capitalization grants made available to the State for clean water projects pursuant to the Federal Clean Water Act.

(3) Of the sums appropriated to the trust from the "Stormwater Management and Combined Sewer Overflow Abatement Fund" created pursuant to section 14 of the "Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989," P.L.1989, c.181 pursuant to P.L.1998, c.87, the trust is authorized to transfer such amounts as needed to the Clean Water State Revolving Fund Accounts for the purpose of providing the State match as required for the award of the capitalization grants made available to the State for clean water projects pursuant to the Federal Clean Water Act.

(4) Of the sums appropriated to the trust from the "2003 Water Resources and Wastewater Treatment Trust Fund" established pursuant to subsection b. of section 19 of the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162 pursuant to P.L.2004, c.110, the trust is authorized to transfer such amounts as needed to the Clean Water State Revolving Fund Accounts for

the purpose of providing the State match as required for the award of the capitalization grants made available to the State for clean water projects pursuant to the Federal Clean Water Act.

d. For the purposes of this act:

(1) "capitalized interest" means the amount equal to interest paid on trust bonds which is funded with trust bond proceeds and the earnings thereon;

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

(3) "reserve capacity expenses" means those project costs for reserve capacity not eligible for loans under rules and regulations governing zero interest loans adopted by the Commissioner of Environmental Protection pursuant to section 4 of P.L.1985, c.329 but which are eligible for loans from the trust in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27);

(4) "debt service reserve fund expenses" means the debt service reserve fund costs associated with reserve capacity expenses, water supply projects for which the project sponsors are public water utilities as provided in section 9 of P.L.1985, c.334 (C.58:11B-9), other drinking water projects not eligible for, or interested in, State or federal debt service reserve funds pursuant to the "Water Supply Bond Act of 1981," P.L.1981, c.261, as amended and supplemented by P.L.1997, c.223, and any clean water projects not eligible for, or interested in, State or federal debt service reserve funds from the Clean Water State Revolving Fund Accounts; and

(5) "loan origination fee" means the fee charged by the Department of Environmental Protection and financed under the trust loan to pay a portion of the costs incurred by the department in the implementation of the New Jersey Environmental Infrastructure Financing Program.

e. The trust is authorized to increase the loan amount in the future to compensate for a refunding of the issue, provided adequate savings are achieved, for the loans issued pursuant to P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71, P.L.2003, c.159, P.L.2004, c.110 and P.L.2005, c.197.

2. a. (1) The New Jersey Environmental Infrastructure Trust is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following clean water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340680-06-1	Middlesex County UA	\$7,675,000
340952-01-1	North Hudson SA	\$1,749,000
340895-06-1	Winslow Township	\$245,000
340547-10-1	Rahway Valley SA	\$31,609,000
342005-01-1	Linden City	<u>\$1,969,000</u>
TOTAL		<u>\$43,247,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 2002, 2003, 2004 and 2005, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 6 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection a. of section 4 of this act.

b. (1) The trust is authorized to expend funds for the purpose of making supplemental loans to or on behalf of the project sponsors listed below for the following drinking water environmental infrastructure projects:

Project Number	Project Sponsor	Estimated Allowable Loan Amount
1904002-001/2/3-1	East Brookwood Estates POA	\$55,000
1209002-003/4-1	Old Bridge MUA	\$1,781,000
0708001-002-1	Glen Ridge Borough	\$125,000
2101002-002-1	Allamuchy Township	<u>\$244,000</u>
TOTAL		<u>\$2,205,000</u>

(2) The loans authorized in this subsection shall be made for the difference between the allowable loan amounts required by these projects based upon final building costs pursuant to subsection a. of section 7 of this act and the loan amounts certified by the chairman of the trust in State fiscal years 2002, 2003 and 2004, and for increased allowable costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27). The loans authorized in this subsection shall be made to or on behalf of the project sponsors listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as a project fails to meet the requirements of section 6 of this act.

(3) The loans authorized in this subsection shall have priority over the environmental infrastructure projects listed in subsection b. of section 4 of this act.

3. a. The New Jersey Environmental Infrastructure Trust is authorized to make loans to or on behalf of the project sponsors for the clean water projects listed in subsection a. of section 2 and subsection a. of section 4 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the trust pursuant to subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act. The trust is authorized to increase any such amount pursuant to subsection b., c., d. or e. of section 7 or section 8 of this act.

b. The trust is authorized to make loans to project sponsors for the drinking water projects listed in subsection b. of section 2 and subsection b. of section 4 of this act up to the individual amounts indicated and in the priority stated, except as any such amount may be reduced by the trust pursuant to subsection a. of section 7 of this act, or if a project fails to meet the requirements of section 6 of this act. The trust is authorized to increase any such amount pursuant to subsection b., c., d. or e. of section 7 or section 8 of this act.

4. a. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2006 Clean Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
340547-11	Rahway Valley SA	\$9,000,000
340815-05	Newark City	\$3,799,000

340952-04	North Hudson SA	\$2,302,000
340952-05	North Hudson SA	\$326,000
340372-26	Ocean County UA	\$34,314,000
340848-01	East Newark Borough	\$300,000
340111-01	New Jersey City University	\$963,000
343045-01	Cape May City	\$1,273,000
340815-07	Newark City	\$4,217,000
340815-08	Newark City	\$2,509,000
343051-01	Hamilton Township	\$2,500,000
343010-02	Brick Township	\$1,057,000
343021-02	Middletown Township	\$770,000
340110-01	Bergen County Improvement Authority	\$112,000,000
340399-21	North Bergen MUA	\$14,772,000
340259-03	Kearny Town	\$582,000
343054-02	New Jersey Water Supply Authority	\$1,080,000
343063-01	East Windsor Township	\$301,000
343060-01	Burlington Township	\$139,000
343012-01	Clinton Township	\$3,108,000
343064-01	River Vale Township	\$1,820,000
343061-01	Clementon Borough	\$352,000
343062-01	East Amwell Township	\$114,000
340030-02	Palmyra Borough	\$440,000
340858-03	Cranford Township	\$2,920,000
340699-06	Middlesex County UA	\$42,025,000
340809-11	Atlantic County UA	\$1,618,000
340325-03	Monmouth County Bayshore OA	\$379,000
340969-04	Berkeley Township SA	\$1,493,000
340701-08	West Milford MUA	\$1,447,000
340316-02	Chatham Township	\$678,000
340296-02	East Rutherford Borough	\$487,000
340856-01	Egg Harbor Township	\$1,258,000
340023-01	Long Beach Township	\$544,000
340259-04	Kearny MUA	\$1,000,000
340850-02	Paterson City	\$6,028,000
340446-08	Edgewater MUA	\$1,626,000
340768-05	Bergen County UA	\$7,164,000
340703-06	Florham Park SA	\$1,663,000
340809-12	Atlantic County UA	\$1,246,000
343065-01	Manasquan Borough	\$825,000
343066-01	Cherry Hill Township	\$990,000

340110-02	Bergen County	
	Improvement Authority	\$6,554,000
343034-04	Readington Township	\$1,392,000
340620-05	Barnegat Township	\$1,232,000
342010-01	Carteret Redevelopment Agency	\$21,074,000
343067-01	Allendale Borough	\$1,439,000
340656-03	Princeton Sewer	
	Operating Committee	\$319,000
340034-01	Tuckerton Borough	\$574,000
340005-01	Cape May Point Borough	\$103,000
340036-01	Gloucester County	
	Improvement Authority	\$5,507,000
340809-13	Atlantic County UA	\$152,000
340809-14	Atlantic County UA	\$2,488,000
340865-02	West Orange Township	\$1,339,000
340883-02	Asbury Park City	\$275,000
340919-03	Holmdel Township	\$142,000
340446-10	Edgewater MUA	\$1,256,000
340705-04	Carlstadt SA	<u>\$413,000</u>

TOTAL **\$315,688,000**

b. The following environmental infrastructure projects shall be known and may be cited as the "State Fiscal Year 2006 Drinking Water Project Priority List":

Project Number	Project Sponsor	Estimated Allowable Loan Amount
1613001-013	North Jersey District	
	Water Supply Commission	\$14,353,000
0613001-001	Seabrook Water Corporation	\$318,000
0102001-001	Atlantic City MUA	\$1,797,000
0514001-001	Wildwood Water Utility	\$705,000
1111001-004	Trenton City	\$7,948,000
0324001-005	Mount Laurel Township MUA	\$10,715,000
1707001-004	Pennsgrove Water Supply Company	\$625,000
1415001-001	Fayson Lake Water Company	\$325,000
1344001-001/2/3	Sea Girt Borough	\$1,610,000
1216001-004	Perth Amboy City	\$696,000
1517001-007	Long Beach Township	\$380,000

1505004-001	Berkeley Township MUA	\$4,402,000
1439001-002	Wharton Borough	\$495,000
1509001-001	Harvey Cedars Borough	\$898,000
1438001-001	Cliffside Park Association	\$182,000
1415001-003	Fayson Lake Water Company	\$237,000
1708001-002	Pennsville Township	\$1,349,000
1530004-001	Stafford Township	\$5,868,000
1510001-001	Island Heights Borough	\$228,000
1439001-003	Wharton Borough	\$460,000
0324001-003	Mount Laurel Township MUA	\$960,000
1415001-007	Fayson Lake Water Company	<u>\$110,000</u>
TOTAL		<u>\$54,661,000</u>

5. In accordance with and subject to the provisions of sections 5, 6 and 23 of P.L.1985, c.334 (C.58:11B-5, 58:11B-6, and 58:11B-23) and as set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21), or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1), any proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects listed in sections 2 and 4 of this act which are not expended for that purpose may be applied for the payment of all or any part of the principal of and interest and premium on the trust bonds whether due at stated maturity, the interest payment dates or earlier upon redemption. A portion of the proceeds from bonds issued by the trust to make loans for priority environmental infrastructure projects pursuant to this act may be applied for the payment of capitalized interest and for the payment of any issuance expenses; for the payment of reserve capacity expenses; for the payment of debt service reserve fund expenses; and for the payment of increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

6. Any loan made by the New Jersey Environmental Infrastructure Trust pursuant to this act shall be subject to the following requirements:

a. The chairman of the trust has certified that the project is in compliance with the provisions of P.L.1977, c.224, P.L.1985, c.334, P.L.1992, c.88, P.L.1997, c.223, P.L.1997, c.224, P.L.1997, c.225 or P.L.1999, c.175, and any rules and regulations adopted pursuant thereto. In making this certification, the chairman may conclusively rely on the project review conducted by the Department of Environmental Protection without any independent review thereof by the trust;

b. The loan shall be conditioned upon approval of a zero interest loan from the Department of Environmental Protection from the "Water Supply

Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," P.L.1981, c.261, as amended by P.L.1983, c.355 and amended and supplemented by P.L.1997, c.223, the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329, the "1992 Wastewater Treatment Fund" established pursuant to section 27 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the "2003 Water Resources and Wastewater Treatment Fund" established pursuant to section 19 of the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162, or the Drinking Water State Revolving Fund established pursuant to section 1 of P.L.1998, c.84;

c. The loan shall be repaid within a period not to exceed 20 years of the making of the loan;

d. The loan shall not exceed the allowable project cost of the environmental infrastructure facility, exclusive of capitalized interest and issuance expenses as provided in subsection b. of section 7 of this act, reserve capacity expenses and the debt service reserve fund expenses as provided in subsection c. of section 7 of this act, interest earned on project costs as provided in subsection d. of section 7 of this act, the amounts of the loan origination fee as provided in subsection e. of section 7 of this act, refunding increases as provided in section 8 of this act and increased costs as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27);

e. The loan shall bear interest, exclusive of any late charges or administrative fees payable to the trust pursuant to subsection o. of section 5 of P.L.1985, c.334 (C.58:11B-5) by the project sponsors receiving trust loans, at or below the interest rate paid by the trust on the bonds issued to make or refund the loans authorized by this act, adjusted for underwriting discount and original issue discount or premium, in accordance with the terms and conditions set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21) or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1); and

f. The loan shall be subject to all other terms and conditions as the trust shall determine to be consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) and any rules and regulations adopted pursuant thereto, and with the financial plan required by section 21 of P.L.1985, c.334 (C.58:11B-21) or the financial plan required pursuant to section 25 of P.L.1997, c.224 (C.58:11B-21.1).

The priority lists and authorization for the making of loans pursuant to this act shall expire on July 1, 2006, and any project sponsor which has not

executed and delivered a loan agreement with the trust for a loan authorized in this act shall no longer be entitled to that loan.

7. a. The New Jersey Environmental Infrastructure Trust is authorized to reduce the individual amount of loan funds made available to or on behalf of project sponsors pursuant to sections 2 and 4 of this act based upon final building costs defined in and determined in accordance with rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27) or rules and regulations adopted by the Commissioner of Environmental Protection pursuant to section 4 of P.L.1985, c.329, section 11 of P.L.1977, c.224 (C.58:12A-11) or section 5 of P.L.1981, c.261. The trust is authorized to use any such reduction in the loan amount made available to a project sponsor to cover that project sponsor's increased costs due to differing site conditions or other allowable expenses as defined and determined in accordance with the rules and regulations adopted by the trust pursuant to section 27 of P.L.1985, c.334 (C.58:11B-27).

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

c. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the amount of reserve capacity expenses, and by the debt service reserve fund expenses associated with the costs identified in paragraph (4) of subsection d. of section 1 of this act.

d. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the interest earned on amounts deposited for project costs pending their distribution to project sponsors.

e. The trust is authorized to increase each loan amount authorized in sections 2 and 4 of this act by the loan origination fee.

8. The New Jersey Environmental Infrastructure Trust is authorized to increase the individual amount of loan funds made available to project sponsors by the trust pursuant to P.L.1989, c.190, P.L.1990, c.97, P.L.1991, c.324, P.L.1992, c.37, P.L.1993, c.192, P.L.1994, c.105, P.L.1995, c.218, P.L.1996, c.87, P.L.1997, c.222, P.L.1998, c.85, P.L.1999, c.173, P.L.2000, c.93, P.L.2001, c.224, P.L.2002, c.71, P.L.2003, c.159, P.L.2004, c.110 or P.L.2005, c.197, provided that adequate savings are achieved, to compensate for a refunding of trust bonds issued to make loans authorized by the aforementioned acts.

9. The expenditure of funds authorized pursuant to this act is subject to the provisions of P.L.1977, c.224 (C.58:12A-1 et seq.), P.L.1985, c.329, P.L.1985, c.334 (C.58:11B-1 et seq.), as amended and supplemented by P.L.1997, c.224, P.L.1992, c.88, P.L.1997, c.223, P.L.1997, c.225 or P.L.1999, c.175, and the rules and regulations adopted pursuant thereto, and the provisions of the Federal Clean Water Act or the Federal Safe Drinking Water Act, as appropriate.

10. This act shall take effect immediately.

Approved August 18, 2005.

CHAPTER 198

AN ACT concerning a long term care insurance plan for local public employees and retirees and supplementing Title 52 of the Revised Statutes.

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

C.52:18-11.2 Long term care insurance plan for local contracting units.

1. a. The State Treasurer shall arrange for a long term care insurance plan for local contracting units subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.). The State Treasurer shall negotiate with and arrange for the purchase, on such terms as the State Treasurer deems to be in the best interests of the employees and retirees of the local contracting units, from carriers licensed to operate in the State, contracts providing long term care insurance and shall execute all documents pertaining thereto for and on behalf of local contracting units in the name of the State. The Treasurer shall not enter into a contract under this act, P.L.2005, c.198 (C.52:18-11.2 et al.), unless the benefits are provided through federally qualified long term care insurance as defined by the federal Internal Revenue Code in 26 U.S.C. s.7702B(b).

b. A local contracting unit may elect to offer the long term care insurance plan to its employees and retirees by the adoption of a resolution by its governing body, which would include the name and title of a certifying agent. A certified copy of the resolution shall be filed with the Division of Pensions and Benefits in the Department of the Treasury.

c. An employee or a retiree of a local contracting unit that has elected to offer the long term insurance plan may choose such insurance coverage and shall pay the entire cost of the long term care insurance.

d. The certifying agent of each local contracting unit electing to offer the long term insurance plan shall submit to the Division of Pensions and Benefits such information with respect to each of its employees and retirees as may be required by the division in connection with the plan. The division shall have the power and authority to make such verification of the employment and other records of any electing local contracting unit as the division may deem necessary in connection with the plan.

C.52:14-15.9a1 Deduction from compensation of certain local public employees for long term care insurance.

2. Whenever any person holding public office, position or employment, whose compensation is paid by a local contracting unit subject to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), shall indicate in writing to the proper disbursing officer the person's choice to have a deduction made from his or her compensation for the payment of insurance premiums for a group plan of long term care insurance pursuant to this act, P.L.2005, c.198 (C.52:18-11.2 et al.), the disbursing officer shall make that deduction from the compensation of the person, and the disbursing officer shall transmit the sum so deducted as directed by the Division of Pensions and Benefits in the Department of the Treasury. Any such written authorization may be withdrawn by the person holding public office, position or employment at any time upon filing a written notice of withdrawal with the above mentioned disbursing officer.

3. This act shall take effect on the first day of the sixth month after the date of enactment.

Approved August 18, 2005.

CHAPTER 199

AN ACT establishing an assessment funding mechanism for the support of the Division of Banking in the Department of Banking and Insurance, imposing certain additional fees and amending and supplementing various parts of the statutory law.

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

C.17:1C-33 Findings, declarations relative to funding mechanism for Division of Banking.

1. a. The Legislature finds and declares that:

(1) The Division of Banking has a statutory obligation to protect the interests of New Jersey's consumers and to regulate and oversee the operations of the financial industry it charters, licenses and registers.

(2) In order to maintain an adequate level of oversight and supervision, and to perform its regulatory responsibilities, it is necessary to establish an assessment funding mechanism for the division's special needs.

(3) A banking assessment funding source is a clear indication of the commitment that the State of New Jersey has made to the special needs of the Division of Banking relative to its administrative activities with regard to the financial regulation, supervision and monitoring of the depository institutions and other financial entities it charters, licenses and registers.

(4) A dedicated funding mechanism for the Division of Banking is in the public interest.

b. The Legislature therefore intends for the actual incurred expenses of the Division of Banking for all services related to the division's financial regulation, supervision and monitoring of depository institutions and other financial entities it charters, licenses and registers to be assessed among these depository institutions, licensees and registrants.

C.17:1C-34 Definitions relative to funding mechanism for Division of Banking.

2. For the purposes of this act:

"Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.

"Other financial entity" means a person who is licensed or registered pursuant to: the "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et seq.); "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-93 et seq.); the "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); or the "pawnbroking law," R.S.45:22-1 et seq.

"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.

C.17:1C-35 Certification of expenses incurred for administration of special functions of Division of Banking; assessments.

3. a. The Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before August 15 in each year, ascertain and certify to the commissioner by category the total amount of expenses incurred by the State in connection with the administration of the special functions of the Division of Banking in the Department of Banking and Insurance relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it licenses during the preceding fiscal year. Those expenses shall include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits and the workers' compensation paid for and on account of personnel, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions of the department, as well as any amounts remaining uncollected from the assessment of the previous fiscal year. Certification made pursuant to this subsection shall be made by the Director of the Division of Budget and Accounting.

b. (1) Upon receipt of the certification made by the Director of the Division of Budget and Accounting pursuant to subsection a. of this section, but no later than September 1 in each year following the close of the previous fiscal year, the commissioner shall issue, in accordance with the provisions of this section, the assessment for the amount of the expenses incurred by, or on behalf of, the department for those special purposes recognized in this act.

(2) Assessments made pursuant to this section shall be distributed among all regulated entities in accordance with regulations promulgated by the commissioner pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. The commissioner shall certify the amount of the assessment issued to each regulated entity. Each regulated entity shall remit the amount so certified and assessed to it to the department in accordance with the procedures established in this act. Amounts collected by the department shall be used for reimbursement to the State for expenses incurred in connection with the special functions of the division relative to the financial regulation, supervision and monitoring of depository institutions and other financial entities it charters, licenses or registers, provided that the amount collected

for those expenses shall not exceed the amount appropriated by the Legislature for those expenses.

C.17:1C-36 Objections to assessment, hearing.

4. Within 15 days after the date of mailing a statement of the assessment as provided in this act, a regulated entity may file its objections to its assessment with the commissioner. Upon receiving those objections, the commissioner shall either: amend the statement as warranted, consistent with sections 5 and 6 of this act; or schedule and send a notice of a hearing on the objections, which hearing shall be held not less than 30 nor more than 60 days after the date of the notice.

C.17:1C-37 Transmission of findings to objector.

5. If upon receiving the objections, or after the hearing, the commissioner finds any part of the assessment against the objecting regulated entity excessive, erroneous, unlawful or invalid, he shall transmit to the objector, by registered mail, his findings and an amended statement of the assessment in accordance with those findings, which shall have the same force and effect as an original statement of the assessment. If the commissioner finds the entire statement of the assessment unlawful or invalid, he shall notify the objector, by registered mail, of that determination, and the original statement of the assessment shall be null and void. If the commissioner finds that the statement as rendered is neither excessive, erroneous, unlawful or invalid, in whole or in part, he shall transmit notice thereof to the objector by registered mail.

C.17:1C-38 Notice of delinquency, collection.

6. If a statement of the assessment against which objections are filed is not paid in full within 30 days after the date of mailing to the objector of notice of a finding that the objections have been disallowed; or if an amended statement of the assessment is not paid within 30 days of the date a copy thereof is mailed by registered mail to the objector, the commissioner shall give notice of the delinquency to the State Treasurer and to the objector, and the State Treasurer shall proceed to make the collection.

C.17:1C-39 Action for recovery.

7. No action for recovery of an amount paid under this act shall be maintained in any court unless objections have been filed with the commissioner. In an action for recovery of any payments, plaintiff may raise any relevant issue of law, but the commissioner's findings of fact shall be presumptive evidence of the facts therein stated.

C.17:1C-40 Action, proceeding.

8. No action or proceeding shall be maintained in any court for the purpose of restraining or delaying the collection or payment of a statement of the assessment rendered in accordance with the provisions of this act. A regulated entity against which a statement of the assessment is rendered shall pay the amount thereof, and after the payment may, in the manner provided by this act at any time within two years from the date of the payment, bring an action at law against the State to recover the amount paid, with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful or invalid, in whole or in part.

C.17:1C-41 Exclusive procedure under act.

9. The procedure provided in this act for determining the lawfulness of statements of the assessment and the recovery of payments made pursuant to those statements of the assessment shall be exclusive of all other remedies and procedures.

C.17:1C-42 Failure, refusal to pay, notice to Treasurer.

10. If any regulated entity to which a statement of the assessment as provided in this act has been mailed fails or refuses to pay the amount within 30 days, or fails to file with the commissioner objections to the statement of the assessment as provided in this act, the commissioner shall transmit to the State Treasurer a certified copy of both the statement of the assessment and the notice of the neglect or refusal of the regulated entity to pay the amount thereof, and at the same time shall mail by registered mail to the entity a copy of the items transmitted to the State Treasurer.

C.17:1C-43 Procedure for collection.

11. Within 10 days after receipt of the notice and certified copy of the statement of the assessment, the State Treasurer shall proceed to collect the amount stated to be due, with legal interest, by seizure and sale of any goods or chattels, including stocks, securities, bank accounts, surety bonds, realty, evidences of debt and accounts receivable belonging to the regulated entity anywhere within the State. The State Treasurer shall not seize any goods or chattels held by the regulated entity on behalf of another.

C.17:1C-44 Additional remedies.

12. As an additional remedy, the State Treasurer may issue a certificate to the Clerk of the Superior Court, that a regulated entity is indebted under this act in an amount stated in the certificate. The clerk shall immediately enter upon his record of docketed judgments the name of the regulated entity, and of the State, the amount of debt so certified, and the date of the entry. The entry shall have the same force and effect as the entry of a docketed judgment in the office of the clerk, and the State Treasurer 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 the regulated entity's right of appeal.

C.17:1C-45 Exemption from fees, charges; exceptions.

13. a. Notwithstanding any law or regulation to the contrary, a regulated entity paying the amounts assessed to it in statements of the assessment made pursuant to section 3 of this act shall be exempt from all fees or charges imposed by the division pursuant to any other provision of law or regulation, except for:

- (1) charter fees;
- (2) application fees for licenses;
- (3) mortgage solicitor registration application fees;
- (4) fees for entry by a foreign depository institution whether from another state of the United States or from another country into New Jersey for branch, trust or other activities;
- (5) fees charged under the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);
- (6) fees charged any entity not chartered, licensed or registered by this State, including but not limited to activities conducted by foreign banks pursuant to section 316 of P.L.1948, c.47 (C.17:9A-316) or foreign associations pursuant to section 214 of P.L.1963, c.144 (C.17:12B-214); and
- (7) fees charged qualified corporations authorized pursuant to section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either registrar and transfer agent activities or activities permitted for qualified educational institutions.

b. Nothing in this section shall exempt a regulated entity from paying any fine or penalty imposed by the commissioner for a violation of a statute or regulation.

c. Except as provided in paragraph (1) of subsection d. of section 7 of the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-28), all fees, charges, fines and penalties as described in subsections a. and b. of this subsection shall be remitted to the State Treasurer for deposit into the General Fund, and those fees, charges, fines and penalties shall not be part of the assessment funding mechanism or considered in the calculation pursuant to section 15 of this act.

C.17:1C-46 Rules, regulations; contents.

14. a. The State Treasurer and the commissioner may 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.

b. Any regulation promulgated by the commissioner shall describe the factors to be considered in computing the assessment. In the case of depository institutions, the assessment shall consider the following factors as

appropriate: assets, deposits or shares, trust funds under management and the supervisory rating of the institution. In the case of licensees or registrants, the assessment shall consider the following factors as appropriate: loan volume, volume of money transmitted, number of transactions, volume of checks cashed, number of licensee branches, number of authorities held under the "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et seq.) and the supervisory rating of the entity. In computing the assessment for depository institutions, licensees or registrants, the commissioner may consider those additional factors the commissioner deems appropriate.

c. The general purpose of the computations to determine the assessment shall be to distribute the financial burden proportionally among the depository institutions and other financial entities it charters, licenses and registers consistent with the division's regulatory activities.

d. The commissioner shall provide for the orderly and fair transition to assessments on existing charters, licensees and registrants by promulgating rules and regulations and by establishing administrative procedures that are reasonable, necessary and consistent with this act.

e. The commissioner shall consider the impact of the assessment on check cashers licensed pursuant to P.L.1993, c.383 (C.17:15A-30 et seq.), and may take any appropriate action pursuant to the commissioner's authority to limit fees as provided in section 14 of P.L.1993, c.383 (C.17:15A-43).

C.17:1C-47 Total amount assessable.

15. a. The total amount assessable to regulated entities in any fiscal year for the assessment established by this act shall not exceed the lesser of:

(1) the total amount of expenses incurred by the State in connection with the administration of the special functions of the division pursuant to section 3 of this act during the preceding fiscal year as ascertained by the Director of the Division of Budget and Accounting in the Department of the Treasury, on or before August 15 in each year, and certified to the commissioner by category; or

(2) .00015 times the sum of (a) the total assets for State-chartered banks, savings banks, and savings and loan associations for the preceding calendar year plus (b) the total loan volume for residential mortgage loans closed by licensed lenders pursuant to the "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et seq.).

b. In calculating the assessments:

(1) Banks, savings banks and savings and loan associations shall be given prorated credit for unused portions of assessment periods; and

(2) Licensees shall be given prorated credit for unused portions of licensing periods.

c. The department shall not issue an examination bill for an examination that has not been completed by the date that the regulated entity becomes subject to the assessment pursuant to the provisions of this act. For the purposes of this act, the completion of the examination shall not include the time to process and review the examination report.

C.17:1C-48 Liability for errors, penalties; third degree crime.

16. a. A depository institution that submits figures on assets, deposits or any other factor used by the department to compute the depository institution's assessment that are substantially or materially in error shall be liable for an administrative penalty not to exceed \$10,000 for each submission that contains incorrect information.

b. A licensee that submits figures on loan volume, number of branches, or any other factor used by the department to compute the licensee's assessment that are substantially or materially in error shall be liable for an administrative penalty not to exceed \$10,000 for each submission that contains incorrect information.

c. In addition to any monetary penalty that may be imposed against a licensee pursuant to subsection b. of this section, the commissioner may take action to revoke, suspend or refuse to renew the license of a licensee that submits substantially or materially erroneous figures in violation of the provisions of this act. The suspension, revocation or refusal to renew a license shall be in addition to any monetary penalty imposed pursuant to subsection b. of this section.

d. The administrative penalty authorized pursuant to this section may be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A willful violation of this section shall be considered a crime of the third degree.

17. Section 8 of P.L.1996, c.157 (C.17:11C-8) is amended to read as follows:

C.17:11C-8 Application, fee.

8. a. Every application for an initial license shall be accompanied by an application fee as set forth in subsection d. of this section. When the applicant at the same time seeks a license to engage in more than one activity, only one application fee may be charged. With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), the license fee, as prescribed by the commissioner by regulation, shall be based on the number of the following activities in which the person is licensed to engage under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.): a mortgage banker or mortgage broker; a secondary lender; a consumer lender; or a sales

finance company. The fee for a biennial license or a renewal thereof shall be set according to the following schedule:

- (1) If the person is licensed to engage in one activity, the fee shall not be more than \$3,000;
- (2) If the person is licensed to engage in two activities, the fee shall not be more than \$4,000;
- (3) If the person is licensed to engage in three activities, the fee shall not be more than \$5,000; and
- (4) If the person is licensed to engage in all four activities, the fee shall not be more than \$6,000.

Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed or collected by the commissioner pursuant to this section.

b. When the initial license is issued in the second year of the biennial licensing period, the license fee shall equal one-half of the license fee for the biennial period set forth above. In lieu of, or in addition to, the fees set forth above, the department may impose other fees and charges as provided by regulation.

c. An applicant for a mortgage solicitor registration pursuant to subsection c. of section 3 of P.L.1996, c.157 (C.17:11C-3) shall be subject to a mortgage solicitor registration application fee, not to exceed \$100 as established by the commissioner by regulation. A solicitor who changes his registration to a different licensee shall be required to submit a new registration application and to pay an application fee.

d. An applicant shall pay to the commissioner at the time of the initial application for a license an application fee not to exceed the amounts specified in this subsection:

- (1) For an application for one activity, an application fee not to exceed \$700;
- (2) For an application for two activities, an application fee not to exceed \$1,000;
- (3) For an application for three activities, an application fee not to exceed \$1,300; and
- (4) For an application for four activities, an application fee not to exceed \$1,600.

e. A licensee that seeks to add an additional activity to an existing license shall pay a fee not to exceed \$300 per activity.

f. Fee amounts shall be prescribed by the commissioner by regulation.

18. Section 8 of P.L.1960, c.40 (C.17:16C-8) is amended to read as follows:

C.17:16C-8 Motor vehicle installment seller; license, application fee.

8. With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), every motor vehicle installment seller shall pay to the commissioner at the time of making the application and biennially thereafter upon renewal a license fee for its principal office and for each additional place of business conducted in this State. The commissioner shall charge for a license such fee as he shall prescribe by rule or regulation. Each fee shall not exceed \$300.00. The license shall run from the date of issuance to the end of the biennial period. When the initial license is issued in the second year of the biennial licensing period, the fee shall be an amount equal to one-half of the license fee for the biennial licensing period. Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed or collected by the commissioner pursuant to this section, however a motor vehicle installment seller shall pay to the commissioner at the time of application an application fee not to exceed \$300.00.

19. Section 18 of P.L.1960, c.40 (C.17:16C-18) is amended to read as follows:

C.17:16C-18 Maintenance of books, accounts and records.

18. Every retail seller, sales finance company, motor vehicle installment seller and holder shall maintain at its place or places of business in this State such books, accounts and records relating to all transactions within this act as will enable the commissioner to enforce full compliance with the provisions of this act.

20. Section 19 of P.L.1960, c.40 (C.17:16C-19) is amended to read as follows:

C.17:16C-19 Preservation of books, accounts, records, annual report.

19. All books, accounts and records of the licensee shall be preserved and kept available as provided herein for such period of time as the commissioner may by regulation require. The commissioner may require a licensee to file an annual report containing that information required by the commissioner by regulation concerning business conducted as a licensee in the preceding calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

21. Section 21 of P.L.1960, c.41 (C.17:16C-82) is amended to read as follows:

C.17:16C-82 License fees.

21. (a) With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), every home financing agency shall pay to the commissioner at the time of making the application and biennially thereafter upon renewal a license fee for its principal place of business and for each additional place of business conducted in this State. The commissioner shall charge for a license such fee as he shall prescribe by rule or regulation. Each fee shall not exceed \$600.00. The license shall run from the date of issuance to the end of the biennial period. When the initial license is issued in the second year of the biennial licensing period, the license fee shall be an amount equal to one-half of the fee for the biennial licensing period. Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed or collected by the commissioner pursuant to this section, however a home financing agency shall pay to the commissioner at the time of application an application fee not to exceed \$600.00.

(b) With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), every home repair contractor shall pay to the commissioner at the time of making the application and biennially thereafter upon renewal a license fee for its principal place of business and for each additional place of business conducted in this State. The commissioner shall charge for a license such fee as he shall prescribe by rule or regulation. Each fee shall not exceed \$300.00. The license shall run from the date of issuance to the end of the biennial period. When the initial license is issued in the second year of the biennial licensing period, the license fee shall be an amount equal to one-half of the fee for the biennial licensing period. Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed or collected by the commissioner pursuant to this section, however a home repair contractor shall pay to the commissioner at the time of application an application fee not to exceed \$300.00.

(c) With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), every home repair salesman shall pay to the commissioner at the time of making the application and biennially thereafter upon renewal a license fee. The commissioner shall charge for a license such fee as he shall prescribe by rule or regulation, not to exceed \$60.00. The license shall run from the date of issuance to the end of the biennial period. When the initial license is issued in the second year of the biennial licensing period, the license fee shall be an amount equal to one-half of the fee for the biennial licensing period. Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed or collected by

the commissioner pursuant to this section, however a home repair salesman shall pay to the commissioner at the time of application an application fee not to exceed \$60.00.

22. Section 26 of P.L.1960, c. 41 (C.17:16C-87) is amended to read as follows:

C.17:16C-87 Maintenance and preservation of books, accounts and records, annual report.

26. a. Every home repair contractor, home financing agency and holder of a home repair contract shall maintain at its place or places of business such books, accounts and records relating to all transactions under this act as will enable the commissioner to enforce full compliance with the provisions hereof. All such books, accounts and records shall be preserved and kept available for such period of time as the commissioner may by regulation require. The commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the commissioner to determine compliance with the provisions of this act.

b. The commissioner may require a licensee to file an annual report containing that information required by the commissioner by regulation concerning business conducted as a licensee in the preceding calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

23. Section 4 of P.L.1968, c.221 (C.17:16D-4) is amended to read as follows:

C.17:16D-4 Licenses.

4. Licenses. No person shall engage in the business of financing insurance premiums in this State without first having obtained a license as a premium finance company from the Commissioner of Banking and Insurance, except that any State or national bank authorized to do business in this State shall be authorized to transact business as a premium finance company, subject to all of the provisions of this act, except that it shall not be required to obtain a license or pay a license fee hereunder. Any person who shall engage in the business of financing insurance premiums in this State without a valid license as provided hereunder shall, upon conviction as provided in R.S. 17:33-2, be subject to a fine of not more than \$300.00. With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), the commissioner shall charge for a license such fee as he shall prescribe by rule or regulation, not to exceed \$1,000.00. Upon implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), a license fee shall no longer be imposed

or collected by the commissioner pursuant to this section, however an insurance premium finance agency shall pay to the commissioner at the time of application an application fee not to exceed \$1,000.00. The license shall run from the date of issuance to the end of the biennial period. With respect to a license fee imposed prior to implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), when the initial license is issued in the second year of the biennial licensing period, the license fee shall be an amount equal to one-half of the fee for the biennial licensing period.

Licenses may be renewed from year to year as of January 1 of each year upon payment of the fee established by the commissioner with respect to a license fee imposed prior to implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.). The fee imposed prior to implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), for said license shall be paid to the commissioner for the use of the State. No portion of the license fee imposed prior to implementation of the assessment pursuant to P.L.2005, c.199 (C.17:1C-33 et al.), shall be refunded if the license is surrendered by the licensee or suspended or revoked by the commissioner.

Before any licensee changes his address he shall return his license to the commissioner who shall indorse the license indicating the change.

The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers and employees, and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this act.

24. Section 5 of P.L.1979, c.16 (C.17:16G-5) is amended to read as follows:

C.17:16G-5 Bond; financial records; annual audit; filing; examination of agency; annual reports.

5. a. Any social service agency or consumer credit counseling agency licensed under this act shall be bonded to the satisfaction of the commissioner and shall have its financial records relating to debt adjustment audited annually by a certified public accountant or a public accountant, which audit shall be filed with the commissioner. Such an audit shall certify that the salaries and expenses paid by the licensee are reasonable compared to those incurred by comparable organizations providing similar services. After reviewing the annual audit, the Commissioner of Banking and Insurance may

cause an examination of the social service agency or consumer credit counseling agency to be made, the actual expenses of such an examination shall be paid by the social service agency or consumer credit counseling agency; and the commissioner may maintain any action against any such agency to recover the fees and expenses herein provided for.

b. The commissioner may require a licensee to file an annual report containing that information required by the commissioner by regulation concerning activities conducted as a licensee in the preceding calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

c. The commissioner may require a high cost home loan counselor to file an annual report containing that information required by the commissioner by regulation concerning activities conducted pursuant to subsection g. of section 5 of P.L.2003, c.64 (C.46:10B-26) as a registrant in the preceding calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

25. Sections 3 and 14 of this act shall take effect immediately, and the remainder of this act shall take effect upon the adoption of regulations pursuant to sections 3 and 14 of this act, but no assessment shall be payable earlier than July 1, 2006. The commissioner may take those anticipatory actions necessary to effectuate the provisions of this act.

Approved August 18, 2005.

CHAPTER 200

AN ACT establishing the "New Jersey Disease Management Study Commission."

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

1. The Legislature finds and declares that:
 - a. Forty-four percent of non-institutionalized Americans have chronic conditions, but these persons account for 78% of health care expenditures in the United States;
 - b. Disease management is a system of coordinated health care interventions typically targeting individuals who have, or are at risk, for developing, chronic medical conditions, which seeks to help them better understand

when to seek care, how to manage their conditions and how to improve their quality of life;

c. Many disease management programs have been successful at improving quality of life, improving health care practices and decreasing health care expenditures by reducing the use of more costly health care services such as inpatient hospital care and emergency room visits;

d. Despite their successes, disease management programs still face several barriers to widespread implementation including resistance among patients and health care providers, low adherence to treatment protocols and a lack of technology to support programs; and

e. There is, therefore, a need to assess disease management programs and determine incentives that would encourage employers, insurers and individuals to use disease management programs as a means of improving the quality of health care while reducing costs.

2. a. There is established the "New Jersey Disease Management Study Commission" in the Department of Health and Senior Services. The purpose of the commission shall be to assess disease management programs to determine their potential to improve health care quality while reducing health care costs.

b. The commission shall consist of 19 members as follows:

(1) the Commissioners of Health and Senior Services, Banking and Insurance and Human Services, and the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, or their designees, who shall serve ex officio; and

(2) 15 public members, to be appointed by the Governor, who shall include: two representatives of AAHP-HIAA, at least one of whom represents managed care companies; one member who is a hospital employee, upon the recommendation of the New Jersey Council of Teaching Hospitals; one representative of the Medical Society of New Jersey; one representative of the New Jersey Business and Industry Association; one representative of the New Jersey Hospital Association; one representative of the New Jersey Public Health Association; one member who is an advanced practice nurse, upon the recommendation of the New Jersey State Nurses Association; one representative of the Rutgers Center for State Health Policy; one representative of the Department of Preventive Medicine and Community Health at UMDNJ-New Jersey Medical School; one representative of the New Jersey Academy of Family Physicians; one representative of the Disease Management Association of America; one representative of the Environmental and Occupational Health Sciences Institute at UMDNJ-Robert Wood Johnson Medical School; one representative of the New Jersey Pharmacists' Association; and one representative of the New Jersey Dietetic Association.

c. Vacancies in the membership of the commission shall be filled in the same manner provided for the original appointments. The public members of the commission shall serve without compensation, but may be reimbursed for traveling and other miscellaneous expenses necessary to perform their duties, within the limits of funds made available to the commission for its purposes.

d. The commission shall organize as soon as practicable, but no later than the 60th day after the appointment of its members, and shall select a chairperson and vice-chairperson from among the members.

e. The commission shall meet at the call of its chair and may hold hearings at the times and in the places it may deem appropriate and necessary to fulfill its charge. The commission shall be entitled to call to its assistance, and avail itself of the services of, the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available for its purposes.

f. The Department of Health and Senior Services shall provide staff services to the commission, including a secretary who is not a member of the commission.

3. The commission shall:

a. assess disease management programs to determine their potential to improve individual health, promote quality health care and contain health care costs;

b. identify technologies that it deems are most effective in supporting disease management programs and review, at a minimum, the following: factors which prevent the adoption of, or participation in, disease management programs; financial and non-financial incentives which may encourage employers, insurers and individuals to use disease management programs; specific incentives offered by other states to encourage the use of disease management programs, and their results; and disease management programs implemented by other states, and their results;

c. identify methods to improve public awareness of the effects of indoor pollutants on the health of individuals, and how they are to be identified and eliminated using proper environmental controls;

d. study insurance products that are designed to promote health wellness and methods to promote the wider acceptance of wellness physical and preventive examinations within the medical community; and

e. study various aspects of demand management with respect to health care consumers in order to better understand the reasons that people choose to access the health care system.

4. The commission shall report its findings and recommendations to the Governor and Legislature, along with any legislative bills that it desires to recommend for adoption by the Legislature, no later than 18 months after the date of its initial meeting.

5. This act shall take effect immediately and shall expire upon the issuance of the commission report.

Approved August 18, 2005.

CHAPTER 201

AN ACT concerning home inspectors and amending and supplementing P.L.1997, c.323, and repealing section 9 of P.L.1997, c.323.

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

1. Section 2 of P.L.1997, c.323 (C.45:8-62) is amended to read as follows:

C.45:8-62 Definitions relative to home inspectors.

2. As used in 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.

2. Section 6 of P.L.1997, c.323 (C.45:8-66) is amended to read as follows:

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 pursuant to the provisions of this act;
 - c. Suspend, revoke or fail to renew the license of a 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.).

3. Section 8 of P.L.1997, c.323 (C.45:8-68) is amended to read as follows:

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; and
 - b. Have successfully completed high school or its equivalent; and
 - c. (1) Have successfully completed an approved course of study of 180 hours, as prescribed by the board, after consultation with the State Department of Education, which shall include not less than 40 hours of unpaid field-based inspections in the presence of and under the direct supervision of a licensed home inspector, which inspections shall be provided by the school providing the approved course of study; or
(2) Have performed not less than 250 fee-paid home inspections in the presence of and under the direct supervision of a licensed home inspector who oversees and takes full responsibility for the inspection and any report produced; and
 - d. Have passed an examination administered or approved by the committee. The examination may have been passed before the effective date of this act.

4. Section 14 of P.L.1997, c.323 (C.45:8-74) is amended to read as follows:

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 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.

5. Section 16 of P.L.1997, c.323 (C.45:8-76) is amended to read as follows:

C.45:8-76 Requirement of error and omissions policy.

16. a. Every licensed 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.45:8-78 Continuing education requirement.

6. The State Board of Professional Engineers and Land Surveyors shall require each home inspector, as a condition for biennial license renewal pursuant to section 13 of P.L.1997, c.323 (C.45:8-73), to complete 40 credit hours of continuing education requirements imposed by the Home Inspection Advisory Committee pursuant to sections 7 through 9 of P.L.2005, c.201 (C.45:8-79 through C.45:8-81).

C.45:8-79 Standards for continuing education.

7. a. The committee shall:

(1) Establish standards for continuing home inspection education, including the subject matter and content of courses of study and the selection of instructors;

(2) Approve educational programs offering continuing education credits; and

(3) Approve other equivalent educational programs and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs.

b. In the case of education courses and programs, each hour of instruction shall be equivalent to one credit.

C.45:8-80 Waiving of requirements for continuing education.

8. The committee may, in its discretion, waive requirements for continuing education on an individual basis for reasons of hardship such as illness or disability, retirement of a license, or other good cause.

C.45:8-81 Time for completion of continuing education.

9. The committee shall require completion of continuing education credits on a pro rata basis for any registration periods commencing more than 12 but less than 24 months following the effective date of this amendatory and supplementary act.

C.45:8-76.1 Action, commencement within four years.

10. An action for an error or omission in the performance of a home inspection contract with respect to a home inspector licensed pursuant to P.L.1997, c.323 (C.45:8-61 et seq.), shall be commenced within four years of the date of the home inspection.

C.45:8-72.1 Issuance of home inspector license based on associate home inspector license or experience, certain.

11. a. During the first 180 days after the enactment date of this amendatory and supplementary act, the committee shall, upon application, issue a home inspector license to any person who at any time prior to or during that 180-day period held a license as an associate home inspector, provided that the applicant: (1) had been engaged in the practice of home inspections for compensation for not less than three years prior to December 30, 2005 and had performed not less than 300 home inspections for compensation prior to December 30, 2005; or (2) had performed not less than 400 home inspections for compensation prior to December 30, 2005.

b. During the first 180 days after the enactment date of this amendatory and supplementary act, the committee shall, upon application, issue a home inspector license to any individual: (1) whose application for an associate home inspector license had been approved by the committee prior to December 30, 2005; or (2) who had satisfied the requirements set forth in section

9 of P.L.1997, c.323 (C.45:8-69) and had completed not less than 40 hours of unpaid field-based inspections in the presence of and under the direct supervision of a licensed home inspector prior to December 30, 2005.

Repealer.

12. Section 9 of P.L.1997, c.323 (C.45:8-69) is repealed.

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

Approved August 18, 2005.

CHAPTER 202

AN ACT concerning environmental infrastructure projects, and amending and supplementing P.L.1985, c.334.

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

C.58:11B-10.2 Loan Origination Fee Fund.

1. a. There is established in the New Jersey Environmental Infrastructure Trust a special fund to be known as the Loan Origination Fee Fund.

The Loan Origination Fee Fund shall be credited with:

(1) moneys deposited into the fund as loan origination fees received by the Department of Environmental Protection and paid by project sponsors of wastewater treatment system projects or water supply projects financed under the New Jersey Environmental Infrastructure Financing Program; and
(2) any interest accumulated on the amounts of the loan origination fees.

b. Moneys in the Loan Origination Fee Fund shall be used exclusively by the Department of Environmental Protection solely for administrative and operating expenses incurred by the department in administering the New Jersey Environmental Infrastructure Financing Program, except that the total amount utilized by the department for administrative and operating expenses in any fiscal year shall not exceed \$5,000,000. Moneys in the fund shall be disbursed to the Department of the Treasury on an annual basis to meet the department's State revenue anticipation established within the annual appropriations act. Amounts in excess of revenue anticipation shall be carried forward into the following year.

c. As used in this section, "loan origination fee" means the fee charged by the Department of Environmental Protection and financed under the trust loan to pay a portion of the costs incurred by the department in the imple-

mentation of the New Jersey Environmental Infrastructure Financing Program.

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

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

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

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

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

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

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

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

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

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

g. The aggregate principal amount of bonds, notes or other obligations, including subordinated indebtedness of the trust, shall not exceed \$2,200,000,000. In computing the foregoing limitations there shall be excluded all the bonds, notes or other obligations, including subordinated indebtedness of the trust, which shall be issued for refunding purposes, whenever the refunding shall be determined to result in a savings.

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

(2) The Joint Budget Oversight Committee or its successor shall have the authority to approve or disapprove the sales of refunding bonds as included in each report submitted in accordance with paragraph (1) of this subsection. The committee shall notify the trust in writing of the approval or disapproval as expeditiously as possible.

(3) No refunding bonds shall be issued unless the report has been submitted to and approved by the Joint Budget Oversight Committee or its successor as set forth in paragraphs (1) and (2) of this subsection.

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

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

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

(1) Pledge of revenues and other receipts to be derived from the payment of the interest on and principal of notes, bonds or other obligations issued

to the trust by one or more local government units, and any other payment made to the trust pursuant to agreements with any local government units, or a pledge or assignment of any notes, bonds or other obligations of any local government unit and the rights and interest of the trust therein;

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

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

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

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

i. The trust shall not issue any bonds, notes or other obligations, or otherwise incur any additional indebtedness, on or after November 5, 2025.

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

3. This act shall take effect immediately.

Approved August 18, 2005.

CHAPTER 203

AN ACT prohibiting smoking in college and university dormitories and amending P.L.1981, c.320.

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

1. Section 3 of P.L.1981, c.320 (C.26:3D-17) is amended to read as follows:

C.26:3D-17 Smoking prohibited in educational institutions, dormitories.

3. a. The appropriate governing body, board or individual responsible for or who has control of the administration of a school, college, university,

or professional training school, either public or private, except the board of education of a school district, shall make and enforce suitable regulations controlling the smoking of tobacco on their premises, except in those areas within the premises wherein smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 and 40:48-2 or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire. The governing body, board or individual may, but need not, designate certain areas within the premises as areas in which smoking is permitted. Smoking in classrooms, lecture halls and auditoriums shall be prohibited except as part of a classroom instruction or a theatrical production. Smoking shall be prohibited in any portion of a building used as a student dormitory that is owned and operated or otherwise utilized by a school or institution of higher education.

b. The board of education of each school district shall make and enforce regulations to prohibit the smoking of tobacco anywhere in its buildings or on school grounds, except as part of a classroom instruction or a theatrical production.

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

Approved August 22, 2005.

CHAPTER 204

AN ACT establishing a domestic violence public awareness campaign and supplementing Title 52 of the Revised Statutes.

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

C.52:27D-43.35 Definitions relative to domestic violence.

1. As used in this act:

"Director" means the Director of the Division on Women in the Department of Community Affairs.

"Division" means the Division on Women in the Department of Community Affairs.

"Domestic Violence" means domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

C.52:27D-45.36 Domestic violence public awareness campaign.

2. a. The Director of the Division on Women in the Department of Community Affairs, in consultation with the Advisory Council on Domestic

Violence and the Commissioners of Human Services and Health and Senior Services, shall establish a domestic violence public awareness campaign in order to promote public awareness of domestic violence among the general public and health care and social services professionals and provide information to assist victims of domestic violence and their children.

b. The public awareness campaign shall include the development and implementation of public awareness and outreach efforts to promote domestic violence prevention and education, including, but not limited to, the following subjects:

- (1) the causes and nature of domestic violence;
- (2) risk factors;
- (3) preventive measures; and
- (4) the availability of, and how to access, services in the community for victims of domestic violence, including, but not limited to, shelter services, legal advocacy services and legal assistance services.

c. The director shall coordinate the efforts of the division with any activities being undertaken by other State agencies to promote public awareness of, and provide information to the public about, domestic violence.

d. The director, within the limits of funds available for this purpose, shall seek to utilize electronic and print media, and may prepare and disseminate such written information as the director deems necessary, to accomplish the purposes of this act.

e. The division shall make available electronically on its Internet website in English and Spanish information about domestic violence as described in subsection b. of this section.

f. The director may accept, for the purposes of the public awareness campaign, any special grant of funds, services, or property from the federal government or any of its agencies, or from any foundation, organization or other entity.

g. The director shall report to the Governor and the Legislature, no later than 18 months after the effective date of this act, on the activities and accomplishments of the public awareness campaign.

3. The Director of the Division on Women, 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.

4. This act shall take effect immediately.

Approved August 23, 2005.

CHAPTER 205

AN ACT concerning prescription legend drugs and amending N.J.S.2C:35-2 and P.L.1999, c.90.

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

1. N.J.S.2C:35-2 is amended to read as follows:

Definitions.

2C:35-2. Definitions. As used in this chapter:

"Administer" means the direct application of a controlled dangerous substance or controlled substance analog, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (1) a practitioner (or, in his presence, by his lawfully authorized agent), or (2) the patient or research subject at the lawful direction and in the presence of the practitioner.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

"Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through V, any substance the distribution of which is specifically prohibited in N.J.S.2C:35-3, in section 3 of P.L.1997, c.194 (C.2C:35-5.2) or in section 5 of P.L.1997, c.194 (C.2C:35-5.3) and any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body. When any statute refers to controlled dangerous substances, or to a specific controlled dangerous substance, it shall also be deemed to refer to any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance or the specific controlled dangerous substance, and to any substance that is an immediate precursor of a controlled dangerous substance or the specific controlled dangerous substance. The term shall not include distilled spirits, wine, malt beverages, as those terms are defined or used in R.S.33:1-1 et seq., or tobacco and tobacco products. The term, wherever it appears in any law or administrative regulation of this State, shall include controlled substance analogs.

"Controlled substance analog" means a substance that has a chemical structure substantially similar to that of a controlled dangerous substance and that was specifically designed to produce an effect substantially similar to that of a controlled dangerous substance. The term shall not include a substance manufactured or distributed in conformance with the provisions

of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21 U.S.C. s.355).

"Counterfeit substance" means a controlled dangerous substance or controlled substance analog which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled dangerous substance or controlled substance analog, whether or not there is an agency relationship.

"Dispense" means to deliver a controlled dangerous substance or controlled substance analog to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. "Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance or controlled substance analog. "Distributor" means a person who distributes.

"Drugs" means (a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections (a), (b) and (c) of this section; but does not include devices or their components, parts or accessories.

"Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

"Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin.

"Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled dangerous substance or controlled substance analog by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance or controlled substance analog in the course of his professional practice, or (2) by a practitioner (or under his supervision) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, except those containing resin extracted from such plant; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (a) Opium, coca leaves, and opiates;
- (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;
- (c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

"Opiate" means any dangerous substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled pursuant to the provisions of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer of

3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof.

"Person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

"Plant" means an organism having leaves and a readily observable root formation, including, but not limited to, a cutting having roots, a rootball or root hairs.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory, pharmacy, hospital or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance or controlled substance analog in the course of professional practice or research in this State.

(a) "Physician" means a physician authorized by law to practice medicine in this or any other state and any other person authorized by law to treat sick and injured human beings in this or any other state.

(b) "Veterinarian" means a veterinarian authorized by law to practice veterinary medicine in this State.

(c) "Dentist" means a dentist authorized by law to practice dentistry in this State.

(d) "Hospital" means any federal institution, or any institution for the care and treatment of the sick and injured, operated or approved by the appropriate State department as proper to be entrusted with the custody and professional use of controlled dangerous substances or controlled substance analogs.

(e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous substances or controlled substance analogs for scientific, experimental and medical purposes and for purposes of instruction approved by the State Department of Health and Senior Services.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance or controlled substance analog.

"Immediate precursor" means a substance which the State Department of Health and Senior Services has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance or controlled

substance analog, the control of which is necessary to prevent, curtail, or limit such manufacture.

"Residential treatment facility" means any facility licensed and approved by the Department of Health and Senior Services and which is approved by any county probation department for the inpatient treatment and rehabilitation of drug or alcohol dependent persons.

"Schedules I, II, III, IV, and V" are the schedules set forth in sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any regulations issued by the Commissioner of Health and Senior Services pursuant to his authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

"State" means the State of New Jersey.

"Ultimate user" means a person who lawfully possesses a controlled dangerous substance or controlled substance analog for his own use or for the use of a member of his household or for administration to an animal owned by him or by a member of his household.

"Prescription legend drug" means any drug which under federal or State law requires dispensing by prescription or order of a licensed physician, veterinarian or dentist and is required to bear the statement "Rx only" or similar wording indicating that such drug may be sold or dispensed only upon the prescription of a licensed medical practitioner and is not a controlled dangerous substance or stramonium preparation.

"Stramonium preparation" means a substance prepared from any part of the stramonium plant in the form of a powder, pipe mixture, cigarette, or any other form with or without other ingredients.

"Stramonium plant" means the plant *Datura Stramonium* Linne, including *Datura Tatula* Linne.

2. Section 8 of P.L.1999, c.90 (C.2C:35-10.5) is amended to read as follows:

C.2C:35-10.5 Prescription legend drugs.

8. Prescription legend drugs. a. A person who knowingly:

(1) distributes a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person;

(2) distributes for pecuniary gain or possesses or has under his control with intent to distribute for pecuniary gain a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian,

dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree;

(3) distributes or possesses or has under his control with intent to distribute a prescription legend drug or stramonium preparation in an amount of at least five but fewer than 100 dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the third degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$200,000 may be imposed; or

(4) distributes or possesses or has under his control with intent to distribute a prescription legend drug or stramonium preparation in an amount of 100 or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the second degree. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed.

Notwithstanding the above, a violation of paragraph (1) or (3) of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S.2C:2-11 if the person demonstrates that the conduct involved no more than six dosage units distributed within a 24-hour period, that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to that person by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication, and that the person intended for the amount he distributed to be solely for the recipient's personal use.

b. A person who uses any prescription legend drug or stramonium preparation for a purpose other than treatment of sickness or injury as lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person.

c. A defendant may be convicted for a violation of subsection b. if the State proves that the defendant manifested symptoms or reactions caused by the use of prescription legend drugs or stramonium preparation. The State need not prove which specific prescription legend drug or stramonium preparation the defendant used.

d. A person who obtains or attempts to obtain possession of a prescription legend drug or stramonium preparation by forgery or deception is guilty of a crime of the fourth degree. Nothing in this section shall be deemed to preclude or limit a prosecution for theft as defined in chapter 20 of Title C of the New Jersey Statutes.

e. A person who knowingly possesses, actually or constructively:

(1) a prescription legend drug or stramonium preparation in an amount of four or fewer dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is a disorderly person; or

(2) a prescription legend drug or stramonium preparation in an amount of five or more dosage units unless lawfully prescribed or administered by a licensed physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication is guilty of a crime of the fourth degree.

Notwithstanding the above, a violation of this subsection shall be deemed a de minimis infraction subject to dismissal pursuant to N.J.S. 2C:2-11 if the person demonstrates that he unlawfully received no more than six dosage units within a 24-hour period, that the prescription legend drug or stramonium preparation was lawfully prescribed for or administered to the person from whom he had received it, and that the person possessed the prescription legend drug or stramonium preparation for solely for his personal use.

f. Where the degree of the offense for violation of this section depends on the number of dosage units of the prescription legend drug or stramonium preparation, the number of dosage units involved shall be determined by the trier of fact. Where the indictment or accusation so provides, the number of dosage units involved in individual acts of distribution or possession with intent to distribute may be aggregated in determining the grade of the offense, whether distribution is to the same person or several persons, provided that each individual act of distribution or possession with intent to distribute was committed within the applicable statute of limitations.

g. Subsections a. and e. of this section shall not apply to: a licensed pharmacy, licensed pharmacist, researcher, wholesaler, distributor, manufacturer, warehouseman or his representative acting within the line and scope of his employment; a physician, veterinarian, dentist or other practitioner authorized by law to prescribe medication; a nurse acting under the direction of a physician; or a common carrier or messenger when transporting such prescription legend drug or stramonium preparation in the same unbroken package in which the prescription legend drug or stramonium preparation was delivered to him for transportation.

3. This act shall take effect immediately.

Approved August 24, 2005.

CHAPTER 206

AN ACT concerning regulation of pharmaceutical wholesale distributors and amending and supplementing P.L.1961, c.52.

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

1. Section 1 of P.L.1961, c. 52 (C.24:6B-1) is amended to read as follows:

C.24:6B-1 Registration statement; filing with department.

1. No person shall hereafter engage or continue to engage in a drug manufacturing business or a wholesale non-prescription drug business in this State without first filing a completed registration statement with the department.

2. Section 2 of P.L.1961, c. 52 (C.24:6B-2) is amended to read as follows:

C.24:6B-2 Persons required to sign and verify statement; form and contents.

2. The registration statement shall be signed and verified by the individuals specified in subsection (c) hereof, shall be made on forms prescribed and furnished by the commissioner and shall state such information necessary and proper to the enforcement of this act as the commissioner may require, including:

(a) The name under which the business is conducted.

(b) The address of each location in New Jersey at which the business is to be conducted. If a wholesale non-prescription drug business is not to be conducted from a location within the State, the statement shall give the name and address of an agent resident in this State on whom process against the registrant may be served.

(c) If the registrant is a proprietorship, the name and address of the proprietor; if a partnership, the names and addresses of all partners; if a corporation, the date and place of incorporation, the names and addresses of the president and secretary thereof and the name and address of the designated registered agent in this State; or if any other type of business association, the names and addresses of the principals of such association.

(d) The names and addresses of those individuals having actual administrative responsibility, which in the case of a proprietorship shall be the managing proprietor; partnership, the managing partners; corporation, the officers and directors; or if any other type of association, those having similar administrative responsibilities.

(e) If the business is to be conducted at more than one location in this State, the name and address of the individual in charge of each such location.

(f) A description of the business engaged in and the drug products manufactured for sale or wholesaled.

(g) The name and address of the individual or individuals on whom orders of the commissioner may be served.

(h) A statement as to whether the registrant engages in manufacturing, compounding, processing, wholesaling, jobbing or distribution of depressant or stimulant drugs as defined pursuant to law.

3. Section 12 of P.L.1961, c.52 (C.24:6B-11) is amended to read as follows:

C.24:6B-11 Penalties.

12. (a) Any person who does not comply with an order of the commissioner within the time specified shall be liable for the first offense for a penalty, to be established by the commissioner of not less than \$200 nor more than \$5,000 and for the second and each succeeding offense for a penalty of not less than \$1,000 nor more than \$20,000. The penalties herein provided shall be enforced by the department as plaintiff in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(b) Any person, who engages or continues to engage in the manufacturing or wholesaling of drugs without having registered with the department as required by this act is guilty of a disorderly persons offense.

4. Section 13 of P.L.1961, c. 52 (C.24:6B-12) is amended to read as follows:

C.24:6B-12 Definitions.

13. For the purposes of this registration act, unless otherwise required by the context:

(a) "Commissioner" means Commissioner of the State Department of Health and Senior Services or his designated representative.

(b) "Department" means the State Department of Health and Senior Services.

(c) "Drugs" means "drugs" and "devices" as defined in R.S. 24:1-1.

(d) "Person" means a natural person, partnership, corporation or any other business association.

(e) "Registrant" means the person in whose name a drug manufacturing business or wholesale non-prescription drug business is registered.

(f) "Drug manufacturing business" means the business of creating, making or producing drugs by compounding, growing or other process. This

definition shall apply to persons engaged in the drug manufacturing business who do not maintain a manufacturing location in this State but do operate distribution depots or warehouses of such business in this State. This definition shall not apply to licensed pharmacies or to licensed professional individuals such as, but not limited to, pharmacists, physicians, dentists, or veterinarians when engaged in the lawful pursuit of their professions.

(g) "Wholesale drug business" means the business of supplying non-prescription drugs to persons other than the ultimate consumer. This definition shall not apply to licensed pharmacies or to licensed professional individuals such as, but not limited to, pharmacists, physicians, dentists or veterinarians when engaged in the lawful pursuit of their professions, and shall not apply to a registered drug manufacturing business.

C.24:6B-14 Definitions relative to pharmaceutical wholesale distributors.

5. As used in sections 5 through 24 of P.L.2005, c.206 (C.24:6B-14 et seq.):

"Adulterated" means a prescription drug that is adulterated pursuant to R.S.24:5-10.

"Authenticate" means to affirmatively verify before any distribution of a prescription drug that each transaction listed on the pedigree has occurred.

"Authorized distributor" or "authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's product. An ongoing relationship is deemed to exist when the wholesale distributor, or any member of its affiliated group as defined in section 1504 of the Internal Revenue Code of 1986 (26 U.S.C. s.1504): is listed on the manufacturer's list of authorized distributors; has a written agreement currently in effect with the manufacturer; or has a verifiable account with the manufacturer and meets or exceeds the following transaction or volume requirement thresholds:

- a. 5,000 sales units per company within 12 months; or
- b. 12 purchases by invoice at the manufacturer's minimum purchasing requirement per invoice within 12 months.

"Centralized prescription processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review, claims adjudication, refill authorizations and therapeutic interventions.

"Chain pharmacy distribution center" means a distribution facility or warehouse owned by and operated for the primary use of a group of pharmacies that are under common or affiliated control or ownership.

"Commissioner" means the Commissioner of Health and Senior Services.

"Contraband" with respect to a prescription drug means: counterfeit; stolen; misbranded; obtained by fraud; purchased by a nonprofit institution for its own use and placed in commerce in violation of the own use agreement; or the existing documentation or pedigree, if required, for the prescription drug has been forged, counterfeited, falsely created, or contains any altered, false or misrepresented information.

"Counterfeit prescription drug" means a prescription drug, or the container, shipping container, seal or labeling thereof, which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or any likeness thereof, of a manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such prescription drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other manufacturer, processor, packer or distributor.

"DEA" means the federal Drug Enforcement Administration.

"Department" means the Department of Health and Senior Services.

"Designated representative" means an individual who is designated by a wholesale prescription drug distributor to serve as the primary contact person for the wholesale distributor with the department, and who is responsible for managing the company's operations at that licensed location.

"Distribute" means to sell, offer to sell, deliver, offer to deliver, broker, give away or transfer a prescription drug, whether by passage of title, physical movement, or both. The term does not mean to: dispense or administer; deliver or offer to deliver in the usual course of business as a common carrier or logistics provider; or provide a sample to a patient by a licensed practitioner, a health care professional acting at the direction and under the supervision of a practitioner, or the pharmacist of a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) acting at the direction of a practitioner.

"Drug" means: a. an article or substance recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them; b. an article or substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; c. an article or substance, other than food, intended to affect the structure of any function of the body of man or animals; and d. an article or substance intended for use as a component of any article or substance specified in clause a., b. or c.; but does not include devices or their components, parts or accessories. Drug includes a prefilled syringe or needle.

"Immediate container" means a container but does not include package liners.

"Logistics provider" means an entity that receives drugs from the original manufacturer and delivers them at the direction of that manufacturer, and does not purchase, sell, trade or take title to the drugs.

"Misbranded" means a prescription drug with respect to which the label is: false or misleading in any particular; does not bear the name and address of the manufacturer, packer or distributor and does not have an accurate statement of the quantities of the active ingredients; or does not show an accurate monograph for legend drugs; or is misbranded based upon other considerations as provided in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.

"Pedigree" means a statement or record identifying each previous sale of a prescription drug, from the sale by a manufacturer through acquisition and sale by a wholesale distributor, including each distribution to an authorized distributor, starting with the last authorized distributor, or the manufacturer if the prescription drug has not been purchased previously by an authorized distributor or is a prescription drug on the specified list of susceptible products. A pedigree shall include the following information: the proprietary and established name of the prescription drug; the dosage; container size; number of containers; the date, business name and address of all parties to each prior transaction involving the prescription drug starting with the last authorized distributor or the manufacturer if the prescription drug has not been purchased previously by an authorized distributor or is a prescription drug on the specified list of susceptible products.

"Repackage" means changing the container, wrapper, quantity or labeling of a prescription drug to further its distribution.

"Sales unit" means the unit of measure that the manufacturer uses to invoice its customer for the particular product.

"Specified list of susceptible products" means a specific list of prescription drugs, to be determined by the commissioner, that are considered to be potential targets for adulteration, counterfeiting or diversion, which the commissioner shall provide to wholesale distributors as prescription drugs are added to or removed from the list, along with notification of those changes.

"Wholesale distribution" means the distribution of prescription drugs in or into the State by a wholesale distributor to a person other than a consumer or patient, and includes transfers of prescription drugs from one pharmacy to another pharmacy if the value of the goods transferred exceeds 5% of total prescription drug sales revenue of either the transferor or transferee pharmacy during any consecutive 12-month period. The term excludes:

a. the sale, purchase or trade of a prescription drug, an offer to sell, purchase, or trade a prescription drug, or the dispensing of a prescription drug pursuant to a prescription;

- b. the sale, purchase or trade of a prescription drug, or an offer to sell, purchase or trade a prescription drug for emergency medical reasons;
- c. the sale, purchase or trade of a prescription drug, or an offer to sell, purchase or trade a prescription drug by pharmacies, chain pharmacy distribution centers, and the associated transfer of goods between chain pharmacy distribution centers and their servicing wholesale distributors or manufacturers;
- d. intracompany transactions or sales among wholesale distributors, chain pharmacy distribution centers, and pharmacies, and which are limited to those sales or transfers of a prescription drug among members of an affiliated group, even if the members of the affiliated group are separate legal entities;
- e. the sale, purchase or trade of a prescription drug, or an offer to sell, purchase or trade a prescription drug among hospitals or other health care entities licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) that are under common control;
- f. the sale, purchase or trade of a prescription drug, or offer to sell, purchase or trade a prescription drug by a charitable organization exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. s.501(c)(3)) to a nonprofit affiliate of the organization;
- g. the purchase or other acquisition by a hospital or other similar health care entity licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;
- h. the transfer of prescription drugs between pharmacies pursuant to a centralized prescription processing agreement;
- i. the distribution of prescription drug samples by manufacturers' representatives or wholesale distributors' representatives;
- j. the sale, purchase or trade of blood and blood components intended for transfusion;
- k. prescription drug returns, when conducted by a pharmacy, chain pharmacy distribution center, hospital, health care entity licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) or charitable institution in accordance with regulations established by the commissioner;
- l. the sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;
- m. the stockpiling and distribution of drugs under the authorization of a State agency for the purpose of providing those products in an emergency situation; or

n. the sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies whether accomplished as a purchase and sale of stock or business assets.

"Wholesale distributor" means any person, other than the manufacturer, pharmacy, logistics provider, or chain pharmacy distribution center, engaged in wholesale distribution of prescription drugs in or into the State and includes repackagers, own-label distributors, private-label distributors, jobbers, brokers, warehouses including distributors' warehouses, independent prescription drug traders, and retail pharmacies that conduct wholesale distribution.

C.24:6B-15 Licensure required for pharmaceutical wholesale distributors.

6. a. A wholesale distributor engaged in the wholesale distribution of prescription drugs within this State, whether or not the wholesale distributor is located in this State, shall be licensed by the department. If wholesale distribution operations are conducted at more than one location, each such location shall be licensed. The department may establish reciprocal agreements with any state that has a drug wholesale licensure and standards program that is at least as protective as the requirements set forth under this act.

b. A wholesale distributor shall renew its license annually and pay a license fee established by the commissioner. License fees shall be used to support administrative and programmatic activities under this act.

c. The commissioner shall establish the licensing and renewal form and application process. An applicant shall provide the following information, in addition to any other information that the commissioner may require:

(1) all trade or business names, including current and former fictitious business names used by the licensee, which names shall not be identical to any name used by another unrelated wholesale distributor licensed to purchase or sell prescription drugs in this State;

(2) the name, business address, Social Security number and date of birth of each owner, partner or sole proprietor, as applicable, and each operator, and

(a) if a partnership, the business name of the partnership and federal employer identification number;

(b) if a corporation, the name, business address, Social Security number, date of birth, and title of each corporate officer and director, the corporate name including the name of any parent company, the state of incorporation, federal employer identification number and name, address and Social Security number of each shareholder owning 10% or more of voting stock;

(c) if a sole proprietorship, the federal employer identification number; or

(d) if a limited liability company, the name of each member and each manager, the company name and federal employer identification number;

(3) the name, business address and telephone number of each person who is serving as the designated representative pursuant to section 10 of this act;

(4) a list of states in which the wholesale distributor is licensed to purchase, possess and distribute prescription drugs, and into which it ships prescription drugs;

(5) information regarding general and product liability insurance, including certification of relevant coverage;

(6) a list of managerial employees;

(7) a list of all disciplinary actions by state and federal agencies over the last four years;

(8) a description, including the address, dimensions, and other relevant information, of each facility or warehouse used for prescription drug storage and distribution;

(9) a description of prescription drug import and export activities of the wholesale distributor;

(10) a description of the applicant's written procedures as required under section 19 of this act; and

(11) if involved in the distribution of controlled dangerous substances, evidence of registration with the department, as required in section 2 of P.L.1970, c.226 (C.24:21-10), and evidence of registration with the DEA.

d. (1) The commissioner shall require from an applicant a surety bond of not less than \$100,000, or evidence of other equivalent means of security acceptable to the department, such as insurance, an irrevocable letter of credit or funds deposited in a trust account or financial institution to secure payment of any administrative penalties imposed by the department and any fees or costs incurred by the department regarding that license when those penalties, fees or costs are authorized under State law and the licensee fails to pay 30 days after the penalty, fees or costs becomes final.

(2) The commissioner may accept a surety bond of \$25,000 if the annual gross receipts of the previous tax year for the wholesale distributor is \$10,000,000 or less.

(3) A separate surety bond or other equivalent means of security shall not be required for each company's separate locations or for affiliated companies or groups when those separate locations or affiliated companies or groups are required to apply for or renew their wholesale distributor license with the department.

(4) The surety bond requirement may be waived, at the discretion of the commissioner, if the wholesale distributor previously has obtained a comparable surety bond or other equivalent means of security for the purpose of

licensure in another state where the wholesale distributor possesses a valid license in good standing, provided that a reciprocal agreement exists between this State and the other state that extends authority to this State to make a claim against the surety bond or other equivalent means of security.

(5) The department may make a claim against the bond or other equivalent means of security until one year after the wholesale distributor's license ceases to be valid or until 60 days after the conclusion of any administrative or legal proceeding before or on behalf of the department which involves the wholesale distributor, including any appeal, whichever occurs later.

e. A licensed wholesale distributor located outside this State who distributes prescription drugs in this State may designate a registered agent in this State for service of process. A licensed wholesale distributor who fails to designate a registered agent shall be deemed to have designated the Secretary of State of this State to be its true and lawful attorney.

f. Each wholesale distribution facility in this State shall undergo an inspection by the department prior to initial licensure and at least once every three years thereafter, in accordance with a schedule to be determined by the commissioner. The department shall use qualified inspectors specifically trained to conduct inspections of wholesale distributors, who shall be required to maintain current training and knowledge regarding the wholesale prescription drug distribution industry. The department may contract with a third party organization that is nationally recognized as having expertise in pharmaceutical drug distribution to meet the inspection requirements of this section.

g. A wholesale distributor shall publicly display or have readily available all licenses and the most recent inspection report issued by the department.

h. The department shall make publicly available on its website the dates of the first and most recent inspections of each wholesale distributor.

i. The department shall notify appropriate parties upon the suspension, revocation or expiration, or other relevant action regarding, a wholesale distributor's license and make that information available on its website within five business days.

j. A licensee shall submit to the department any change in information within 30 days of that change, unless otherwise noted.

C.24:6B-16 Criminal history record background check for applicants, designated representatives, persons enumerated.

7. a. The commissioner shall require each applicant, designated representative or any person enumerated in subsection c. of section 6 of this act, in accordance with applicable State and federal laws, rules and regulations, to undergo a criminal history record background check.

The commissioner is authorized to exchange fingerprint data with and receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation consistent with the provisions of applicable federal and State laws, rules and regulations. The Division of State Police shall forward criminal history record background information to the commissioner in a timely manner when requested pursuant to the provisions of this section.

An applicant, designated representative or any person enumerated in subsection c. of section 6 of this act shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. No check of criminal history record background information shall be performed pursuant to this section unless the applicant, designated representative or person enumerated in subsection c. of section 6 of this act has furnished his or her written consent to that check. An applicant, designated representative or person enumerated in subsection c. of section 6 of this act who refuses to consent to, or cooperate in, the securing of a check of criminal history record background information shall not be considered for licensure. An applicant, designated representative or person enumerated in subsection c. of section 6 of this act shall bear the cost for the criminal history record background check, including all costs of administering and processing the check.

b. The commissioner shall not license an applicant, designated representative or any person enumerated in subsection c. of section 6 of this act if the criminal history record background information reveals a disqualifying conviction. For the purposes of this section, a disqualifying conviction shall mean a 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 health care claims fraud as set forth in P.L.1997, c.353 (C.2C:21-4.2 et al.) or insurance fraud as set forth in sections 72 and 73 of P.L.2003, c.89 (C.2C:21-4.5 and 2C:21-4.6); or

(d) involving any controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes except paragraph (4) of subsection a. of N.J.S.2C:35-10; or

(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; or

(3) Any violation of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.

c. Upon receipt of the criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, the commissioner shall provide written notification to the applicant, designated representative or person enumerated in subsection c. of section 6 of this act, of his or her qualification for or disqualification from licensure.

If the applicant, designated representative or person enumerated in subsection c. of section 6 of this act is disqualified because of a disqualifying conviction pursuant to the provisions of this section, the conviction that constitutes the basis for the disqualification shall be identified in the written notice.

d. The Division of State Police shall promptly notify the commissioner in the event that an individual who was the subject of a criminal history record background check conducted pursuant to this section is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of that notification, the commissioner shall make a determination regarding the continued eligibility for licensure of the applicant, designated representative or person enumerated in subsection c. of section 6 of this act.

e. Notwithstanding the provisions of subsection b. of this section to the contrary, the commissioner may offer provisional licensure for a period not to exceed three months if the applicant, designated representative or person enumerated in subsection c. of section 6 of this act submits to the commissioner a sworn statement attesting that the person has not been convicted of any disqualifying conviction pursuant to this section, and the commissioner determines that no criminal history record background information exists on file in the Division of State Police or the Federal Bureau of Investigation which would disqualify the person.

f. Notwithstanding the provisions of subsection b. of this section to the contrary, no applicant, designated representative or person enumerated in subsection c. of section 6 of this act shall be disqualified from licensure on the basis of any conviction disclosed by a criminal history record background check conducted pursuant to this section if the applicant, designated representative or person enumerated in subsection c. of section 6 of this act has affirmatively demonstrated to the commissioner clear and convincing evidence of rehabilitation. In determining whether clear and convincing evidence of rehabilitation has been demonstrated, the following factors shall be considered:

- (1) the nature and responsibility of the position which the convicted individual would hold, has held or currently holds;
- (2) the nature and seriousness of the crime or offense;
- (3) the circumstances under which the crime or offense occurred;
- (4) the date of the crime or offense;

- (5) the age of the individual when the crime or offense was committed;
- (6) whether the crime or offense was an isolated or repeated incident;
- (7) any social conditions which may have contributed to the commission of the crime or 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 individual under their supervision.

C.24:6B-17 Establishment, maintenance of list of authorized distributors.

8. a. A manufacturer that is registered with the department pursuant to P.L.1961, c.52 (C.24:6B-1 et seq.) shall establish and maintain an up-to-date list of its authorized distributors and authorized distributors of record, as defined in section 5 of this act. The list shall be filed with the department, and each manufacturer shall publish the list on its website. The department shall provide electronic links to each manufacturer's website from the department's website. A manufacturer shall notify the department within 10 business days of any change to the list.

b. The commissioner may determine that a wholesale distributor is an authorized distributor if the wholesale distributor can demonstrate that it has a written agreement currently in effect with a manufacturer or a verifiable account with a manufacturer and meets the following transaction or volume requirement thresholds:

- (1) 5,000 sales units per company within 12 months; or
- (2) 12 purchases by invoice at the manufacturer's minimum purchasing requirement per invoice within 12 months.

C.24:6B-18 Determination of eligibility for licensure renewal.

9. The department shall determine eligibility for licensure and renewal thereof, of persons engaged in the wholesale distribution of prescription drugs. In addition to any additional factors that the commissioner may deem relevant to protecting the public health and safety, the following shall be considered in determining an applicant's eligibility:

- a. any suspension, sanction or revocation by a federal, state or local government of any license currently or previously held by the applicant or any of its owners for violations of laws regarding drugs;

- b. the results of the applicant's criminal history record background check pursuant to section 7 of this act and information regarding the applicant's business provided pursuant to section 6 of this act;

- c. the applicant's past experience in the manufacturing or distribution of drugs;

- d. whether the applicant furnished false or fraudulent material in any application related to drug manufacturing or distribution;
- e. compliance with previously granted licenses related to drug distribution or any health care professional or occupational licenses; and
- f. a driver's license and Social Security number verification for all company officers, key management, principals and owners, provided that the review does not conflict with State confidentiality laws.

C.24:6B-19 Additional requirements for designated representatives.

10. In addition to satisfying any requirements that the commissioner may establish by regulation, a designated representative shall:

- a. submit an application that includes the following information:
 - (1) the person's date and place of birth;
 - (2) the person's occupations, positions of employment and offices held during the past seven years, and the principal business addresses;
 - (3) whether the person has been temporarily or permanently enjoined by a court of competent jurisdiction during the past four years for violating any federal or state law regulating drugs, along with the details of those events;
 - (4) a description of any involvement by the person with any business that manufactured, administered, prescribed, distributed or stored prescription drugs and was named as a party in a lawsuit;
 - (5) a photograph of the person taken within the previous 30 days;
 - (6) the name, business address, occupation, date and place of birth for each member of the person's immediate family who is employed by the wholesale distributor in a management or operations position or has ownership in the wholesale distribution business. As used in this paragraph, the term "member of the person's immediate family" includes the person's spouse, children, parents and siblings, and the spouses of the person's children and the person's siblings; and
 - (7) such other information as the commissioner deems relevant.
- b. have a minimum of two years of verifiable, full-time managerial, supervisory, auditing or compliance experience with: (1) a pharmacy, wholesale distributor or drug manufacturer licensed, permitted or registered in this or another state, territory of the United States or the District of Columbia; (2) a nationally recognized drug trade association; or (3) a state or federal agency, where the person's responsibilities included record keeping, storage and shipment of prescription drugs;
- c. serve as the designated representative for only one wholesale distributor location at any one time; and
- d. be actively involved in and aware of the actual daily operations of the wholesale distributor. As used in this subsection, "actively involved"

means being: employed full-time in a managerial position; physically present at the facility during normal business hours; and knowledgeable about all policies and procedures pertaining to the wholesale distributor's operations. A designated representative may seek assistance from qualified individuals to help ensure compliance with the provisions of this subsection.

C.24:6B-20 Requirements for facilities used for wholesale prescription drug distribution.

11. All facilities used for wholesale prescription drug distribution shall:
- a. be of suitable construction to ensure that all prescription drugs in the facilities are maintained in accordance with their labeling or official compendium standards;
 - b. be of suitable size and construction to facilitate cleaning, maintenance and proper wholesale distribution operations;
 - c. have adequate storage, lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;
 - d. have a quarantine area for prescription drugs that are adulterated, counterfeit or suspected of being counterfeit, or otherwise unfit for distribution;
 - e. be maintained in a clean and orderly condition and free from infestation;
 - f. be secure from unauthorized entry, with the outside perimeter of the premises well-lighted and entry into areas where prescription drugs are held limited to authorized personnel;
 - g. be equipped with security and inventory management and control systems that provide suitable protection against theft, diversion or counterfeiting, and can readily provide data to the department; and
 - h. be a commercial location and not a personal dwelling or residence.

C.24:6B-21 Provision of pedigree, certification prior to sale, return of prescription drug.

12. a. Before the sale or return of a prescription drug to another wholesale distributor, a selling wholesale distributor shall provide a pedigree or a certification in accordance with the following specifications:
- (1) if the seller is an authorized distributor of record, a pedigree for each prescription drug that is included on the specified list of susceptible products and was not purchased directly from the manufacturer; or
 - (2) if the seller is neither the prescription drug manufacturer nor an authorized distributor of record, a pedigree for each prescription drug that is distributed.
- b. A wholesale distributor shall provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information.
- c. A wholesale distributor shall conduct business in a commercial location, and not a personal dwelling or residence.

d. A wholesale distributor shall provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting or diversion of prescription drugs.

C.24:6B-22 Annual report to the Legislature on tracking system.

13. The commissioner shall report annually to the Legislature on the availability of an effective standardized electronic product identification tracking system for prescription drugs in this State. The report shall address whether such a system can be feasibly implemented by manufacturers, wholesale distributors and pharmacies for purposes of authentication, and deterrence and detection of counterfeit drugs. If the commissioner determines that implementation of such a system is feasible, he shall make recommendations regarding the timing and method of implementing the system.

C.24:6B-23 Authentication of distribution of prescription drug.

14. a. (1) A wholesale distributor shall authenticate every distribution of a prescription drug back to the manufacturer if the wholesale distributor has reason to believe that a prescription drug purchased from another wholesale distributor is adulterated, misbranded or counterfeit.

(2) A wholesale distributor who distributed a prescription drug that is the subject of an authentication pursuant to this section shall provide, upon request, information regarding the distribution of the prescription drug, including: date of purchase; sales invoice number; and contact information for the wholesale distributor who sold the prescription drug, including the name, address, telephone number and e-mail address, if available.

(3) If a wholesale distributor is unable to authenticate each transfer, the wholesale distributor shall quarantine the prescription drug and report this to the department within 14 days after completing the attempted authentication.

(4) If the wholesale distributor satisfactorily completes the authentication, the wholesale distributor shall maintain records of the authentication for two years, and produce them to the department and the Department of Law and Public Safety, upon request.

b. (1) A wholesale distributor shall conduct annual random authentications on at least 10% of pedigrees as required by this act.

(2) A wholesale distributor shall conduct annual random authentications on at least 90% of the pedigrees of prescription drugs designated on the specified list of susceptible products for which a pedigree is required.

(3) A wholesale distributor and a manufacturer from whom other wholesale distributors have purchased prescription drugs shall cooperate with random authentications of pedigrees and provide requested information in a timely manner.

C.24:6B-24 Examination of shipping container.

15. a. A wholesale distributor shall visually examine each shipping container upon receipt to ensure its identity and to determine if it contains prescription drugs that are adulterated, contraband, counterfeit, suspected of being contraband or counterfeit, or otherwise unfit.

b. Containers found to be unacceptable under subsection a. of this section shall be quarantined from the rest of stock until an examination and determination are made that the contents are not adulterated, contraband, counterfeit, or otherwise unfit.

c. Upon receipt of a shipping container, a wholesale distributor shall review its records for the acquisition of prescription drugs for accuracy and completeness.

d. Each outgoing shipment shall be carefully inspected for identity and to ensure that it has been stored under proper conditions.

e. Disposal and destruction of containers, labels and packing shall be conducted in a manner to ensure that they cannot be used in counterfeiting activities. Appropriate witnessing of the destruction and disposal shall be in accordance with federal and State requirements.

C.24:6B-25 Criteria for return of prescription drug to wholesale distributor.

16. a. (1) A pharmacy, chain pharmacy distribution center or pharmacy member of an affiliated group shall return to a wholesale distributor any prescription drug that is on the specified list of susceptible products if the prescription drug:

(a) was ordered by a pharmacy or delivered to a pharmacy by a wholesale distributor in error or in excess of need;

(b) is identified by the pharmacy as such within 30 business days of receipt or pursuant to the retail agreement in place between the pharmacy and wholesale distributor;

(c) has been maintained in its original packaging;

(d) has had its integrity maintained; and

(e) is accompanied by appropriate and complete documentation and, where applicable, any necessary notations made to the certification, invoice or packing slip.

(2) The prescription drug shall be physically returned within 30 business days of notification to the wholesale distributor or as consistent with the wholesale distributor's return policy. If the prescription drug cannot be returned to the wholesale distributor, it shall be returned to the manufacturer.

b. A prescription drug manufacturer shall accept return of prescription drugs on the specified list of susceptible products that have not been returned to a wholesale distributor in accordance with the time frame specified in paragraph (2) of subsection a. of this section.

c. A wholesale distributor shall quarantine a prescription drug, container or labeling that is received outdated, damaged, deteriorated, misbranded, counterfeited, suspected of being counterfeited, adulterated, or otherwise deemed unfit for human consumption until it is returned.

d. A manufacturer or wholesale distributor who receives returned prescription drugs shall notify the department of the return.

e. A wholesale distributor shall identify a prescription drug that becomes outdated after receipt and has been opened or used, but is not adulterated, misbranded, counterfeited, or suspected of being counterfeit, and quarantine the drug until it is destroyed or returned.

f. A prescription drug that becomes outdated after receipt and has been unopened or unused, but is not adulterated, misbranded, counterfeit or suspected of being counterfeit shall be so identified and quarantined until it is destroyed or returned.

g. A wholesale distributor shall return or destroy, within 30 business days after discovery, a prescription drug that has been returned, if any condition under which it has been returned casts doubt on its safety, identity, strength, quality or purity.

h. A wholesale distributor:

(1) shall retain discovered contraband, counterfeit, or suspected counterfeit prescription drugs, evidence of criminal activity and accompanying documentation until its disposition is authorized by the department; and

(2) shall not destroy the shipping container, immediate or sealed outer or secondary container or labeling, and accompanying documentation, which is suspected of or determined to be counterfeit or fraudulent, until its disposition is authorized by the department.

C.24:6B-26 Requirements for wholesale distributor.

17. A wholesale distributor shall exercise due diligence in accordance with the following requirements, unless the commissioner waives any requirement. Prior to the first purchase of prescription drugs for distribution in this State from another wholesale distributor that is not licensed in this State pursuant to this act, the purchasing wholesale distributor shall obtain the following information from the selling wholesale distributor:

a. verification of the wholesale distributor's status as an authorized distributor of record, if applicable, for which purpose inclusion of the wholesale distributor's business name on the manufacturer's list of authorized distributors of record, as required in section 8 of this act, shall be deemed acceptable for verification purposes;

b. a list of the state in which the wholesale distributor is domiciled and the states into which it ships prescription drugs;

c. the wholesale distributor's most recent facility inspection reports;

- d. copies of relevant general and product liability insurance coverage;
- e. a list of any other names under which the wholesale distributor does business or was formerly known;
- f. names of corporate officers and managerial employees;
- g. a list of all disciplinary actions by state and federal agencies involving wholesale distribution of drugs for the last four years, if the selling wholesale distributor supplies it upon request by the purchasing wholesale distributor; and
- h. a description, including the address, dimensions and other relevant information, of each facility used for prescription drug storage and distribution.

C.24:6B-27 Maintenance of document, record relative to pedigree, certification.

18. a. A person who receives or passes a pedigree or certification pursuant to this act shall maintain the document or record for three years from receipt or passing of the document or record.

b. A wholesale distributor shall:

(1) establish and maintain records of all transactions regarding the receipt, distribution or other disposition of all prescription drugs, including the dates of receipt and distribution or other disposition of the prescription drugs; and

(2) make its inventories and other records available for inspection and copying by an authorized official of any local, State or federal governmental agency for a period of three years following the creation of those records.

c. A wholesale distributor shall ensure that its records as described in this section:

(1) if kept at the inspection site or immediately retrievable by computer or other electronic means, are readily available for authorized inspection during the retention period; and

(2) if kept at a central location apart from the inspection site and not electronically retrievable, are made available for inspection within two business days of a request by an authorized official of any State or federal governmental agency charged with enforcement of the provisions of this act.

d. A wholesale distributor shall maintain an ongoing list of persons with whom it does business related to prescription drugs.

e. A wholesale distributor shall establish and maintain procedures for reporting counterfeit or suspected counterfeit prescription drugs, or counterfeiting or suspected counterfeiting activities to the department.

f. A wholesale distributor shall maintain a system for mandatory reporting to the department of significant shortages or losses of prescription drugs when diversion of prescription drugs is known or suspected.

C.24:6B-28 Adherence to written policies, procedures by wholesale distributors.

19. a. A wholesale distributor shall establish, maintain and adhere to written policies and procedures for the receipt, security, storage, inventory, transport, shipping and distribution of prescription drugs, including policies and procedures for: identifying, recording and reporting losses or thefts; correcting all errors and inaccuracies in inventories; and implementing and maintaining a continuous quality improvement system.

b. Pursuant to subsection a. of this section, a wholesale distributor shall establish procedures:

- (1) for handling recalls and withdrawals of prescription drugs;
- (2) to prepare for and protect against any crisis that affects the security or operation of any facility;
- (3) for segregating, returning and destroying prescription drugs, and providing all necessary documentation;
- (4) for disposal and destruction of containers, labels and packaging to ensure that they cannot be used in counterfeiting activities, which procedures shall require retention of all necessary documentation for at least three years, and appropriate witnessing of the destruction of any labels, packaging, immediate containers or containers in accordance with federal and State requirements;
- (5) for investigating and reporting significant inventory discrepancies to the department;
- (6) for reporting criminal or suspected criminal activities involving the inventory of prescription drugs to the department within five business days of discovery and for reporting suspected criminal activities involving prescription drugs that are also controlled substances to the department; and
- (7) for satisfying authentication requirements required by section 14 of this act.

C.24:6B-29 Violations, gradation of offenses.

20. a. A person is guilty of a crime of the third degree if the person:

- (1) engages in the wholesale distribution of prescription drugs and, with intent to defraud or deceive, fails to deliver to another person a complete and accurate pedigree, when required, prior to transferring the prescription drug to another person;
- (2) engages in the wholesale distribution of prescription drugs and, with intent to defraud or deceive, fails to acquire a complete and accurate pedigree, when required, concerning a prescription drug prior to obtaining the prescription drug from another person;
- (3) engages in the wholesale distribution of prescription drugs, and knowingly destroys, alters, conceals or fails to maintain a complete and

accurate pedigree concerning any prescription drug in the person's possession;

(4) engages in the wholesale distribution of prescription drugs and possesses pedigree documents required by the department, and knowingly fails to authenticate the matters contained in the documents as required, but nevertheless distributes or attempts to further distribute prescription drugs;

(5) engages in the wholesale distribution of prescription drugs and, with intent to defraud or deceive, falsely swears or certifies that the person has authenticated any documents related to the wholesale distribution of prescription drugs;

(6) engages in the wholesale distribution of prescription drugs and knowingly forges, counterfeits or falsely creates any pedigree, and falsely represents any factual matter contained on any pedigree or knowingly omits to record material information required to be recorded in a pedigree;

(7) engages in the wholesale distribution of prescription drugs and knowingly purchases or receives prescription drugs from a person not authorized to distribute prescription drugs in wholesale distribution;

(8) engages in the wholesale distribution of prescription drugs and knowingly sells, barter, brokers or transfers prescription drugs to a person not authorized to purchase prescription drugs, under the jurisdiction in which the person receives the prescription drugs in a wholesale distribution;

(9) knowingly possesses, actually or constructively, any amount of a contraband prescription drug and knowingly sells or delivers, or possesses with intent to sell or deliver, any amount of the contraband prescription drug;

(10) knowingly forges, counterfeits or falsely creates any label for a prescription drug or falsely represents any factual matter contained in any label of a prescription drug; or

(11) knowingly manufactures, purchases, sells, delivers or brings into the State, or is knowingly in actual or constructive possession of any amount of a contraband prescription drug.

b. A person who knowingly manufactures, purchases, sells, delivers or brings into the State, or is knowingly in actual or constructive possession of, any amount of a contraband prescription drug, and whose actions as described in this subsection result in the death of a person, is guilty of a crime of the first degree.

c. A person who engages in the wholesale distribution of prescription drugs without having registered with the department as required pursuant to this act is guilty of a disorderly persons offense.

C.24:6B-30 Noncompliance with orders, penalties.

21. a. Any person who does not comply with an order of the commissioner within the time specified shall be liable to a penalty, to be established by the commissioner as follows: for the first offense, not less than \$200 nor

more than \$5,000; and, for the second and each succeeding offense, not less than \$1,000 nor more than \$20,000. The penalties shall be enforced by the department as plaintiff in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. Nothing in this act shall be construed to prevent or limit the commissioner, the Division of Consumer Affairs in the Department of Law and Public Safety or any appropriate board under the purview of the Division of Consumer Affairs, or the Attorney General from taking any other action permitted by law against a person who violates the provisions of this act.

C.24:6B-31 Real, personal property, certain, subject to forfeiture.

22. Any real or personal property which was used or intended to be used to commit, facilitate or promote the commission of the crime, or which constitutes, is derived from, or is traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the crime, shall be subject to forfeiture in accordance with the provisions of N.J.S. 2C:64-1 et seq.

C.24:6B-32 Wholesale Drug Distribution Advisory Council.

23. a. There is created a Wholesale Drug Distribution Advisory Council within the department to advise the department regarding proposed rules on the distribution of prescription drugs and to recommend any practical measures that may improve the integrity of the prescription drug distribution system.

b. The council shall be comprised of eight members as follows:

(1) the commissioner and the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, or their designees, who shall serve ex officio;

(2) three persons employed by different wholesale distributors licensed in this State, one of whom shall be appointed by the Governor, one by the President of the Senate and one by the Speaker of the General Assembly;

(3) one person employed by a prescription drug manufacturer, appointed by the Governor;

(4) one pharmacist, appointed by the Speaker of the General Assembly; and

(5) one representative of a chain pharmacy distribution center, appointed by the President of the Senate.

c. The public members shall serve for a term of three years; but, of the members first appointed, two shall serve for a term of one year, two for a term of two years, and two for a term of three years. Members are eligible for reappointment upon the expiration of their terms. Vacancies in the membership of the council shall be filled in the same manner provided for the original appointments.

d. The public members shall be appointed, and the council shall organize as soon as practicable following their appointment, but no later than 60 days after the date of enactment of this act. The members shall select a chairperson and vice-chairperson from among the membership of the council. The chairperson shall appoint a secretary, who need not be a member of the council.

e. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in performing their duties and within the limits of available funds.

C.24:6B-33 Rules, regulations.

24. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall adopt rules and regulations to ensure the safety and sanitary conduct of pharmaceutical distribution and to carry out the provisions of this act.

25. This act shall take effect on the 180th day after enactment, except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved August 24, 2005.

CHAPTER 207

AN ACT concerning certain substances, amending N.J.S.2C:20-2 and supplementing Title 2C of the New Jersey Statutes and Titles 45 and 51 of the Revised Statutes.

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

C.2C:35-25 Sale restrictions for ephedrine products; disorderly persons offense.

1. a. Except as provided in subsection d. of this section, no person shall sell, offer for sale or purchase in any single retail transaction more than:

(1) three packages, or any number of packages that contain a total of nine grams, of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or

(2) three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, or any number

of packages of such combination drug that contain a total of nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers.

b. As used in this section, "drug" has the meaning as defined in R.S.24:1-1.

c. A violation of this section is a disorderly persons offense.

d. This act shall not apply to a drug lawfully prescribed or administered by a licensed physician, veterinarian or dentist.

C.2C:35-26 Reporting requirement for ephedrine products.

2. Every pharmacy, store and other retail mercantile establishment shall promptly communicate to local law enforcement authorities the confirmed report of, or actual knowledge of, a loss of 30 or more grams of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers. As used in this section, "store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale.

C.2C:35-27 Permissive inference concerning possession of ephedrine products.

3. Proof that a person has in his possession more than 30 grams or 10 packages of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers; or more than 30 grams or 10 packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, shall give rise to a permissive inference by the trier of fact that the person acted with a purpose to create methamphetamine.

4. N.J.S. 2C:20-2 is amended to read as follows:

Consolidation of theft offenses; grading; provisions applicable to theft generally.

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally.

a. Consolidation of Theft and Computer Criminal Activity Offenses. Conduct denominated theft or computer criminal activity in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft or computer criminal activity may be supported by evidence that it was committed in any manner that would be theft or computer criminal activity under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other

appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is \$75,000.00 or more;

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram;

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000 or more; or

(e) The property stolen is human remains or any part thereof.

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds \$500.00 but is less than \$75,000.00;

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;

(d) It is from the person of the victim;

(e) It is in breach of an obligation by a person in his capacity as a fiduciary;

(f) It is by threat not amounting to extortion;

(g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant;

(h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000;

(i) The property stolen is any real or personal property related to, necessary for, or derived from research, regardless of value, including, but not limited to, any sample, specimens and components thereof, research subject, including any warm-blooded or cold-blooded animals being used for research or intended for use in research, supplies, records, data or test results, prototypes or equipment, as well as any proprietary information or other type of information related to research;

(j) The property stolen is a New Jersey Prescription Blank as referred to in R.S.45:14-14;

(k) The property stolen consists of an access device or a defaced access device; or

(1) The property stolen consists of anhydrous ammonia and the actor intends it to be used to manufacture methamphetamine.

(3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00. If the amount involved was less than \$200.00 the offense constitutes a disorderly persons offense.

(4) The amount involved in a theft or computer criminal activity shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts or computer criminal activities committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

c. Claim of right. It is an affirmative defense to prosecution for theft that the actor:

(1) Was unaware that the property or service was that of another;

(2) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or

(3) Took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

d. Theft from spouse. It is no defense that theft or computer criminal activity was from or committed against the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft or computer criminal activity only if it occurs after the parties have ceased living together.

C.2C:35-28 Unlawful possession of precursors; manufacturing methamphetamine; crime of second degree.

5. a. Except as authorized by P.L.1970, c. 226 (C.24:21-1 et seq.), a person is guilty of the crime of unlawful possession of a precursor if the person knowingly or purposely possesses anhydrous ammonia with intent to unlawfully manufacture methamphetamine or any of its analogs.

b. Except as authorized by P.L.1970, c. 226 (C.24:21-1 et seq.), a person is guilty of the crime of unlawful possession of a precursor if the person knowingly or purposely possesses phenylalanine with intent to unlawfully manufacture methamphetamine or amphetamine or any of their analogs.

c. Except as authorized by P.L.1970, c. 226 (C. 24:21-1 et seq.), a person is guilty of the crime of unlawful possession of a precursor if the person knowingly or purposely possesses, with intent to manufacture a controlled dangerous substance or controlled substance analog, any of the following:

- (1) carbamide (urea) and propanediol and malonic acid or its derivatives;
- (2) ergot or an ergot derivative and diethylamine or dimethyl-formamide or diethylamide;
- (3) phenylacetone (1-phenyl-2 propanone);
- (4) pentazocine and methyliodid;
- (5) phenylacetonitrile and dichlorodiethyl methylamine or dichlorodiethyl benzylamine;
- (6) diphenylacetonitrile and dimethylaminoisopropyl chloride;
- (7) piperidine and cyclohexanone and bromobenzene and lithium or magnesium; or
- (8) 2, 5-dimethoxy benzaldehyde and nitroethane and a reducing agent.

d. (1) Except as authorized by P.L.1970, c. 226 (C.24:21-1 et seq.), a person is guilty of the crime of unlawful possession of a precursor if the person, with intent to unlawfully manufacture methamphetamine, knowingly or purposely possesses ephedrine (including its salts, isomers or salts of isomers), norpseudoephedrine (including its salts, isomers or salts of isomers), n-methylephedrine (including its salts, isomers or salts of isomers), n-methylpseudoephedrine (including its salts, isomers or salts of isomers), or pseudoephedrine (including its salts, isomers or salts of isomers).

(2) Proof that a person in possession of any of the substances enumerated in paragraph (1) of this subsection at the same time also possesses any of the following substances shall give rise to a permissive inference by the trier of fact that the person acted with intent to unlawfully manufacture methamphetamine:

- (a) amorphous (red) phosphorus or white phosphorus;
- (b) hydroiodic acid;
- (c) anhydrous ammonia;
- (d) sodium; or
- (e) lithium.

Unlawful possession of a precursor in violation of this section is a crime of the second degree.

6. a. The New Jersey Department of Agriculture, which includes the Secretary of Agriculture, the State Board of Agriculture and the State Chemist, shall conduct a study on the feasibility of using an additive to anhydrous ammonia sold as agricultural fertilizer to inhibit or prevent its illicit use in the manufacturing of the drug methamphetamine. The study shall consider: the effectiveness of potential additives in inhibiting or preventing the use of anhydrous ammonia to manufacture the drug methamphetamine; expected final cost of any potential additives; the human health hazards, hazards to fish, shellfish and wildlife, and environmental hazards of any potential

additives as compared to the same hazards posed by anhydrous ammonia; and the extent which the additives would be expected to reduce the effectiveness or usefulness of anhydrous ammonia as an agricultural fertilizer.

b. The department shall prepare a report on the recommendations to require or encourage the use of an additive to anhydrous ammonia to inhibit or prevent its use in the manufacture of methamphetamine and submit a copy of such report to the Legislature and the Governor no later than one year after the effective date of P.L.2005, c.207 (C.2C:35-25 et al.).

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

Approved August 24, 2005.

CHAPTER 208

AN ACT concerning bicycle, roller skate, and skateboard helmets and amending P.L.1991, c.465 and P.L.1997, c.411.

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

1. 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 17 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.

2. Section 3 of P.L.1991, c. 465 (C.39:4-10.3) is amended to read as follows:

C.39:4-10.3 Posting of sign required; violations, penalties; renters required to provide helmet; immunity.

3. a. A person regularly engaged in the business of selling or renting bicycles shall post a sign at the point where the sale or rental transaction is completed stating: "STATE LAW REQUIRES A BICYCLE RIDER UNDER 17 YEARS OF AGE TO WEAR A HELMET." 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 a bicycle is sold through the use of a catalog or brochure and the purchase and payment are made by mail, telephone or another telecommunications or electronic method.

A person who fails to post a sign required by this subsection within 60 days after the effective date of this amendatory act (P.L.1995, c.177) 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 of the Division of Consumer Affairs of the Department of Law and Public Safety, the inspectors appointed under his authority, and the police or peace officers of, or inspectors duly appointed for this purpose, by any municipality or county or by 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 may be apprehended or where he may reside. Process shall be either a summons or warrant and shall be executed in a summary manner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. A person regularly engaged in the business of renting bicycles shall provide a helmet to a person under 17 years of age who will operate the bicycle 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.

c. A person regularly engaged in the business of selling or renting bicycles 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 bicycle operator or passenger who is under the age of 17 years as a result of the operator's or passenger's failure to wear a helmet or to wear a properly fitted or fastened helmet in violation of the requirements of this act.

d. Within 60 days after the effective date of this amendatory act (P.L.1995, c.177), the Division of Consumer Affairs in the Department of Law and Public Safety shall make a reasonable effort to notify any person who is regularly engaged in the business of selling or renting bicycles of the requirements of this section. The responsibility of a person 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.

3. Section 1 of P.L.1997, c.411 (C.39:4-10.5) is amended to read as follows:

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 17 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.

4. Section 5 of P.L.1997, c.411 (C.39:4-10.9) is amended to read as follows:

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 17 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 municipality 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 of 1999," P.L.1999, c.274 (C.2A:58-10 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 17 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 17 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.

5. This act shall take effect on the first day of the seventh month after enactment.

Approved August 26, 2005.

CHAPTER 209

AN ACT authorizing the adoption of substance abuse testing policies in public school districts 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-22 Findings, declarations relative to substance abuse testing policies in public school districts.

1. The Legislature finds and declares that there are many school districts within the State with a growing problem of drug abuse among their students. The Legislature further finds that federal and State courts have held that it may be appropriate for school districts to combat this problem through the random drug testing of students participating in extracurricular activities, including interscholastic athletics, and students who possess school parking permits. The Legislature also finds that a random drug testing program may have a positive effect on attaining the important objectives of deterring drug use and providing a means for the early detection of students with drug problems so that counseling and rehabilitative treatment may be offered.

C.18A:40A-23 Adoption of policy for random testing of certain students.

2. A board of education may adopt a policy, pursuant to rules and regulations adopted by the State Board of Education in consultation with the Department of Human Services, which are consistent with the New Jersey Constitution and the federal Constitution, for the random testing of the district's students in grades 9-12 who participate in extracurricular activities, including interscholastic athletics, or who possess school parking permits, for the use of controlled dangerous substances as defined in N.J.S.2C:35-2 and anabolic steroids. The testing shall be conducted by the school physician, school nurse or a physician, laboratory or health care facility designated by the board of education and the cost shall be paid by the board. Any disciplinary action taken against a student who tests positive for drug use or who refuses to consent to testing shall be limited to the student's suspension from or prohibition against participation in extracurricular activities, or revocation of the student's parking permits.

C.18A:40A-24 Public hearing prior to adoption of drug testing policy.

3. Each board of education shall hold a public hearing prior to the adoption of its drug testing policy. The policy shall be in written form and shall be distributed to students and their parents or guardians at the beginning of each school year. The policy shall include, but need not be limited to, the following:

- a. notice that the consent of the student and his parent or guardian for random student drug testing is required for the student to participate in extracurricular activities and to possess a school parking permit;
- b. the procedures for collecting and testing specimens;
- c. the manner in which students shall be randomly selected for drug testing;
- d. the procedures for a student or his parent or guardian to challenge a positive test result;
- e. the standards for ensuring the confidentiality of test results;
- f. the specific disciplinary action to be imposed upon a student who tests positive for drug use or refuses to consent to testing;
- g. the guidelines for the referral of a student who tests positive for drug use to drug counseling or rehabilitative treatment; and
- h. the scope of authorized disclosure of test results

C.18A:40A-25 Rules, regulations.

4. The State Board of Education, in consultation with the Department of Human Services, 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.

5. This act shall take effect immediately.

Approved August 29, 2005.

CHAPTER 210

AN ACT requiring the notification of certain persons of the availability of the federal earned income tax credit and the New Jersey earned income tax credit, supplementing chapter 21 of Title 43 of the Revised Statutes, chapter 1 of Title 30 of the Revised Statutes, P.L.1966, c.293 (C.52:27D-1 et seq.), and P.L.1948, c.92 (C.52:18A-1 et seq.) and amending N.J.S.54A:7-2.

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

C.43:21-4.2 Notification of availability of earned income tax credit, recipients of unemployment compensation.

1. The Commissioner of Labor and Workforce Development shall notify in writing any person who received unemployment compensation pursuant to R.S.43:21-1 et seq. of the availability of the earned income tax credit provided in section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.32, and the New Jersey earned income tax credit provided in section 2 of P.L.2000, c.80 (C.54A:4-7). The written notification shall use the statement developed by the State Treasurer pursuant to section 4 of P.L.2005, c.210 (C.52:18-11.3) for this purpose. The notification shall be distributed in a manner deemed by the commissioner to be the most practicable and cost effective, but that will ensure personal notification of each person. The notification shall be distributed between January 1 and February 15 of each calendar year following the calendar year in which the person received the unemployment compensation.

C.30:1-2.5 Notification of availability of earned income tax credit, recipients of certain public assistance.

2. The Commissioner of Human Services shall notify in writing any person over 18 years of age of the availability of the earned income tax credit provided in section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.32, and the New Jersey earned income tax credit provided in section 2 of P.L.2000, c.80 (C.54A:4-7), if the person:

a. received food stamps under the Food Stamp Program authorized by Title XIII of the "Food and Agriculture Act of 1977," Pub. L. 95-113 (7 U.S.C. s.2011 et seq.);

- b. received assistance under the "Work First New Jersey General Public Assistance Act," P.L.1947, c.156 (C.44:8-107 et seq.);
- c. received assistance from the Work First New Jersey program for dependent children and their parents under P.L.1997, c.38 (C.44:10-55 et seq.);
- d. participated in the "New Jersey Medical Assistance and Health Services Program," P.L.1968, c.413 (C.30:4D-1 et seq.);
- e. received aid under the Supplemental Security Income Program established pursuant to Title XVI of the federal Social Security Act, 42 U.S.C. s.1381 et seq.; or
- f. was a foster parent as defined in P.L.1951, c.138 (C.30:4C-1 et seq.).

The written notification shall use the statement developed by the State Treasurer pursuant to section 4 of P.L.2005, c.210 (C.52:18-11.3) for this purpose. The notification shall be distributed in a manner deemed by the commissioner to be the most practicable and cost effective, but that will ensure personal notification of each person. The commissioner shall take such reasonable actions as may be necessary to avoid the distribution of more than one notice to a person who was the recipient of or participated in two or more of the programs listed in this section. The notification shall be distributed between January 1 and February 15 of each calendar year following the calendar year in which the person was a recipient or participant, or foster parent. If the recipient, participant or foster parent was a married couple, only one notice addressed to either the husband or wife, or both, shall be required.

C.52:27D-3.5 Notification of availability of earned income tax credit for recipients of certain rental assistance.

3. The Commissioner of Community Affairs shall notify in writing any person who received rental assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937 as added by the Housing and Community Development Act of 1974, Pub. L.93-383 (42 U.S.C. s.1437f) of the availability of the earned income tax credit provided in section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.32, and the New Jersey earned income tax credit provided in section 2 of P.L.2000, c.80 (C.54A:4-7). The written notification shall use the statement developed by the State Treasurer pursuant to section 4 of P.L.2005, c.210 (C.52:18-11.3) for this purpose. The notification shall be distributed in a manner deemed by the commissioner to be the most practicable and cost effective, but that will ensure personal notification of each person. The notification shall be distributed between January 1 and February 15 of each calendar year following the calendar year in which the person or couple received the assistance. The commissioner shall consult annually with the

Commissioner of Human Services in an effort to take such reasonable actions as may be necessary to avoid the distribution of more than one notice to a person who is eligible to receive a notice under this section and section 2 of P.L.2005, c.210 (C.30:1-2.5). If the recipient of the assistance was a married couple, only one notice addressed to either the husband or wife, or both, shall be required.

C.52:18-11.3 Written statement informing recipients.

4. The State Treasurer shall develop a written statement informing a recipient as specified in sections 1 through 3 of P.L.2005,c.210 (C.43:21-4.2, C.30:1-2.5, and C.52:27D-3.5), of the availability of the earned income tax credit under the provisions of section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.32, and the New Jersey earned income tax credit provided in section 2 of P.L.2000, c.80 (C.54A:4-7), for distribution pursuant to sections 1, 2 and 3 of P.L.2005,c.210 (C.43:21-4.2, C.30:1-2.5, and C.52:27D-3.5) and subsection b. of N.J.S.54A:7-2.

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

Information statement for employee or recipient of other payments, earned income credit.

54A:7-2. a. Every employer or payor of a pension or annuity required to deduct and withhold tax under this act from the wages of an employee or from the payment of a pension or annuity, or an employer who would have been required so to deduct and withhold tax if an employee had claimed no more than one withholding exemption, shall furnish to each such employee, or pension or annuity recipient or the estate thereof, in respect of the wages or pension or annuity payments paid by such employer or payor to such employee or pension or annuity recipient during the calendar year on or before February 15 of the succeeding year, or, if his employment or pension or annuity is terminated before the close of such calendar year, within 30 days from the date on which the last payment of the wages or pension or annuity is made, a written statement as prescribed by the director showing the amount of wages or pension or annuity payments paid by the employer or payor to the employee or pension or annuity recipient, the cost of commuter transportation benefits, as defined pursuant to section 3 of P.L.1992, c.32 (C.27:26A-3), excludable by the employee pursuant to section 1 of P.L.1993, c.108 (C.54A:6-23), and the cost of such benefits not so excludable, provided by the employer to the employee, the amount deducted and withheld as tax, the amount deducted and withheld as worker contributions for unemployment and disability insurance as provided under the New Jersey "Unemployment Compensation Law," and such other information as the director shall prescribe.

b. In addition to the statement furnished pursuant to subsection a. of this section, each employer shall notify an employee in writing of the availability of the earned income tax credit under the provisions of section 32 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.32, and the New Jersey earned income tax credit provided in section 2 of P.L.2000, c.80 (C.54A:4-7). The written notification shall use the statement developed by the State Treasurer pursuant to section 4 of P.L.2005, c.210 (C.52:18-11.3) for this purpose. The employer shall notify only those employees whom the employer knows, or reasonably believes, may be eligible for the federal credit based on the wages reported on the statement distributed pursuant to subsection a. of this section.

6. This act shall take effect immediately.

Approved August 29, 2005.

CHAPTER 211

AN ACT concerning certain federal grants made available to the State for the benefit of wildlife and wildlife habitat and making an appropriation, supplementing P.L.1973, c.309 (C.23:2A-1 et seq.).

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

C.23:2A-15 Matching funds for certain federal grants to benefit wildlife, wildlife habitat.

1. a. There shall be appropriated each fiscal year to the Department of Environmental Protection a sum sufficient to provide the State match required to qualify for any federal grants or other assistance apportioned and made available to the State of New Jersey under the State Wildlife Grants Program or any similar program established pursuant to federal law, rule, or regulation for the purpose of benefitting wildlife and their habitat, including species that are not hunted or fished.

b. The annual State match appropriation requirement under subsection a. of this section shall be met through the appropriation, from the "Endangered and Nongame Species of Wildlife Conservation Fund" established by section 1 of P.L.1981, c.170 (C.54A:9-25.2), from the "Wildlife Conservation Fund" established by section 1 of P.L.1993, c.119 (C.39:3-33.10), or from any other fund or account established by law exclusively or primarily to fund the conservation of endangered or nongame wildlife and their habitat, of moneys, credited in such funds or accounts, that cumulatively exceed an amount equal to the total amount from those funds or accounts that was used in State fiscal year 2005 to support programs and activities related to the

conservation of endangered or nongame wildlife and their habitat, which support is ineligible to meet the State match requirement under the State Wildlife Grants Program.

c. In any fiscal year, to the extent that funds directed to be appropriated under subsection b. of this section are insufficient to meet the annual State match appropriation requirement under subsection a. of this section, the remaining amount necessary to meet that requirement shall be made from the General Fund.

d. The sum appropriated under this section each fiscal year shall be expended by the Division of Fish and Wildlife in the Department of Environmental Protection for the purposes and in accordance with the requirements of the federal program and to allow the Endangered and Nongame Species Program in the division to perform its duties and responsibilities.

2. There is appropriated from the General Fund to the Department of Environmental Protection the sum of \$381,715 to provide the State match for the year 2004 sums which have been apportioned and made available to the State of New Jersey under the State Wildlife Grants Program established by the federal government. The sum appropriated pursuant to this section shall be expended by the Division of Fish and Wildlife in the Department of Environmental Protection for the purposes and in accordance with the requirements of the federal program and to allow the Endangered and Nongame Species Program in the division to perform its duties and responsibilities. To the extent that the State has expended any funds from other sources to provide the State match for the year 2004 under the State Wildlife Grants Program established by the federal government, the sum appropriated pursuant to this section shall be used to fully reimburse those other sources accordingly.

3. This act shall take effect immediately.

Approved August 29, 2005.

CHAPTER 212

AN ACT concerning construction code inspection, mending and supplementing P.L.1975, c.217 (C.52:27D-119 et seq.), and amending P.L.1971, c.198.

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

1. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to read as follows:

C.52:27D-124 Powers of the commissioner.

6. The commissioner shall have all the powers necessary or convenient to effectuate the purposes of this act, including, but not limited to, the following powers in addition to all others granted by this act:

a. To adopt, amend and repeal, after consultation with the code advisory board, rules: (1) relating to the administration and enforcement of this act and (2) the qualifications or licensing, or both, of all persons employed by enforcing agencies of the State to enforce this act or the code, except that, plumbing inspectors shall be subject to the rules adopted by the commissioner only insofar as such rules are compatible with such rules and regulations, regarding health and plumbing for public and private buildings, as may be promulgated by the Public Health Council in accordance with Title 26 of the Revised Statutes.

b. To enter into agreements with federal and State of New Jersey agencies, after consultation with the code advisory board, to provide insofar as practicable (1) single-agency review of construction plans and inspection of construction and (2) intergovernmental acceptance of such review and inspection to avoid unnecessary duplication of effort and fees. The commissioner shall have the power to enter into such agreements although the federal standards are not identical with State standards; provided that the same basic objectives are met. The commissioner shall have the power through such agreements to bind the State of New Jersey and all governmental entities deriving authority therefrom.

c. To take testimony and hold hearings relating to any aspect of or matter relating to the administration or enforcement of this act, including but not limited to prospective interpretation of the code so as to resolve inconsistent or conflicting code interpretations, and, in connection therewith, issue subpoena to compel the attendance of witnesses and the production of evidence. The commissioner may designate one or more hearing examiners to hold public hearings and report on such hearings to the commissioner.

d. To encourage, support or conduct, after consultation with the code advisory board, educational and training programs for employees, agents and inspectors of enforcing agencies, either through the Department of Community Affairs or in cooperation with other departments of State government, enforcing agencies, educational institutions, or associations of code officials.

e. To study the effect of this act and the code to ascertain their effect upon the cost of building construction and maintenance, and the effectiveness of their provisions for insuring the health, safety, and welfare of the people of the State of New Jersey.

f. To make, establish and amend, after consultation with the code advisory board, such rules as may be necessary, desirable or proper to carry out his powers and duties under this act.

g. To adopt, amend, and repeal rules and regulations providing for the charging of and setting the amount of fees for the following code enforcement services, licenses or approvals performed or issued by the department, pursuant to the "State Uniform Construction Code Act:"

(1) Plan review, construction permits, certificates of occupancy, demolition permits, moving of building permits, elevator permits and sign permits; and

(2) Review of applications for and the issuance of licenses certifying an individual's qualifications to act as a construction code official, subcode official or assistant under this act.

(3) (Deleted by amendment, P.L.1983, c.338).

h. To adopt, amend and repeal rules and regulations providing for the charging of and setting the amount of construction permit surcharge fees to be collected by the enforcing agency and remitted to the department to support those activities which may be undertaken with moneys credited to the Uniform Construction Code Revolving Fund.

i. To adopt, amend and repeal rules and regulations providing for:

(1) Setting the amount of and the charging of fees to be paid to the department by a private agency for the review of applications for and the issuance of approvals authorizing a private agency to act as an on-site inspection and plan review agency or an in-plant inspection agency;

(2) (Deleted by amendment, P.L.2005, c.212).

(3) (Deleted by amendment, P.L.2005, c.212).

j. To enforce and administer the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the code promulgated thereunder, and to prosecute or cause to be prosecuted violators of the provisions of that act or the code promulgated thereunder in administrative hearings and in civil proceedings in State and local courts.

k. To monitor the compliance of local enforcing agencies with the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), to order corrective action as may be necessary where a local enforcing agency is found to be failing to carry out its responsibilities under that act, to supplant or replace the local enforcing agency for a specific project, and to order it dissolved and replaced by the department where the local enforcing agency repeatedly or habitually fails to enforce the provisions of the "State Uniform Construction Code Act."

l. To adopt, amend and repeal rules and regulations implementing the provisions of P.L.1999, c.15 and P.L.2003, c.44 concerning the installation and maintenance of carbon monoxide sensors.

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 contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising for bids and bidding therefor and shall be awarded by resolution of the governing body 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 the official newspaper, 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, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education 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 unit may be a party;

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

(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) Those goods and services necessary or required to prepare and conduct an election;

(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 goods or services 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) (Deleted by amendment, P.L.1999, c.440.)

(q) Library and educational goods and services;

(r) (Deleted by amendment, P.L.2005, c.212).

(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) (Deleted by amendment, P.L.1999, c.440.)

(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;

(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.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

(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 or any other state or subdivision thereof.

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it 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 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; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, 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 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; 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 unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods 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.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or 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, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process

provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

C.52:27D-124.3 Submittal of bid, proposal by private agency under local public contracts law.

3. A proposal by a private agency to provide inspection or plan review services to a municipality to administer the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be submitted in accordance with and shall be subject to the bidding and other provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). A municipality shall require as part of the bid specifications that a private agency submit a bid or proposal in terms of a percentage of the costs charged by the department when it serves as a local enforcement agency pursuant to section 10 of P.L.1975, c.217 (C.52:27D-128). A municipality may include in the fee charged by it for work done by private agencies an amount sufficient to cover a proportionate share of administrative costs incurred by the local enforcing agency in connection with inspections performed by private agencies.

4. The Commissioner of Community Affairs shall, no later than three years after the effective date of P.L.2005, c.212, submit to: the Chairman of the Senate Community and Urban Affairs Committee and the Chairman of the Assembly Housing Committee, or their successor committees; the presiding officers and the minority leaders of the Senate and General Assembly; and the Governor, a report on the impact of making private agency contracts for inspection and plan review services subject to contracting procedures provided under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) as required under P.L.2005, c.212. The report shall include an assessment of the quality of inspection services rendered pursuant to such contracts, the price of those services and uniformity of pricing for comparable services in municipalities throughout the State, the level of satisfaction of municipal officials with the services provided, the ease of administration of those contracts, and the extent to which full-time inspectors employed by the Department of Community Affairs are displaced by this change in contracting procedure.

5. This act shall take effect on the first day of the third month next following enactment.

Approved August 29, 2005.

CHAPTER 213

AN ACT authorizing municipalities to increase fines for certain trucks violating truck route ordinances and supplementing Title 40 of the Revised Statutes.

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

C.40:67-16.5a Fines for violation of certain truck route ordinances; required signage.

1. Notwithstanding the provisions of any other law to the contrary, a municipality with a system of truck routes established by ordinance pursuant to P.L.1953, c.354 (C. 40:67-16.1 et seq.) that excludes all trucks having a total combined gross weight in excess of four tons from certain municipal streets may, by ordinance, increase the penalties for violating the truck route ordinance while traveling on a street or road having a grade in excess of five percent as follows:

- a. for a first violation a fine of not less than \$2,500 or more than \$3,000, and
- b. for second or subsequent violations a fine of not less than \$4,000 or more than \$5,000.

A municipality that adopts an ordinance to increase penalties in accordance with this section shall place signs in appropriate locations to warn truck drivers in advance that a road grade in excess of five percent is ahead, that trucks in excess of four tons are prohibited from traveling on the grade, and that increased fines will be imposed for a violation of the prohibition.

2. This act shall take effect immediately.

Approved August 29, 2005.

CHAPTER 214

AN ACT concerning commercial motor 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 chief administrator 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 twelfth calendar month following the month in which the certificate was issued; provided, however, that the chief administrator may require registrations which shall expire, and issue certificates thereof which shall become void, on a date fixed by the chief administrator, 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 chief administrator in amounts proportionately less or greater than the fees established by law. The chief administrator may fix the expiration date for registration certificates at a date other than 12 months if the chief administrator 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:

(1) In the case of vehicles other than trucks transporting ready-mixed concrete, asphalt, stone, sand, gravel, clay and cleanfill:

For vehicles not in excess of 5,000 pounds, \$53.50.

For vehicles in excess of 5,000 pounds and not in excess of 10,000 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 10,000 pounds and not in excess of 18,000 pounds, \$53.50 plus \$13.50 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 \$14.50 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 \$15.50 for each 1,000 pounds or portion thereof in excess of 5,000 pounds; and

(2) In the case of trucks transporting ready-mixed concrete, asphalt, stone, sand, gravel, clay and cleanfill:

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 chief administrator 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 chief administrator 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 twelfth calendar month following the month in which the certificate was issued; provided, however, that the chief administrator may require registrations which shall expire, and issue certificates thereof which shall become void on a date fixed by the chief administrator, 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 chief administrator in amounts proportionately less or greater than the fees established by law. The chief administrator may fix the expiration date for registration certificates at a date other than 12 months if the chief administrator 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 chief administrator 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 chief administrator 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 twelfth 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 chief administrator 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 chief administrator, 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 chief administrator in advance.

If any commercial motor-drawn vehicle registered for a four-year period is sold or withdrawn from use on the highways, the chief administrator 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 chief administrator 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 P.L.1995, c.157 (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 sixth month following enactment.

Approved August 29, 2005.

CHAPTER 215

AN ACT providing for the appointment of a BPU Business Ombudsman in the Board of Public Utilities and supplementing Title 48 of the Revised Statutes.

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

C.48:2-92 Short title.

1. This act shall be known and may be cited as the "BPU Business Ombudsman Act."

C.48:2-93 Findings, declarations relative to BPU Business Ombudsman.

2. The Legislature finds and determines that:

a. The attraction and retention of new and existing businesses is vital to the continued economic development of the State.

b. The increasing complexity of energy issues and the creation of a competitive energy marketplace, has resulted in obstacles to the attraction and retention of new and existing businesses in this State, especially since other states have developed marketing and promotional materials and programs designed to offer businesses the means to quickly determine energy savings from relocating to another area of the country.

c. An effective strategy to counter such efforts, attract new businesses and retain existing businesses in this State, is to provide for the appointment of a BPU Business Ombudsman within the Board of Public Utilities who shall be responsible for providing information to businesses concerning energy costs in the State and to assist businesses with the application for and processing of State energy programs, subsidies and grants to reduce their energy costs.

d. It is in the public interest to remain competitive with other states by authorizing the President of the Board of Public Utilities to appoint a BPU Business Ombudsman to act as a centralized resource for businesses to obtain information and assistance concerning State energy costs, potential benefits resulting from switching to or utilizing third-party energy suppliers, State energy programs, subsidies and grants to reduce energy costs and to promote energy efficiencies.

e. The appointment of a BPU Business Ombudsman to oversee and coordinate the dissemination of energy information needed by businesses is intended to encourage businesses to remain and expand in this State, to attract businesses from other states to relocate to this State and to stimulate business investment.

C.48:2-94 Definitions relative to BPU Business Ombudsman.

3. As used in this act:

"Act" means the "BPU Business Ombudsman Act."

"Board" means the Board of Public Utilities.

"Business project or activity" means a new commercial or industrial business or enterprise or the expansion or improvement of an existing commercial or industrial business or enterprise in this State.

"BPU Business Ombudsman" means the person appointed by the President of the Board pursuant to section 4 of this act.

C.48:2-95 BPU Business Ombudsman; appointment, powers, duties, funding.

4. a. There is hereby created a BPU Business Ombudsman in the board to provide information and assistance to any business, located in this State or seeking to relocate in this State, with regard to energy costs, potential benefits from switching to or utilizing third-party energy suppliers, State

energy programs, subsidies or grants available to businesses to reduce their energy costs and promotion of energy efficiencies.

b. The ombudsman office shall be headed by a BPU Business Ombudsman who shall be appointed by the President of the Board and shall serve at the pleasure of the President of the Board. The BPU Business Ombudsman shall be a person qualified by training, experience, or both, to direct the work of the office. In appointing an Ombudsman, the President of the Board may select from, but shall not be restricted to, candidates from within the board as presently constructed.

c. The Ombudsman, under the supervision of the board, shall organize the work of that office and employ such professional, technical, research and clerical staff as may be necessary, proper and expedient to carry out the purposes of P.L.2005, c.215 (C.48:2-92 et seq.). The board, in consultation with the Ombudsman, may formulate and adopt rules and regulations and prescribe duties for the efficient conduct of the business, work and general administration in connection with P.L.2005, c.215 (C.48:2-92 et seq.). The Ombudsman may delegate to subordinate employees such of the Ombudsman's powers as the Ombudsman may deem desirable, to be exercised under the Ombudsman's supervision and direction.

d. The BPU Business Ombudsman and staff shall be funded through use of a portion of the monies received by the board as a result of the board's inclusion of a retail margin on certain hourly-priced and larger non-residential customers pursuant to the board's continuing regulation of Basic Generation Service pursuant to sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57). Nothing in P.L.2005, c.215 (C.48:2-92 et seq.) should be interpreted to restrict the board's discretion to set the level of the retail margin. Should the board determine to reduce or eliminate the retail margin or take any action that might implicate the funding of the activities or position, or both, of the BPU Business Ombudsman, the board shall assess the continuing need for the Ombudsman and upon a determination that the position remains necessary and useful shall consider alternative funding options.

C.48:2-96 Function of office of BPU Business Ombudsman.

5. It shall be the function of the office to:

a. Assist businesses with obtaining information concerning energy costs in response to requests from businesses;

b. Monitor the impact of State energy costs on business projects and activities and on business decisions to relocate to this State, and identify and recommend energy cost reduction strategies including State programs, subsidies and grants that may be available for businesses to reduce their energy costs;

c. Participate in the application process for State energy programs, subsidies and grants on behalf of a business, if in the BPU Business Ombudsman's judgment, such participation may be necessary to assist a business in order for a project or activity to proceed;

d. Work with board staff to assist in creating public information programs designed to acquaint and educate businesses and the public about the duties and responsibilities of the office; and

e. Interface with energy marketers seeking to provide service in this State and, where appropriate, work to bring them together with businesses concerned about energy costs.

C.48:2-97 Annual report to board.

6. The Ombudsman shall make an annual report to the board of the office's operations, and render such other reports as the board shall from time to time request or as may be required by law.

C.48:2-98 Rules, regulations.

7. The board may, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt such rules and regulations, as shall be necessary to implement the provisions of this act.

8. This act shall take effect 90 days after enactment but the board may take administrative actions in advance to effectuate the purposes of this act.

Approved August 29, 2005.

CHAPTER 216

AN ACT concerning certain State law enforcement officers and amending N.J.S.2C:39-6, P.L.1983, c.324 and P.L.1977, c.167.

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 police officer, 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;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area.

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) (Deleted by amendment, P.L.2003, c.168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c.291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c.362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or

from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting

serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

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 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 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. Section 21 of P.L.1983, c.324 (C.13:1L-21) is amended to read as follows:

C.13:1L-21 Power to arrest without warrant; authorization to carry firearm; law enforcement training program.

21. The commissioner of the department shall have the power to vest in State park police officers and other personnel of the department at all times the power to arrest without warrant any person violating any law of the State committed in their presence and bring the offender before any court having jurisdiction to receive the complaint of such violation. These personnel are hereby authorized to carry firearms at all times. The department, with the approval of the Attorney General, shall establish and maintain a law enforcement training program for such personnel.

3. Section 1 of P.L. 1977, c.167 (C.13:1A-6.1) is amended to read as follows:

C.13:1A-6.1 Power to arrest without warrant; law enforcement training program.

1. The Commissioner of the Department of Environmental Protection shall have the power to vest in the conservation officers of the Division of Fish and Wildlife and the park police officers and law enforcement operation officers of the Division of Parks and Forestry at all times the power to arrest without warrant any person violating any law of this State committed in their presence and bring the offender before any court having jurisdiction to receive the complaint of such violation. The Department of Environmental Protection, with the approval of the Attorney General, shall establish and maintain a suitable law enforcement training program for such personnel.

4. To effectuate the purposes of P.L.2005, c.216, the Commissioner of Personnel shall establish and assign, and, where necessary, abolish, consolidate or reassign, the ranks and titles currently governing the position of State park ranger to ranks and titles appropriate to the position of State park police officer.

5. This act shall take effect on the first day of the third month following enactment.

Approved August 29, 2005.

CHAPTER 217

AN ACT concerning the award of county college credit to certain firefighters and supplementing chapter 64A 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:64A-79 Findings, declarations relative to award of county college credit to certain firefighters.

1. The Legislature finds and declares that: through programs and courses county fire academies work to enhance the ability of firefighters to deal more effectively with fire and related emergencies; county fire academy courses offer students an opportunity to grow professionally and to increase their knowledge and skills to provide a safe and effective response to their communities; and certain courses offered by county fire academies are equal in difficulty to those at the college level.

The Legislature, therefore, further finds that it is appropriate for county colleges to award college credits to firefighters for certain courses completed in county fire academies.

C.18A:64A-80 Conditions for receipt of county college credit for course at fire academy.

2. a. Any person who successfully completes a course at a county fire academy shall receive county college credit for the course if: the county college determines after a review of the curriculum of the course offered by the county fire academy that the curriculum is similar to the curriculum of a course offered in the county college's fire science program; and upon completion of the course, the person successfully completes an examination approved by the county college. The county college shall waive any credit-by-exam fee the college may charge.

b. The county fire academy and county college of a county shall work jointly to identify courses at the county fire academy which offer a curriculum similar to that of courses included in the county college's fire science program.

3. This act shall take effect immediately.

Approved September 7, 2005.

CHAPTER 218

AN ACT concerning emergency warning lights of a member of a volunteer fire company, a volunteer first aid or rescue squad or a volunteer Office

of Emergency Management and amending P.L.1977, c.223 and P.L.1985, c.171.

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

1. Section 1 of P.L.1977, c.223 (C.39:3-54.7) is amended to read as follows:

C.39:3-54.7 Mounting and operation of emergency warning lights.

1. a. An active member in good standing of any of the following organizations may mount and operate, on a motor vehicle operated by that member, an emergency warning light or lights as provided in P.L.1977, c.223 (C.39:3-54.7 et seq.):

(1) a volunteer fire company or a volunteer first aid or rescue squad recognized by and rendering service in any municipality; or

(2) any county or municipal volunteer Office of Emergency Management recognized by and rendering service in any county or municipality, provided the member's official duties include responding to a fire or emergency call.

b. The Chief Administrator of the New Jersey Motor Vehicle Commission shall not require the member to specify on which motor vehicles the emergency warning light or lights may be mounted.

2. Section 3 of P.L.1977, c.223 (C.39:3-54.9) is amended to read as follows:

C.39:3-54.9 Specifications.

3. Emergency warning lights shall be removable or permanently attached, of the flashing or revolving type, equipped with a blue lens and controlled by a switch installed inside the vehicle or shall be blue of the light bar type, in accordance with the specifications prescribed by the chief administrator.

3. Section 4 of P.L.1977, c.223 (C.39:3-54.10) is amended to read as follows:

C.39:3-54.10 Placement of motor vehicle, types of lights.

4. No more than two emergency warning lights shall be installed on a vehicle. If one light is used it shall be installed in the center of the roof of the car, or on the front of the vehicle so that the top of the emergency warning light is no higher than the top of the vehicle's headlights, or in the center of the dashboard. It may be a low profile light bar of the strobe, halogen or incandescent type, or a combination thereof. If two lights are used they may

be placed on the windshield columns on each side of the vehicle where spotlights are normally mounted, or on either side of the roof at the front of the vehicle directly back of the top of the windshield. Under no circumstances may one light be placed on the roof and one on the windshield column in the spotlight position. Light elements shall be shielded from direct sight or view of the driver.

4. Section 5 of P.L.1977, c.223 (C.39:3-54.11) is amended to read as follows:

C.39:3-54.11 Identification cards; issuance.

5. a. The Chief Administrator of the New Jersey Motor Vehicle Commission shall prepare suitable identification cards bearing the signature of the chief administrator which, upon the request of the mayor or chief executive officer of any municipality recognizing and being served by a volunteer fire company or a volunteer first aid or rescue squad on a form and in a manner prescribed by the chief administrator, shall be forwarded to the mayor or chief executive officer, to be countersigned and issued by the mayor or chief executive officer to the members in good standing of the volunteer fire company or first aid or rescue squad.

b. Identification cards issued pursuant to this section and sections 5 and 6 of P.L.2005, c.34 (C.39:3-54.22 and C.39:3-54.23) shall be considered permits to mount and operate emergency warning lights as provided for in P.L.1977, c.223 (C.39:3-54.7 et seq.) and shall apply to any motor vehicle driven by the member of a volunteer fire company, a volunteer first aid or rescue squad or a volunteer Office of Emergency Management. Emergency warning lights shall not be mounted prior to the issuance of the identification cards. Each member of a volunteer fire company, a volunteer first aid or rescue squad or a volunteer Office of Emergency Management must carry the identification card while an emergency warning light or lights are operated on the vehicle.

5. Section 6 of P.L.1977, c.223 (C.39:3-54.12) is amended to read as follows:

C.39:3-54.12 Rights of motor vehicle with emergency lights in operation.

6. Nothing contained herein is intended to grant to any member of a volunteer fire company, a volunteer first aid or rescue squad or a volunteer Office of Emergency Management any privileges or exemptions denied to the drivers of other vehicles, and such members operating emergency warning lights shall drive with due regard for the safety of all persons and shall obey all the traffic laws of this State including R.S.39:4-81, provided, however, that the drivers of non-emergency vehicles upon any highway shall yield the right

of way to the vehicle of any member of a volunteer fire company, a volunteer first aid or rescue squad or a volunteer Office of Emergency Management operating emergency warning lights in the same manner as is provided for authorized emergency vehicles pursuant to R.S.39:4-92.

6. Section 7 of P.L.1977, c.223 (C.39:3-54.13) is amended to read as follows:

C.39:3-54.13 Violation of act; penalty.

7. Any person authorized to operate emergency warning lights pursuant to P.L.1977, c.223 (C.39:3-54.7 et seq.) who willfully operates such emergency warning lights in violation of the provisions of P.L.1977, c.223 (C.39:3-54.7 et seq.) shall be liable to a penalty of not more than \$100 and the person's privilege to operate such emergency warning lights may be suspended or revoked by the Chief Administrator of the New Jersey Motor Vehicle Commission. A person who is not authorized to operate emergency warning lights who willfully operates such emergency warning lights shall be liable to a penalty of not more than \$200.

7. Section 1 of P.L.1985, c.171 (C.39:3-54.15) is amended to read as follows:

C.39:3-54.15 Warning lights, sirens on vehicle of volunteer fire, first aid or rescue squad chiefs or officers.

1. A current chief or first assistant chief of a volunteer fire company, or chief officer of a first aid or rescue squad, recognized by and rendering service in any municipality may mount and operate on a motor vehicle owned by him and registered in his name a red emergency warning light or lights, a siren, or both, as prescribed in P.L.1985, c.171 (C.39:3-54.15 et seq.). The size and type of lights and siren, and the location of their controls, shall be determined by the Chief Administrator of the New Jersey Motor Vehicle Commission.

8. This act shall take effect on the first day of the seventh month after enactment.

Approved September 7, 2005.

CHAPTER 219

AN ACT concerning regulation of fine particle emissions from certain vehicles and equipment powered by diesel engines, and amending and supplementing various parts of statutory law.

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

C.26:2C-8.26 Findings, declarations relative to regulation of fine particle emissions from diesel engines.

1. The Legislature finds and declares that the emissions of fine particles into the air pose an extraordinary health risk to the people of the State; that the Department of Environmental Protection has determined that 1,000 deaths and 68,000 cases of asthma in the State each year are attributed to the exceedance of the federal 2.5 micron fine particle standard in the State; that exhaust emissions from diesel-powered vehicles and equipment contribute substantially to the fine particle problem, and pose both cardiovascular and cancer risks; that the United States Environmental Protection Agency has classified diesel exhaust as likely to be carcinogenic to humans by inhalation at environmental exposures; that the United States Environmental Protection Agency has also identified diesel particle matter and diesel exhaust organic gases as a mobile source air toxic; that studies repeatedly have found links between exposure to fine particles and health effects, including premature death and increased incidents of asthma, allergies, and other breathing disorders; and that these studies include the examination of the health impacts of the exposure to diesel emissions for school children riding diesel-powered school buses.

The Legislature further finds and declares that, although some new diesel-powered vehicles and equipment operate more cleanly and may contribute less to air quality problems than their predecessors, diesel-powered trucks, buses, and off-road equipment tend to remain in service as long as 20 years or more; that, among these types of vehicles and equipment, diesel commercial buses and diesel solid waste vehicles operate in significant numbers in urban areas of the State where the reduction of fine particle diesel emissions should be prioritized because fine particle diesel emissions are at the highest concentrations in these areas; that the emissions from diesel school buses directly impact the health of school children throughout the State; that unless emissions from some on-road diesel-powered vehicles and off-road diesel-powered equipment currently operating in the State are controlled, all on-road diesel-powered vehicles and off-road diesel-powered equipment will continue to emit high levels of fine particles and contribute to air pollution in the State for many years to come; that filters and other devices and cleaner burning fuels are available to reduce emissions from older diesel vehicles and equipment; that retrofitting certain diesel-powered vehicles and equipment with emissions reducing devices, operating these vehicles and equipment on cleaner burning fuel, or both, could significantly improve air quality; that although such requirements impose costs, the costs

are relatively small when compared with the costs of the vehicles or equipment they update or the cost of the impact on the public health from the air pollution that the requirements abate; that by exercising discretion in the types of vehicles and equipment and the matching of technologies to vehicles and equipment, the cost of installing and using pollution-reducing devices and fuels can be minimized and the air pollution reduction and public health benefits can be maximized; and that the Department of Environmental Protection has estimated that targeting reductions of fine particles from these vehicles and equipment could remove 315 tons per year from the ambient air in the State and could prevent more than 150 premature deaths.

The Legislature therefore determines that it is of vital importance to the health of the people of the State to begin to reduce significantly fine particle emissions and exposure of school children to these emissions; and that this start can be most effectively and economically accomplished by requiring the use of the best available retrofit technologies for the reduction of fine particle emissions in diesel-powered commercial buses, school buses, solid waste vehicles, and publicly owned on-road vehicles and off-road equipment.

C.26:2C-8.27 Definitions relative to regulation of fine particle emissions from diesel engines.

2. As used in sections 1 through 31 of P.L.2005, c.219 (C.26:2C-8.26 et seq.):

"Best available retrofit technology" means the equipment, retrofit device, or fuel, or any combination thereof, designated by the United States Environmental Protection Agency as a verified technology for diesel retrofit programs, or by the California Air Resources Board as a verified technology for diesel emissions control, for use on or in specific makes, model years, types, and classes of on-road diesel vehicles or off-road diesel equipment, and that, as determined by the Department of Environmental Protection, may be used on or in regulated vehicles or regulated equipment, at a reasonable cost, to achieve substantial reduction of fine particle diesel emissions. "Best available retrofit technology" may include, but is not limited to, particle filters, diesel oxidation catalysts, flow through filters, and modified diesel fuel, provided that these diesel retrofit devices and diesel emissions control strategies are verified technologies according to the United States Environmental Protection Agency or the California Air Resources Board. "Best available retrofit technology" shall include only those retrofit devices and fuel for which the retrofit device manufacturer or fuel manufacturer agrees, in a manner determined appropriate by the department, that the installation and use of the retrofit device or the use of the special fuel would not jeopardize the original engine warranty in effect at the time of the installation or the commencement of use of the retrofit device or fuel, and for which the

retrofit device manufacturer or fuel manufacturer has provided a warranty pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). "Best available retrofit technology" shall not include repowering of any vehicle or piece of equipment, or the use of ultra-low sulfur diesel fuel;

"Commission" means the New Jersey Motor Vehicle Commission;

"Compliance form" means a form used for ascertaining compliance with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) or eligibility for reimbursement of costs associated therewith, and issued pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42);

"Constitutionally dedicated moneys" mean moneys dedicated pursuant to Article VIII, Section II, paragraph 6, subparagraph (d) of the State Constitution;

"Department" means the Department of Environmental Protection;

"Diesel commercial bus" means a diesel bus as defined pursuant to section 2 of P.L. 1995, c.157 (C.39:8-60), except that "diesel commercial bus" shall include only diesel commercial buses with a gross vehicle weight rating in excess of 14,000 pounds, and shall not include school buses;

"Diesel engine" means an internal combustion engine with compression ignition using diesel fuel, including the fuel injection system but excluding the exhaust system;

"Diesel Risk Mitigation Fund" or "fund" means the fund established pursuant to section 28 of P.L.2005, c.219 (C.26:2C-8.53);

"Diesel solid waste vehicle" means any on-road diesel vehicle with a gross vehicle weight rating in excess of 14,000 pounds that is used for the purposes of collecting or transporting residential or commercial solid waste, including vehicles powered by a diesel engine used for transporting waste containers, including, but not necessarily limited to, open boxes, dumpsters or compactors, which may be removed from the tractor. "Diesel solid waste vehicle" shall include solid waste cabs and solid waste single-unit vehicles;

"Fine particle" means a particle emitted directly into the atmosphere from exhaust produced by the combustion of diesel fuel and having an aerodynamic diameter of 2.5 micrometers or less;

"Fine particle diesel emissions" means emissions of fine particles from an on-road diesel vehicle or from off-road diesel equipment;

"Fleet" means one or more on-road diesel vehicles or pieces of off-road diesel equipment;

"Off-road diesel equipment" means any equipment or vehicle, other than a diesel construction truck, powered by a diesel engine that is used primarily for construction, loading, and other off-road purposes and, when in use, is not commonly operated on a roadway except when used for roadway con-

struction and repair, including, but not necessarily limited to, rollers, scrapers, excavators, rubber tire loaders, crawler/dozers, and off-highway trucks. "Off-road diesel equipment" shall include equipment and vehicles that are not used primarily for transportation and are considered off-road equipment and vehicles but, for the purposes of moving the equipment and vehicles from place to place on the roadways of the State, are required to have "in-transit" plates issued by the New Jersey Motor Vehicle Commission. "Off-road diesel equipment" shall not include any non-mobile equipment, such as a generator or pump, and shall not include boats or trains;

"On-road diesel vehicle" means any vehicle, other than a private passenger automobile, that is powered by a diesel engine and operated on the roadways of the State, and shall include, but need not be limited to, diesel buses, diesel-powered motor vehicles, and heavy-duty diesel trucks as defined pursuant to section 2 of P.L.1995, c.157 (C.39:8-60);

"Owner" means any person, the State, or any political subdivision thereof, that owns any on-road diesel vehicle or off-road diesel equipment subject to the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.);

"Private regulated commercial bus" means any diesel commercial bus not owned by the New Jersey Transit Corporation, and any diesel commercial bus owned by the New Jersey Transit Corporation but leased or operated by a provider of diesel commercial bus service other than the New Jersey Transit Corporation;

"Public regulated commercial bus" means any diesel commercial bus owned and operated by the New Jersey Transit Corporation;

"Regulated commercial bus" means any diesel commercial bus registered and operating in the State;

"Regulated equipment" means any regulated off-road diesel equipment or any piece of off-road diesel equipment that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Regulated off-road diesel equipment" means any off-road diesel equipment operating in the State that is owned by the State or any political subdivision thereof, or a county or municipality, or any political subdivision thereof;

"Regulated on-road diesel vehicle" means any on-road diesel vehicle registered in the State that is owned by the State or any political subdivision thereof, a county or municipality, or any political subdivision thereof;

"Regulated school bus" means a school bus powered by a diesel engine, and owned by a school district, nonpublic school, or school bus contractor who has entered into a contract with a school district or a nonpublic school to transport children to and from a primary or secondary school in the State, that was originally designed to carry 10 or more passengers, and is in service on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.);

"Regulated solid waste vehicle" means any diesel solid waste vehicle registered in the State that is owned by the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, or that is owned by a person who has entered into a contract in effect on or after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), with the State or any political subdivision thereof, or a county or municipality or any political subdivision thereof, to provide solid waste services;

"Regulated vehicle" means any regulated commercial bus, regulated on-road diesel vehicle, regulated solid waste vehicle, or any regulated school bus required to comply with any requirements pursuant to subsection b. of section 7 of P.L.2005, c.219 (C.26:2C-8.32) from model year 2006 or a preceding model year and registered in the State, or any on-road diesel vehicle registered in the State that is required to use best available retrofit technology pursuant to an approved fleet averaging plan;

"Retrofit device" means a best available retrofit technology that is an after-market apparatus installed on an on-road diesel vehicle or on a piece of off-road diesel equipment;

"School bus" means a school bus as defined under R.S.39:1-1;

"Technology" means any equipment, device, or fuel used alone or in combination to achieve the reductions in emissions required for best available retrofit technology; and

"Ultra-low sulfur diesel fuel" means diesel fuel that the United States Environmental Protection Agency designates or defines as ultra-low sulfur diesel fuel.

C.26:2C-8.28 DEP rules, regulations.

3. a. The Department of Environmental Protection, no later than 270 days after the effective date of this section, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The rules and regulations adopted pursuant to subsection a. of this section shall include, but not need not be limited to:

(1) the designation of the required reduction in fine particle diesel emissions and choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment to meet the required reduction for each make, model or type of regulated vehicles or regulated equipment, including, but not limited to, the description of the hierarchy and levels of best available retrofit technologies as they correspond to the emissions reductions anticipated from the use of each best available retrofit technology, and the requirements for implementing the use of best available retrofit technologies by any owner of regulated vehicles or regulated equip-

ment who elects not to submit a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34);

(2) guidelines and requirements for developing fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans, and any supplements or modifications thereto, including, but not limited to:

(a) a description of the components that, at a minimum, are to be included in a fleet retrofit plan;

(b) guidelines for use by owners of regulated vehicles or regulated equipment concerning how to develop an inventory of regulated vehicles or regulated equipment, prepare the required fleet retrofit plan, and determine the technology required for each vehicle or piece of equipment;

(c) the choices of the best available retrofit technologies available to owners of regulated vehicles or regulated equipment for each make, model or type of regulated vehicle or regulated equipment to achieve reductions in fine particle emissions;

(d) information on how to select the specific best available retrofit technologies and ensure the fleet retrofit plan, combined fleet plan, or fleet averaging plan requirements are met;

(e) procedures and provisions for the review and approval, and enforcement of fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans for regulated vehicles or regulated equipment; and

(f) provisions ensuring, in the implementation requirements for fleet retrofit plans, combined fleet plans, or fleet averaging plans, due consideration of the efforts of owners of regulated vehicles or regulated equipment who voluntarily retrofit regulated vehicles or regulated equipment prior to the required submittal of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(3) the procedures for contacting the department with questions about the requirements of, and compliance with, the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), and for obtaining any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans;

(4) in consultation with the Department of Education, the Department of Health and Human Services, the New Jersey Motor Vehicle Commission, and the Department of Law and Public Safety, provisions concerning the idling and queuing of school buses and enforcement of violations thereof, in accordance with section 8 of P.L.2005, c.219 (C.26:2C-8.33) and no less stringent than restrictions on idling pursuant to department rules and regulations in effect on the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.); and

(5) any requirements or guidelines concerning the installation of closed crankcase technology in regulated school buses or compliance with the provisions of section 6 of P.L.2005, c.219 (C.26:2C-8.31);

(6) warranty provisions for best available retrofit technologies and their installation and use on regulated vehicles or regulated equipment; and

(7) any other provisions the department determines necessary for the implementation of P.L.2005, c.219 (C.26:2C-8.26 et al.).

c. No provision of the rules and regulations adopted pursuant to subsection a. of this section may:

(1) designate any other types, makes, models, or classes of vehicles or equipment as regulated vehicles or regulated equipment other than regulated vehicles and regulated equipment as defined in section 2 of P.L.2005, c.219 (C.26:2C-8.27);

(2) require the installation and use of a retrofit device on a private regulated commercial bus earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun to use best available retrofit technologies that are retrofit devices on public regulated commercial buses;

(3) require the installation or use of a retrofit device on a regulated vehicle or piece of regulated equipment unless:

(a) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(b) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be installed or used in that given year, by rule or regulation or by a provision of a plan submitted pursuant to section 7 or section 9 of P.L.2005, c.219 (C.26:2C-8.32 or C.26:2C-8.34).

Provided that the State Treasurer has issued the certification required under subparagraph (a) of paragraph (3) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

d. The rules and regulations adopted pursuant to paragraph (6) of subsection b. of this section shall at a minimum require that:

(1) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment the full repair and replacement cost of the best available retrofit technology, including parts and labor, if the best available retrofit technology fails to perform as verified;

(2) the manufacturer of best available retrofit technology warrant to the owner of any regulated vehicle or piece of regulated equipment, if the installation or use of the best available retrofit technology damages the engine or the engine components of the regulated vehicle or piece of regulated equipment, the repair or replacement of engine components to return the engine components of the regulated vehicle or piece of regulated equipment to the condition they were in prior to damage caused by the best available retrofit technology;

(3) the manufacturers of best available retrofit technology authorize installers of best available retrofit technology other than fuel as authorized installers of the best available retrofit technology; and

(4) only authorized installers of best available retrofit technology install best available retrofit technology other than fuel.

The specific provisions of these requirements and the specific provisions of any warranty may be established by the department through rules and regulations adopted pursuant to this section or under separate rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), including but not limited to, the period of time during which a warranty would be in effect.

C.26:2C-8.29 DEP to consult when developing rules, regulations concerning diesel commercial buses.

4. The Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the New Jersey Transit Corporation when developing the provisions of the rules and regulations to be adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) concerning diesel commercial buses. No later than 60 days before any proposed rules or regulations are filed for publication in the New Jersey Register, the Department of Environmental Protection shall submit for comment to the New Jersey Transit Corporation any rules or regulations concerning diesel commercial buses proposed for adoption pursuant to section 3, section 19, or section 20 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.44, or C.26:2C-8.45). The Department of Environmental Protection, wherever possible, shall incorporate into requirements imposed on the New Jersey Transit Corporation the use of improved pollution control or fuels other than conventional diesel fuel used by the New Jersey Transit Corporation pursuant to section 22 of P.L.1984, c.73 (C.27:1B-22), but may require additional controls or fuel use for diesel commercial buses operated by, or under contract to, the New Jersey Transit Corporation. No provision of section 22 of P.L.1984, c.73 (C.27:1B-22) shall be construed to supersede, or exempt the New Jersey Transit Corporation from, any requirements the Department of Environmental Protection may establish pursuant to this section. The Department of

Environmental Protection shall give due consideration to the efforts and actions of the New Jersey Transit Corporation for any reduction of fine particle diesel emissions that it has achieved by the installation of retrofit equipment on on-road diesel vehicles in its fleet or the use of special fuels by its fleet to use prior to the submittal of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

C.26:2C-8.30 Public outreach program to owners of affected vehicles, equipment.

5. The Department of Environmental Protection shall develop and implement, in consultation with the New Jersey Motor Vehicle Commission, a public outreach program to notify and inform the owners of regulated vehicles or regulated equipment affected by the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) of the provisions of the law. In developing and implementing the public outreach program, the department shall make every effort to reach those owners that can be identified with the information that is available to the department and through other State agencies or departments, but the department shall not be responsible for notifying and informing owners that could not be identified, and not the New Jersey Motor Vehicle Commission nor any other State agency or department shall be required to identify every owner.

C.26:2C-8.31 Closed crankcase technology for regulated school buses.

6. a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), or two years after the date on or by which both certifications required in this subsection have been made, whichever is later, every owner of a regulated school bus shall have installed on the regulated school bus closed crankcase technology as specified by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

No owner of a regulated school bus shall be required to install closed crankcase technology pursuant to this subsection unless:

(1) the State Treasurer certifies in each of the two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.) that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the closed crankcase technology required pursuant to this subsection in that two-year period.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated

vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

b. The Department of Environmental Protection shall provide, and each owner of a regulated school bus shall obtain from the department, a compliance form for each regulated school bus. The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of the closed crankcase technology to verify compliance with the requirements of subsection a. of this section and to seek reimbursement for the cost of the closed crankcase technology. The compliance form shall include the cost of any retrofit device installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology. After the installation of the closed crankcase technology on a regulated school bus, a copy of the completed compliance form shall be kept on each regulated school bus at all times.

c. The department shall review the compliance forms submitted pursuant to subsection b. of this section and forward them to the State Treasurer. The State Treasurer shall reimburse each owner of a regulated school bus the cost of any retrofit device installed as part of the closed crankcase technology requirement and any cost associated with the installation of the closed crankcase technology indicated on the compliance form, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of subsection d. of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the installation of the crankcase technology required pursuant to this section and establishing the inspection requirements and procedures for verification of compliance with the crankcase technology requirement established pursuant to this section, the use of the compliance form in any inspection or as part of the inspection procedures and verification of compliance, any training necessary for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, and the extent of that training to be provided by the Department of Environmental Protection, and in what manner that training shall be provided.

f. If for any reason, the owner of the regulated school bus is unable to comply with the requirements specified in this section, the owner shall notify the department, as soon as practicable, of the inability to comply. The department shall resolve the situation with the owner as soon as practicable, and the department shall issue any necessary documentation and other information to the owner of the regulated school bus.

C.26:2C-8.32 Study to identify, quantify sources of fine particles in cabin of regulated school buses.

7. a. Within two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the Department of Environmental Protection shall complete a study to identify and quantify the sources of fine particles present in the cabin of a regulated school bus. The study shall:

- (1) evaluate the relative contribution of emissions from both the crank-case and the tailpipe to in-cabin levels of fine particles; and
- (2) evaluate the feasibility of requiring, and the environmental and health benefits of the reduction of fine particle levels from school bus tailpipe emissions through the use of additional retrofit devices.

b. If the Department of Environmental Protection finds as a result of the study conducted pursuant to subsection a. of this section that technologically feasible reductions in tailpipe emissions would significantly reduce the health risks associated with exposure of children to fine particles in the cabin of a standard school bus, the department may require the use of additional best available retrofit technologies in or on regulated school buses. If the department makes such a finding pursuant to the study, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing:

- (1) the best available retrofit technologies that regulated school buses shall be required to use, according to type, class, and other identifying vehicle information as designated by the department in these rules and regulations; and
- (2) the requirements for submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan that are consistent with the requirements and provisions of section 9 and section 10 of P.L.2005, c.219 (C.26:2C-8.34 and C.26:2C-8.35) and the requirements for implementing the use of best available retrofit technologies for any owner who elects not to submit such a plan.

No use of additional best available retrofit technologies in or on regulated school buses may be required pursuant to this subsection for regulated school buses scheduled to be in service for less than two years on or after the date of notification pursuant to subsection d. of this section. No provision

of the rules and regulations may require an owner of a regulated school bus to make a submittal to the department except as provided by this section.

c. No owner of a regulated school bus shall be required to install or use a retrofit device on a regulated school bus as required pursuant to the rules and regulations adopted pursuant to subsection b. of this section or pursuant to any part of a plan submitted pursuant to subsection e. of this section unless:

(1) the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund for that year; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay for the cost of purchase and installation of the retrofit device required to be used by rule or regulation or by a provision of a plan submitted pursuant to subsection e. of this section in that given year.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated school buses for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated school buses.

d. The Department of Environmental Protection shall notify each owner of a regulated school bus of the adoption of the rules and regulations pursuant to subsection b. of this section and the provisions of those rules and regulations. In establishing additional requirements pursuant to subsection b. of this section, the department shall require the compliance of regulated school buses before the compliance of other vehicles and equipment required to use best available retrofit technologies pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.). The State Treasurer shall prioritize the use of dedicated moneys in the Diesel Risk Mitigation Fund to allow for regulated school bus compliance with the provisions of this section, and shall prioritize payments made from the fund for regulated school buses complying with these additional requirements.

e. If rules and regulations are adopted pursuant to subsection b. of this section, each owner of a regulated school bus shall submit to the Department of Environmental Protection:

(1) an inventory of the diesel-powered school buses that are owned by the owner;

(2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules

and regulations adopted pursuant to subsection b. of this section, or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), if the owner has elected to do so.

The owner shall make these submittals no later than 180 days after the effective date of the rules and regulations adopted pursuant to subsection b. of this section, or the date on or by which both certifications required pursuant to subsection c. of this section have been made, whichever is later.

f. No later than 180 days after the date of the submittals and notice pursuant to subsection e. of this section, the Department of Environmental Protection shall review, approve, and resolve any discrepancies concerning any submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and shall issue final approval of the submitted plan. Any supplements or modifications to the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to this subsection shall be made pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. The department shall provide a one-page compliance form to each owner of a regulated school bus that submits a notice to comply pursuant to paragraph (2) of subsection e. of this section for each regulated school bus required to use best available retrofit technologies. The compliance form shall be similar to the compliance form issued pursuant to section 17 of P.L.2005, c.219 (C.26:2C-8.42) and shall be consistent with the provisions of subsection b. of that section. The department shall issue with the compliance form a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or other vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of, or commencement of the use of, the best available retrofit technologies required pursuant to the rules and regulations adopted pursuant to subsection b. of this section. The department shall review the compliance forms submitted and shall forward them to the State Treasurer, who shall reimburse each owner of a regulated school bus the cost of any retrofit device and the costs associated with the installation thereof, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

C.26:2C-8.33 Rules and regulations relative to idling school buses, consistency with "Air Pollution Control Act (1954)."

8. a. The rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28), shall be consistent with any rules and regulations adopted pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) concerning the idling of vehicles powered by diesel engines, shall be no less stringent than the restrictions on idling pursuant to department rules and regulations in effect on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and shall provide for the same penalties to be enforced for school bus idling as are enforced for the idling of other motor vehicles pursuant to section 2 of P.L.1966, c.15 (C.39:3-70.2), except that:

(1) a warning shall be issued to the driver of the school bus operated in violation of these provisions, to the school district if the school district is not the owner of the school bus, and the principal or administrator of the school serviced by the school bus operated in violation of these provisions, for the first violation;

(2) for a first violation, a notice of violation shall be issued to, and the appropriate penalty imposed on, the owner of the school bus operated in violation of these provisions; and

(3) subsequent violations shall be enforced against the owner of the school bus operated in violation of these provisions, if other than the school district, and the school district serviced by the school bus operated in violation of these provisions.

No penalties may be assessed against any driver of any school bus that is operated in violation of the rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

b. The Department of Environmental Protection shall consult with the Department of Education, individual school districts and school administrators concerning the issue of school bus idling, and develop and assist with the implementation of policies and procedures to achieve compliance with the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. The Department of Law and Public Safety, in consultation with local law enforcement, the Department of Education, the Department of Environmental Protection, and the New Jersey Motor Vehicle Commission, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to facilitate and ensure the enforcement of the rules and regulations adopted pursuant to paragraph (4) of subsection b. of section 3 of P.L.2005, c.219 (C.26:2C-8.28).

C.26:2C-8.34 Submissions to DEP by owner of regulated vehicle, equipment.

9. a. Except as otherwise provided for in this section, any owner of a regulated vehicle or regulated equipment shall submit to the Department of Environmental Protection:

(1) an inventory of all on-road diesel vehicles and off-road diesel equipment owned, operated, or leased by the owner;

(2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; and

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has elected to do so.

b. Each owner of a regulated vehicle or regulated equipment shall make the submittals required pursuant to subsection a. in accordance with the following schedule:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(2) for public regulated commercial buses, no later than one year after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28); and

(4) for regulated on-road diesel vehicles and regulated equipment other than regulated solid waste vehicles and regulated commercial buses, no later than two years after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. No owner of a private regulated commercial bus shall be required to make any submittal pursuant to subsection b. of this section until the owners of public regulated commercial buses have made their submittals required pursuant to that subsection, and no installation and use of a retrofit device on a private regulated commercial bus may be required earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun the use of retrofit devices on public regulated commercial buses.

d. The owner of regulated vehicles or regulated equipment who commences operation of a fleet after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) shall make the submittals required pursuant to subsection a. of this section within 180 days after the date on which they began operations, or the date provided in subsection b. of this section, whichever is later.

e. The owner of regulated vehicles or regulated equipment may coordinate or combine the development of a fleet retrofit plan with the development of a fleet retrofit plan of any other owner, or a group of owners, of regulated vehicles or regulated equipment, and with the guidance of the Department of Environmental Protection submit a combined fleet retrofit plan.

f. The fleet retrofit plan submitted pursuant to subsection a. of this section shall include a description by the owner of the best available retrofit technology and the specific regulated vehicle or piece of regulated equipment on which the specific best available retrofit technology would be used, as determined by the owner pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

g. If the owner of regulated vehicles or regulated equipment determines that the best available retrofit technology as required under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific regulated vehicle or pieces of regulated equipment, the owner may document this determination in the fleet retrofit plan and request the use of another level of best available retrofit technology to meet the requirement for that specific regulated vehicle or piece of regulated equipment, or provide documentation as to why the owner cannot use the best available retrofit technology that is required. The owner may also propose and negotiate an enforceable commitment to:

(1) retire the regulated vehicle or piece of regulated equipment and replace it with a vehicle or piece of equipment certified to fine particle emission levels at or below the emission levels that would have been achieved by the use of the required best available retrofit technology; or

(2) replace the engine of the vehicle or the equipment with an engine certified to that fine particle emissions level.

h. The owner of 75 or more regulated vehicles or pieces of regulated equipment, or any group of owners who elect to develop a combined fleet retrofit plan pursuant to subsection d. of this section under which 75 or more regulated vehicles or pieces of regulated equipment would be regulated, may propose to the Department of Environmental Protection a fleet averaging plan, in lieu of a fleet retrofit plan or a combined fleet retrofit plan, for the fleet or fleets affected. The owner or owners may propose a fleet averaging plan provided that the total net percent reductions in fine particle emissions

under the proposed fleet averaging plan are equivalent to the estimated reductions in fine particle emissions that would have been achieved by the owner if a fleet retrofit plan were submitted and implemented for the regulated vehicles or regulated equipment, or both, or by the owners if the owners had submitted and implemented a combined fleet retrofit plan for their regulated vehicles or regulated equipment, or both, as calculated pursuant to the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group of owners may propose achieving fine particle emissions reductions from any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment owned by the owner or group of owners, or the retirement of any of those vehicles or equipment, and shall submit the proposed fleet averaging plan to the department as required by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

i. A fleet averaging plan proposed pursuant to subsection g. of this section that proposes the use of retrofit devices on any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment shall include: (1) a description by the owner of the best available retrofit technology and the specific vehicle or equipment on which the specific best available retrofit technology would be used, the specific vehicle or equipment to be retired, and how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on the specific vehicles or equipment; and (2) other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

j. The Department of Environmental Protection shall give due consideration in the application of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan requirements to any efforts or actions by owners of regulated vehicles or regulated equipment who voluntarily retrofit, retire, or repower vehicles or equipment prior to the adoption of rules and regulations pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any of the requirements of this section for such an owner in order to provide such due consideration.

k. The Department of Environmental Protection shall provide any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

l. No owner of regulated vehicles or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or regulated equipment as required pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) or under a plan submitted

pursuant to this section in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by rule and regulation or under an approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan or supplement or modification thereto, as applicable, by an owner in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

C.26:2C-8.35 Approval of fleet retrofit plans.

10. a. The department shall review, and approve or disapprove all parts of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). The department may approve or disapprove any fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan in part, and:

(1) may direct the owner to comply with the approved part or parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan, as applicable, prior to final approval of other parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan; or

(2) in the case of a fleet averaging plan, may determine that the owner or the group of owners cannot comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) by implementing the proposed fleet averaging plan, and may require the owner to submit a fleet retrofit plan, or the group of owners of the fleets to submit a combined fleet retrofit plan or individual fleet retrofit plans.

Any determination made, or requirement established, pursuant to paragraph (2) of this subsection shall be made in writing and shall be provided in writing to each owner affected by the determination or requirement.

b. If the department exercises its authority under paragraph (2) of subsection a. of this section, the department shall issue a modified timetable for submittal of a fleet retrofit plan for the regulated vehicles or regulated equipment, a combined fleet retrofit plan for the group of owners, or individual fleet retrofit plans for the owners in the group. The department may require the submittal of these plans no earlier than 180 days after the date of

the determination pursuant to paragraph (2) of subsection a. of this section, or the date on or by which both of the certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later. The department shall review, approve or disapprove any fleet retrofit plan or combined fleet retrofit plan submitted in accordance with this modified timetable.

c. Whenever the department disapproves a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner indicating the deficiencies of the disapproved fleet retrofit plan, disapproved combined fleet retrofit plan, or the disapproved fleet averaging plan, or part thereof, and the recommendations of the department to correct the deficiencies.

d. During the review process or prior to final approval of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part thereof in question, the department may contact and enter into negotiations with the owner to resolve discrepancies between the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), the submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and any requests by the owner for alternatives pursuant to subsection g. of section 9 of P.L.2005, c.219 (C.26:2C-8.34).

e. The owner or a group of owners whose fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, is disapproved by the department shall make the recommended revisions to the disapproved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the disapproved part thereof, within 60 days after the receipt of the disapproval notification from the department, and shall submit to the department the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, or the final revised part thereof that had been disapproved and revised. If the department does not take further action within 30 days after receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, the final fleet averaging plan, or the final revised part that had been disapproved, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part that had been disapproved and revised, shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the plan shall be in effect as of the date of the close of the 30-day period following the submittal of the final revised plan, or part thereof.

f. Upon the date of final approval of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, the owner shall

be subject to the provisions of the fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan, or that part thereof, and shall be required to comply with these provisions on or after the final approval date or the date on or by which both certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later.

C.26:2C-8.36 Anniversary date of plans, submissions required from owner.

11. a. The date on which all parts of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan have been approved and are in effect shall serve as the anniversary date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval for the purposes of this subsection. On each annual anniversary of the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or 90 days after the date of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan approval, or the approval of the most recent supplement or modification thereto, as applicable, whichever is later, each owner of regulated vehicles or regulated equipment shall submit a supplement to the fleet retrofit plan or combined fleet retrofit plan, or a modification of the fleet averaging plan, as applicable, indicating any changes to the fleet that have been made.

b. A supplement submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner added or removed from the fleet since the submission of the fleet retrofit plan or combined fleet retrofit plan, or the last supplement thereto; and

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used.

c. A modification to a fleet averaging plan submitted pursuant to subsection a. of this section shall include:

(1) a description of any on-road diesel vehicles or off-road diesel equipment owned, operated, or leased by the owner or removed from the fleet since the submission of the fleet averaging plan or the last modification, thereto;

(2) for the regulated vehicles or regulated equipment added to the fleet, a description of the best available retrofit technology and the specific vehicle or piece of equipment on which the specific best available retrofit technology would be used that was not described in the fleet averaging plan or the last modification thereto; and

(3) a description of how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on specific regulated vehicles and other on-road diesel vehicles, or on specific regulated equipment and other off-road diesel equipment, and other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

d. The department shall review, and approve or disapprove all parts of the supplement or the modification no later than one year after its submittal date. The department may approve or disapprove any supplement or modification to any plan in part, and require the owner of the regulated vehicles or regulated equipment to comply with the approved part or parts of the supplement or modification prior to final approval of other parts of the supplement or the modification.

e. Whenever the department disapproves a supplement to a fleet retrofit plan, combined fleet retrofit plan, or a modification to a fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner or operator of the fleet indicating the deficiencies of the disapproved supplement or modification, or part thereof, and the recommendations of the department to correct the deficiencies. The owner or a group of owners who receive disapproval of a supplement to a fleet retrofit plan or combined fleet retrofit plan, or of a modification to a fleet averaging plan, or a part thereof, shall make the recommended revisions to the supplement or the modification within 60 days after the receipt of the disapproval notification from the department, and submit the final revised supplement or modification, or the revised part that had been disapproved, to the department. If the department does not take further action within 30 days after receipt of the final revised supplement or modification, or the revised part that had been disapproved, the revised supplement to the fleet retrofit plan or combined fleet retrofit plan, or modification to the fleet averaging plan, or the revised part that had been disapproved shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised supplement or modification or the final revised part that had been disapproved, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the supplement or modification shall be in effect as of the date of the close of the 30-day period after the receipt of the final revised supplement or modification.

f. Upon the date of final approval of the applicable part, and the date the final supplement or modification is in effect, the owner shall be subject to the provisions of the fleet retrofit plan or combined fleet retrofit plan, and the supplement thereto, or the fleet averaging plan and the modification

thereto, except as may otherwise be provided pursuant to subsection e. of section 10 of P.L.2005, c.219 (C.26:2C-8.35).

g. No owner of a regulated vehicle or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or piece of regulated equipment as required pursuant to a supplement to a fleet retrofit plan or combined fleet retrofit plan, or a modification to a fleet averaging plan or, any part of such a supplement or a modification, in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund, and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by an owner by rule or regulation or by the supplement to a fleet retrofit plan or combined fleet retrofit plan or the modification to a fleet averaging plan in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

C.26:2C-8.37 Inapplicability relative to vehicles, equipment meeting federal standard.

12. Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no best available retrofit technology shall be required by the department to be used on any regulated on-road diesel vehicle manufactured and certified to meet a federal standard of 0.01 grams per brake-horsepower-hour of fine particle emissions, or on any regulated off-road diesel equipment manufactured and certified to meet a federal standard of 0.015 grams per brake-horsepower-hour of fine particle emissions.

C.26:2C-8.38 Voluntary repowering, replacing, or rebuilding of equipment.

13. Notwithstanding the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, to the contrary, no owner of any on-road diesel vehicle or piece of off-road diesel equipment may be required by the department to repower any on-road diesel vehicle or piece of off-road diesel equipment, or to replace or rebuild an engine in any on-road diesel vehicle or piece of off-road diesel equipment, unless the owner has voluntarily agreed to do so. The owner of any on-road diesel vehicle or piece of off-road diesel equipment may repower the on-road diesel

vehicle or piece of off-road diesel equipment, or replace or rebuild its engine, to comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.).

C.26:2C-8.39 Record listing for each regulated vehicle, piece of equipment.

14. a. Each owner of regulated vehicles or regulated equipment shall keep, at the place of business of the owner a record listing for each regulated vehicle or piece of regulated equipment the following identifying information and records for the regulated vehicle or piece of regulated equipment: (1) the compliance form issued for each regulated vehicle or piece of regulated equipment provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42) or any other document for the verification of compliance that may be issued or required pursuant to section 20 of P.L.2005, c.219 (C.26:2C-8.45); (2) maintenance records for the emissions control system or best available retrofit technology; (3) the records of the two most recent calendar years of fuel purchases for each vehicle or piece of regulated equipment required to use modified fuel or fuel additives pursuant to rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or approved supplement or approved modification thereto, as applicable; (4) the original, approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, any exemption requests, and approvals or disapprovals of the requests, plans, supplements, or modifications, as applicable; and (5) any other documentation pertinent to fleet averaging plans that may be otherwise required under rules or regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The Department of Environmental Protection shall have the authority to inspect these records upon request. The Department of Environmental Protection may call upon the Superintendent of State Police and the State Police to assist with inspections pursuant to this subsection if necessary.

b. The owner of the fleet shall keep on each regulated vehicle or piece of regulated equipment, and on each vehicle or piece of equipment that is required to use best available retrofit technologies pursuant to an approved fleet averaging plan, or modification thereto, the current, updated compliance form issued pursuant to section 6, section 7, section 16 or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41 or C.26:2C-8.42), and a copy thereof with the records required pursuant to subsection a. of this section.

C.26:2C-8.40 Labeling of retrofit devices.

15. Each retrofit device that is installed in the State shall be labeled with a legible and durable label affixed to the device. The label shall provide a unique identification number to be matched to the specific retrofit device and

the specific vehicle required to use the retrofit device. No retrofit device may be sold or installed for use in the State unless it complies with the requirements of this section.

C.26:2C-8.41 Compliance forms for regulated equipment.

16. a. The Department of Environmental Protection shall develop and issue to each owner of regulated equipment compliance forms for the regulated equipment no later than 180 days after the submittal of a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), or 180 days after the date of the final approval of the fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable. The compliance form shall include a section for providing the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment.

b. As soon as practicable after the required best available retrofit technologies have been installed on the regulated equipment, the owner of regulated equipment shall complete the compliance form, retain a copy of the owner's records, and return it to the Department of Environmental Protection. Thereafter, a current copy of the completed compliance form shall be kept on each piece of regulated equipment at all times.

c. Each owner of regulated equipment seeking reimbursement for the cost of any retrofit device installed and any cost associated with the installation of the required best available retrofit technology for the regulated equipment shall submit a copy of the completed compliance form to the Department of Environmental Protection. The department shall review the submitted compliance form and forward it to the State Treasurer, who shall reimburse the owner the costs indicated on the completed compliance form.

C.26:2C-8.42 Issuance of one-page compliance forms.

17. a. No later than 180 days after the date on which the owner of regulated vehicles or regulated equipment submits a notice to comply pursuant to paragraph (2) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 7 of P.L.2005, c.219 (C.26:2C-8.32), the date on which the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan is in effect pursuant to section 10 of P.L.2005, c.219 (C.26:2C-8.35), or the date on which any supplement to the fleet retrofit plan or the combined fleet retrofit plan, or modification to the fleet averaging plan is in effect pursuant to section 11 of P.L.2005, c.219 (C.26:2C-8.36), the department shall issue to the owner of a regulated vehicle or piece of regulated equipment a one-page compliance form for each regulated vehicle or piece of regulated equipment required to use best

available retrofit technologies pursuant to the approved fleet retrofit plan or combined fleet retrofit plan, or the approved supplement thereto. In the case of an approved fleet averaging plan, the department shall also issue a one-page compliance form for each regulated vehicle, piece of regulated equipment, and other on-road diesel vehicle or piece of off-road diesel equipment that is required to use best available retrofit technologies pursuant to the approved fleet averaging plan, or the approved modification thereto.

b. The compliance form issued by the Department of Environmental Protection pursuant to subsection a. of this section shall be no longer than one page and shall have printed on the form: (1) the name and business address of the owner of the regulated vehicle or piece of regulated equipment; (2) the vehicle identification number for the regulated vehicle or the serial number for the piece of regulated equipment that is required to use best available retrofit technologies pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or the approved fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan; (3) a description of the best available retrofit technologies that may be used by the specific regulated vehicle or piece of regulated equipment and the requirement under the approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan; (4) a description of the best available retrofit technology required for the vehicle or piece of equipment pursuant to the rules and regulations, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as the case may be; (5) an identified space for the label number for a required retrofit device to be entered into the form; (6) an identified space for the owner responsible for the submittal of the notice to comply by rules and regulations or the submittal and update of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan to certify that any required retrofit devices have been installed, and the date of that compliance; (7) an identified space for the examiner of the regulated vehicle to certify that the vehicle identification number that appears on the form corresponds to the vehicle on which the required retrofit device has been installed, and that the label identification number on the required retrofit device corresponds to the label identification number entered on the form of the regulated on-road diesel vehicle or other on-road diesel vehicle on which the required retrofit device has been installed; and (8) an identified space for the owner to record the cost of the retrofit device and its installation.

c. The Department of Environmental Protection shall issue with the forms sent to the owner of the fleet a notice of instructions describing the purpose of, and the procedures for completion of the compliance form, and the requirement to keep the compliance form with the regulated vehicle, or

another vehicle included in a fleet averaging plan or modification thereto, for the life of the vehicle.

C.26:2C-8.43 Retaining form on vehicle, piece of equipment; record copies.

18. a. Upon receipt of the compliance form for a vehicle or piece of equipment required to use best available retrofit technology pursuant to department rules and regulations, an approved fleet plan, combined fleet plan, fleet averaging plan, or supplement or modification thereto, as applicable, the owner of the vehicle or piece of equipment shall retain the form on the vehicle or piece of equipment for which it was issued, and a copy of the current form in the business records of the owner, at all times.

b. As soon as practicable after the requirement to implement the use of best available retrofit technologies for a specific vehicle or piece of equipment as provided in department rules and regulations, the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, or supplement or modification thereto, as applicable, has been complied with, the owner shall complete the appropriate portion of the form provided pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42). The owner, shall: (1) indicate the choice of best available retrofit technology that has been used to fulfill the requirement; (2) enter into the identified space on the compliance form the label identification number for any retrofit device that has been installed on the regulated vehicle or regulated equipment; (3) certify that the requirement on the form has been met for the regulated vehicle or piece of regulated equipment whose vehicle identification number or serial number, as applicable is printed on the form; and (4) provide and certify the date that the installation was done or compliance began on the compliance form.

c. For any regulated vehicle that is not required to be inspected under the periodic inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et seq.), the owner shall have the regulated vehicle inspected by a diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) for the presence of the required retrofit device and compliance with the requirement described on the compliance form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42), as soon as practicable after the requirements of subsection b. of this section have been met for the regulated vehicle.

d. For any regulated vehicle that is subject to inspection under the periodic inspection program pursuant to P.L. 1995, c.157 (C.39:8-59 et seq.), the owner, after complying with the provisions of subsection b. of this section, shall have the regulated vehicle inspected for compliance with the

requirement printed on the form issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42) at the next annual periodic inspection scheduled for the vehicle, or as soon as practicable after complying with the provisions of subsection b. of this section. No provision of this subsection shall be construed as requiring the owner to have any vehicle subject to a periodic inspection to have that vehicle registered at any scheduled periodic inspection.

e. A diesel emissions inspection center licensed pursuant to P.L.1995, c.157 (C.39:8-59 et seq.) shall inspect any regulated vehicle presented to it for inspection for compliance with the requirement on the form issued for the regulated vehicle pursuant to section 6, section 7, section 16, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.41, or C.26:2C-8.42). The person performing the inspection shall verify the presence of the required retrofit device, the match of the label identification number on the form with the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number on the form to the label identification number on the retrofit device on the vehicle, and the correct vehicle identification number on the form. No provision of this subsection shall be construed to require the diesel emissions inspection center to verify the functioning or the correct installation of the retrofit device, or to test for the level of emissions reduction attributed to the use of the retrofit device.

f. If the owner of the regulated vehicle is a licensed diesel inspection center or is otherwise authorized to self-inspect the vehicles owned by the owner, the owner may perform the inspection and provide the certification required pursuant to subsections d. and e. of this section.

g. Only one inspection per vehicle is required pursuant to this section.

C.26:2C-8.44 MVC rules, regulations relative to one-time confirmation of compliance with plans.

19. a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), the New Jersey Motor Vehicle Commission shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary for the provision of a one-time confirmation of compliance with approved regulated fleet retrofit plans, combined fleet retrofit plans, or fleet averaging plans, or supplements or modifications thereto, as applicable. As necessary, the New Jersey Motor Vehicle Commission shall provide for the inspection of regulated vehicles, including, but not limited to, the inspection of regulated vehicles that were not required to be inspected on the date of enactment of P.L.2005, c.219 (C.26:2C-8.26 et al.), and the verification of compliance and completion of the compliance form by examiners, mechanics, technicians, or other knowl-

edgeable persons involved in the maintenance and repair of the regulated vehicles.

b. The commission shall include, in its inspection of a diesel commercial bus pursuant to P.L.1995, c.157 (C.39:8-59 et al.), an inspection of any regulated commercial bus required to install a retrofit device pursuant to a regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan, after the retrofit device has been installed, to determine that the installation of the required best available retrofit technology has occurred as required pursuant to the approved regulated fleet retrofit plan, combined regulated fleet retrofit plan, or fleet averaging plan for the diesel commercial bus being inspected, or shall provide for such an inspection at a separate time requested by the owner, operator, or lessee of the regulated fleet of which the diesel commercial bus is a part. This inspection is required to be performed only once and after the required retrofit device has been installed. The owner, operator, or lessee of the regulated fleet containing the diesel commercial buses shall notify the New Jersey Motor Vehicle Commission that the required installation has been done for the diesel commercial bus being inspected as required pursuant to this subsection.

c. The owner of a regulated vehicle subject to inspection pursuant to subsection a. or subsection b. of this section shall present to the person performing the inspection the form for the regulated vehicle issued pursuant to section 6, section 7, or section 17 of P.L.2005, c.219 (C.26:2C-8.31, C.26:2C-8.32, or C.26:2C-8.42). The person performing the inspection pursuant to subsection a. or subsection b. of this section shall check for the presence of the required retrofit device, the match of the label identification number in the form and or the device in the vehicle, and shall certify that the requirement has been met based on the presence of the required retrofit device and the match of the label identification number to the form for the vehicle with the vehicle identification number on the form.

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. No provision of this section shall be construed to require the New Jersey Motor Vehicle Commission to verify the functioning of the retrofit device, or its correct installation, or to test the function of the retrofit device for any level of emissions reduction attributed to the use of the retrofit device.

C.26:2C-8.45 Alternative approach for reimbursement of cost for retrofit devices.

20. a. The provisions of section 6, section 7, section 14, sections 16 through 19, inclusive, and sections 29 through 31, inclusive, of P.L.2005,

c.219 (C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.39, C.26:2C-8.41 through C.26:2C-8.44, and C.26:2C-8.54 through C.26:2C-8.56) affecting the reimbursement of owners of regulated vehicles or regulated equipment for the costs associated with the purchase and installation of retrofit devices, to the contrary notwithstanding, the Department of Environmental Protection may develop an alternative approach for reimbursement of these costs to the owners if the department determines that an alternative approach is feasible, cost-effective, and efficient. The alternative approach may include, but shall not be limited to, directly reimbursing the entity performing the actual installation of the retrofit device in lieu of reimbursing the owner of the regulated vehicle or regulated equipment. If the department determines that an alternative approach is feasible, cost-effective, and efficient and chooses to implement the alternative approach, the department shall establish and implement the alternative approach pursuant to rules and regulations adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). No such rule or regulation may modify any procedure performed by, or any responsibility or requirement imposed on, the New Jersey Motor Vehicle Commission, its employees, or any persons licensed or contracted by the New Jersey Motor Vehicle Commission, unless the rule or regulation is adopted jointly by the New Jersey Motor Vehicle Commission and the Department of Environmental Protection pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. No provision of subsection a. of this section or any other rule or regulation adopted pursuant thereto, shall be construed to supersede or modify, the provisions of section 3, section 4, subsection a. or subsections d. through f., inclusive, of section 6, subsections a. through c. or subsections e. through f., inclusive, of section 7, sections 8 through 13, inclusive, subsection d. or e. of section 19, section 21, section 26, section 27, section 28, subsection a. of section 29, or subsection b. of section 30 of P.L.2005, c.219 (C.26:2C-8.28, C.26:2C-8.29, C.26:2C-8.31, C.26:2C-8.32, C.26:2C-8.33 through C.26:2C-8.38, C.26:2C-8.44, C.26:2C-8.46, C.26:2C-8.51, C.26:2C-8.52, C.26:2C-8.53, C.26:2C-8.54, or C.26:2C-8.55).

c. No entity performing the actual installation of a retrofit device who is reimbursed for the costs associated with the purchase and installation of retrofit devices pursuant to rules and regulations adopted pursuant to subsection a. of this section may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.). No State agency, department, or political subdivision thereof may impose any charge on any owner of a regulated vehicle or piece of regulated equipment for any cost associated with the purchase and installation of retrofit devices required pursuant to P.L.2005,

c.219 (C.26:2C-8.26 et al.) if entities performing the actual installation of a retrofit device are reimbursed for the costs pursuant to rules and regulations adopted pursuant to subsection a. of this section.

C.26:2C-8.46 Joint rules, regulations relative to training.

21. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations providing for the training with respect to emissions testing and inspection required for persons who inspect or reinspect a vehicle pursuant to the periodic inspection program or the roadside inspection program established pursuant to P.L.1995, c.157 (C.39:8-59 et al.), or who repair any vehicle because of its failure of emissions testing under the periodic inspection program or roadside inspection program, including, but not limited to, the extent of the training, standards with respect to emissions testing and inspection for the training and certification of mechanics employed for the purposes of inspecting vehicles under the periodic inspection program or the roadside inspection program, or for the repair of vehicles that fail inspections under the periodic inspection program and the roadside enforcement program, and the training to meet these standards, including but not limited to, the length, convenience and affordability to the trainee, and the cost, if any of that training.

C.26:2C-8.47 Consultation when adopting rules, regulations.

22. Except as may otherwise be provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the New Jersey Motor Vehicle Commission shall consult with the Department of Environmental Protection and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

C.26:2C-8.48 Coordination of programs by DEP with MVC and DLPS.

23. Except as otherwise provided in rules and regulations jointly adopted pursuant to subsection e. of section 6, and section 21 of P.L.2005, c.219 (C.26:2C-8.31 and C.26:2C-8.46), the Department of Environmental Protection shall consult with the New Jersey Motor Vehicle Commission and the Department of Law and Public Safety when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement

program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

C.26:2C-8.49 Coordination of programs by DLPS with DEP and MVC.

24. The Department of Law and Public Safety shall consult with the Department of Environmental Protection and the New Jersey Motor Vehicle Commission when adopting rules and regulations pursuant to P.L.1995, c.157 (C.39:8-59 et al.) to ensure the proper coordination between the periodic inspection program and the roadside enforcement program and the implementation and enforcement of the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

C.26:2C-8.50 Ultra-low sulfur diesel fuel required on-road.

25. a. No on-road diesel vehicle may operate in the State using any fuel other than ultra-low sulfur diesel fuel, on or after October 15, 2006, or the date set by the United States Environmental Protection Agency as the retail compliance date for the sale of ultra-low sulfur diesel for use in on-road diesel vehicles pursuant to federal law and regulation.

b. No sooner than July 15, 2006, and following a public hearing held by the Department of Environmental Protection on the availability of ultra-low sulfur diesel fuel in the State, the department shall determine and issue a written notice of its determination as to whether sufficient supplies of ultra-low sulfur diesel fuel are available in the State to require only ultra-low sulfur diesel fuel to be sold in the State on and after January 15, 2007, without significant disruption of, or significant price increases in, the wholesale and retail fuel market. If the department determines that supplies would be sufficient, no diesel fuel other than ultra-low sulfur diesel fuel may be sold in the State on or after the 180th day after the date on which the department issues a written determination that supplies would be sufficient, or three months after the retail compliance date for the sale of ultra-low sulfur diesel fuel for use in on-road diesel vehicles implemented by the United States Environmental Protection Agency, whichever is later.

c. If the department determines that sufficient supplies are not available pursuant to subsection b. of this section, the requirement to sell only ultra-low sulfur diesel fuel in the State shall take effect only 180 days after the department issues a written determination that the supplies are sufficient.

d. The Department of Environmental Protection, in consultation with the Department of Law and Public Safety, the Department of Labor and Workforce Development, and the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section.

C.26:2C-8.51 Inapplicability relative to farm vehicles, equipment.

26. No provision of P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be construed to apply to any vehicle or equipment used on, or in the course of the operation of, a farm or to any vehicle or equipment used for any agricultural purposes.

C.26:2C-8.52 Violations, penalties.

27. a. Whenever the Commissioner of Environmental Protection finds that a person has violated a provision of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, the commissioner may:

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

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

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. The commissioner is authorized to assess a civil administrative penalty of not more than \$5,000 for each violation of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto. In adopting rules and regulations establishing the amount of any penalty to be assessed, the commissioner may take into account the type, seriousness, and duration of the violation and the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation, approval, or authorization violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 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 an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, 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. Any civil administrative penalty assessed under this section may be

compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

c. A person who violates any provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.), or any rule or regulation adopted pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to subsection b. of this section, shall be subject, upon order of a court, to a civil penalty for such violation of not more than \$5,000. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in connection with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.).

d. Any person who knowingly, recklessly, or negligently makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be in violation of P.L.2005, c.219 (C.26:2C-8.26 et al.) and shall be subject to the penalties assessed pursuant to subsections b. and c. of this section.

C.26:2C-8.53 "Diesel Risk Mitigation Fund"; money credited, use.

28. a. There is established in the Department of the Treasury a special, nonlapsing fund to be known as the "Diesel Risk Mitigation Fund." The fund shall be administered by the State Treasurer and shall be credited with:

- (1) constitutionally dedicated moneys;
- (2) such moneys as are appropriated by the Legislature; and
- (3) any return on investment of moneys deposited in the fund.

b. Moneys in the fund may be used by the Department of the Treasury solely for:

(1) reimbursements to owners of regulated vehicles or regulated equipment to reimburse the cost of required retrofit devices and the installation thereof;

(2) the administrative costs incurred by the Department of Environmental Protection to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$900,000 per year; and

(3) the administrative costs incurred by the New Jersey Motor Vehicle Commission to implement the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) up to \$250,000 per year.

c. No moneys in the fund may be made available for any costs associated with requirements imposed by P.L.2005, c.219 (C.26:2C-8.26 et al.), unless the State Treasurer certifies that the constitutionally dedicated moneys have been deposited in the fund in that year.

If the moneys provided for the administrative costs of the New Jersey Motor Vehicle Commission are not required by the commission in a given year because they exceed the amount of the administrative costs of the commission in that year, the State Treasurer shall provide those moneys unexpended for that purpose to the Department of Environmental Protection for administrative costs, provided that the administrative costs paid from the constitutionally dedicated moneys deposited in the fund do not exceed \$1,150,000.

d. Any owner of a regulated vehicle or piece of regulated equipment is eligible for reimbursement from the fund. Notwithstanding the provisions of the "Local Budget Law" (N.J.S.40A:4-1 et seq.) to the contrary, a county, municipality, or an authority as defined in section 3 of P.L.1983, c.313 (C.40A:5A-3) required to comply with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.) may anticipate in its annual budget or any amendments or supplements thereto those sums to be reimbursed from the fund for the costs of retrofit devices and their installation that are required to be used in or on any regulated vehicle or piece of regulated equipment in a given year in which the county, municipality, or authority incurs the cost. For the purposes of subsection l. of section 3 of P.L.1976, c.68 (C.40A:4-45.3) and subsection g. of section 4 of P.L.1976, c.68 (C.40A:4-45.4), the costs of retrofit devices and their installation shall be considered an amount to be received from State funds in reimbursement for local expenditures and therefore exempt from the limitation on local budgets imposed pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2).

C.26:2C-8.54 Allocation of moneys in fund, application for reimbursement.

29. a. Moneys in the fund shall be allocated and used to provide reimbursement to the owners of regulated vehicles or regulated equipment for 100% of the costs of the purchase and installation of the retrofit device pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.), other than fuel.

b. The owner or operator of a regulated vehicle or piece of regulated equipment seeking the reimbursement authorized in subsection a. of this section shall file an application on a form to be developed by the State Treasurer and the Department of Environmental Protection, with the department, with the documentation required by the department and the State Treasurer pursuant to section 30 of P.L.2005, c.219 (C.26:2C-8.55). Neither the State Treasurer nor the Department of Environmental Protection may charge an application fee.

c. Upon a determination that an application for reimbursement meets all established criteria for an award from the fund, the Department of Environmental Protection and the State Treasurer shall approve the application. Upon the department approval of an application for reimbursement from the fund, the State Treasurer shall award the reimbursement to an owner upon the availability of sufficient moneys in the fund. If moneys in the fund are not sufficient at any point to fund all applications for reimbursement that have been approved by the State Treasurer, the State Treasurer shall award reimbursement to approved owners based upon the date of approval of the application.

C.26:2C-8.55 Rules, regulations relative to filing requirements for reimbursement.

30. a. The State Treasurer shall adopt, in consultation with the Department of Environmental Protection, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations:

(1) establishing the filing requirements for a complete application for reimbursement from the fund; and

(2) to require an owner:

(a) to submit documentation or other information demonstrating that the retrofit device has been purchased and installed on a regulated vehicle, which shall include the vehicle identification number of the vehicle, or on regulated equipment the serial number;

(b) to submit documentation of the actual costs incurred for the purchase of the retrofit device required to be installed, the nature and scope of work performed to install the retrofit device, and the actual costs incurred to install the technology;

(c) to submit a certification that the owner has not engaged in any of the conduct described in subsection a. of section 31 of P.L.2005, c.219 (C.26:2C-8.56);

(d) to submit a certification that the retrofit device installed on a regulated vehicle or regulated equipment is in conformance with rules and regulations of the Department of Environmental Protection; and

(e) to provide access at reasonable times to the regulated vehicles or regulated equipment to determine compliance with the terms and conditions of the reimbursement award.

b. In establishing requirements for applications for reimbursement, the State Treasurer:

(1) may not impose conditions that interfere with the everyday normal operations of an owner's business activities, except to the extent necessary to ensure the owner has complied with the provisions of P.L.2005, c.219 (C.26:2C-8.26 et al.);

(2) shall strive to minimize the complexity and costs to owners of complying with such requirements; and

(3) shall expeditiously process all applications in accordance with a schedule established, in consultation with the Department of Environmental Protection, for the review and the taking of final action within 30 days after the receipt of the completed application.

C.26:2C-8.56 Denial of application for reimbursement.

31. a. The State Treasurer may deny an application for reimbursement from the fund, and any reimbursement from the fund may be recoverable by the State Treasurer, upon a finding that:

(1) the owner of a regulated vehicle or regulated equipment failed to commence or complete the purchase or installation of best available retrofit technology on the vehicle or equipment for which an application for reimbursement was filed in accordance with the applicable rules and regulations; or

(2) the owner of a regulated vehicle or regulated equipment provided false information or withheld information on an application that would render the owner ineligible for reimbursement from the fund, that resulted in the owner receiving a larger reimbursement than the owner would otherwise be eligible, or that resulted in payments from the fund in excess of the actual costs incurred by the owner or the amount to which the owner is legally eligible.

b. Nothing in this section shall be construed to require the State Treasurer, the Department of Environmental Protection, or any other State agency or department, to undertake an investigation or make any findings concerning the conduct described in subsection a. of this section.

32. Section 4 of P.L.1966, c.16 (C.26:2C-8.4) is amended to read as follows:

C.26:2C-8.4 Standards and requirements for control of air contaminants, motor vehicles without air pollution control devices.

4. Except as otherwise required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) or other laws, codes, rules, and regulations concerning motor vehicles registered in the State, the codes, rules and regulations shall establish standards and requirements for control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any air pollution control devices, systems, or engine modifications provided such vehicles were not manufactured with pollution control devices, systems or engine modifications in accordance with the "Motor Vehicle Air Pollution Control Act" (77 Stat. 392, 42 U.S.C. s.1857), the

federal "Clean Air Act," 42 U.S.C. s.7401 et seq., and any subsequent federal laws controlling air contaminants from motor vehicles.

33. Section 2 of P.L.1966, c.15 (C.39:3-70.2) is amended to read as follows:

C.39:3-70.2 Air pollution; penalty.

2. Any person who operates a motor vehicle or owns a motor vehicle, other than a school bus, which the person permits to idle in violation of rules and regulations, or to be operated upon the public highways of the State when the motor vehicle is emitting smoke and other air contaminants in excess of standards adopted by the Department of Environmental Protection pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) shall be liable to a penalty of not less than \$250 nor more than \$1,000 per day, per vehicle, which shall be enforced in accordance with the provisions of chapter 5 of Title 39 of the Revised Statutes and P.L.2005, c.219 (C.26:2C-8.26 et al.).

The owner of any school bus that is operated or is permitted to idle in violation of rules and regulations adopted pursuant to the Department of Environmental Protection pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) or any applicable rules and regulations adopted pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.) shall be liable for a penalty of not less than \$250 nor more than \$1,000 per day, per vehicle, which shall be enforced in accordance with the provisions of chapter 5 of Title 39 of the Revised Statutes, except that no penalty may be assessed against any driver of a school bus who is not the owner of the school bus.

The provisions of this section shall not apply to a motor vehicle idling in traffic, or a motor vehicle other than a school bus idling in a queue of motor vehicles, that are intermittently motionless and moving because the progress of the motor vehicles in the traffic or the queue has been stopped or slowed by the congestion of traffic on the roadway or other conditions over which the driver of the idling motor vehicle has no control.

34. Section 9 of P.L.1995, c.157 (C.39:8-67) is amended to read as follows:

C.39:8-67 Provision of State Police Officers.

9. The Superintendent of the State Police, in consultation with and subject to the approval of the Attorney General, shall provide State Police officers to assist the commission in conducting the roadside enforcement program and the pilot roadside enforcement program. The State Police officers shall have authority to direct diesel buses, heavy-duty diesel trucks, or other diesel-powered motor vehicles from the roadway for the purpose

of inspection, and shall perform other police duties necessary for or helpful to the implementation of the programs. The State Police officers shall maintain records of these inspections and shall forward the information concerning the number of inspections, and the type of violations and the number of each type of violation to the Department of Environmental Protection.

35. This act shall take effect immediately.

Approved September 7, 2005.

CHAPTER 220

AN ACT establishing a community service pilot program for high school students in the Department of Education.

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

1. The Legislature finds and declares that:
 - a. a person is not only an individual, but part of a broader community of family, friends, neighbors and fellow citizens;
 - b. an important goal of public education should be to teach young people about their role in society and to develop in them a sense of civic responsibility, especially toward those in the community who may demonstrate greater social need, such as the elderly, the sick, the poor, and the homeless;
 - c. a student can best learn about civic responsibility by participating in community organizations and activities which are aimed at addressing some of the social problems and concerns facing our society;
 - d. a number of school districts throughout the country currently require high school students to participate in a community service program; and
 - e. the establishment of a community service requirement for high school students in this State on a pilot basis would provide young people with an opportunity to actively participate in their communities and would help them to mature into responsible citizens and adults with strong social and civic values.

2. a. The Commissioner of Education shall establish a community service pilot program. Pursuant to the pilot program, beginning in the 2005-2006 school year and in each of the following two school years thereafter, a high school junior in a selected school shall complete a minimum of 15 hours of community service. The high school junior:

(1) may complete the community service requirement during the evenings, on weekends, or during the summer, but shall not complete the requirement during school hours;

(2) may complete the community service requirement with a non-profit agency or organization, a public agency or institution, a non-profit or for-profit health care facility, or any other community organization which the commissioner deems appropriate; and

(3) shall not receive compensation for community service or substitute employment for the service requirement.

b. The commissioner shall select 30 schools to participate in the pilot program based upon the commissioner's evaluation of the school's ability to successfully implement the program. In selecting the schools to participate, the commissioner shall include urban and suburban schools from the north, central and southern regions of the State with at least one school per county.

c. The commissioner shall authorize the board of education of a school district in which a selected school is located to exempt a student from all or part of the community service requirement if, in the judgment of the board, the requirement would result in undue hardship for the student. In addition, the commissioner may authorize the board of education to exempt a student who is classified pursuant to chapter 46 of Title 18A of the New Jersey Statutes from all or part of the service required pursuant to the pilot program if, in the judgment of the board, the performance of that service would be inconsistent with the Individual Education Plan of that student.

3. The commissioner shall periodically review the progress of the community service pilot program to ensure that the program is achieving the intended goals, and shall report to the Governor and the Legislature by December, 2008 on the effectiveness of the pilot program. The report shall include a recommendation on the advisability of the pilot program's continuation and expansion to all high schools within the State.

4. Nothing in this act shall be construed to exempt the agencies, organizations, and institutions which permit high school students to perform community service from complying with child labor laws pursuant to P.L.1940, c.153 (C.34:2-21.1 et seq.).

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

6. This act shall take effect immediately.

Approved September 9, 2005.

CHAPTER 221

AN ACT concerning traffic calming measures on certain streets and roads and amending P.L. 2004, c.107.

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

1. Section 2 of P.L.2004, c. 107 (C.39:4-8.10) is amended to read as follows:

C.39:4-8.10 Construction of speed humps, traffic calming measures by municipality.

2. a. Pursuant to the provisions of section 3 of this act, a municipality may construct a speed hump on totally self-contained two-lane residential streets and on totally self-contained one-way residential streets under municipal jurisdiction which have no direct connection with any street in any other municipality, have fewer than 3,000 vehicles per day, with a posted speed of 30 mph or less, and on one-way streets connecting to county roads. The board of directors of any corporation, or the board of trustees of any corporation or other institution of a public or semipublic nature not for pecuniary profit, having control over private roads, may construct or provide for the construction of a speed hump on any private road subject to the provisions of Title 39 of the Revised Statutes, pursuant to P.L.1945, c.284 (C.39:5A-1 et seq.).

b. Pursuant to the provisions of section 3 of P.L.2004, c.107 (C.39:4-8.11), a municipality may construct traffic calming measures where appropriate, which may include, but are not limited to, speed humps on streets under municipal jurisdiction which have no direct connection with any street in any other municipality, have fewer than 3,000 vehicles per day, with a posted speed of 30 mph or less, and on one-way streets connecting to county roads, when any road construction project or repair of a street set forth in this subsection is undertaken and located within 500 feet of that street is a school or any property used for school purposes.

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

Approved September 13, 2005.

CHAPTER 222

AN ACT concerning emergency health powers, supplementing Title 26 of the Revised Statutes and amending R.S.26:4-2, 26:8-62, 34:15-43 and 34:15-75.

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

C.26:13-1 Short title.

1. This act shall be known and may be cited as the "Emergency Health Powers Act."

C.26:13-2 Definitions relative to emergency health powers.

2. As used in this act:

"Biological agent" means any microorganism, virus, bacterium, rickettsiae, fungus, toxin, infectious substance or biological product that may be naturally occurring or engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, bacterium, rickettsiae, fungus, infectious substance or biological product, capable of causing death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism.

"Bioterrorism" means the intentional use or threat of use of any biological agent, to cause death, disease or other biological malfunction in a human, animal, plant or other living organism, or degrade the quality and safety of the food, air or water supply.

"Chemical weapon" means a toxic chemical and its precursors, except where intended for a lawful purpose as long as the type and quantity is consistent with such a purpose. Chemical weapon includes, but is not limited to: nerve agents, choking agents, blood agents and incapacitating agents.

"Commissioner" means the Commissioner of Health and Senior Services, or the commissioner's designee.

"Contagious disease" means an infectious disease that can be transmitted from person to person.

"Department" means the Department of Health and Senior Services.

"Health care facility" means any non-federal institution, building or agency, or portion thereof whether public or private for profit or nonprofit that is used, operated or designed to provide health services, medical or dental treatment or nursing, rehabilitative or preventive care to any person. Health care facility includes, but is not limited to: an ambulatory surgical facility, home health agency, hospice, hospital, infirmary, intermediate care facility, dialysis center, long-term care facility, medical assistance facility, mental health center, paid and volunteer emergency medical services, outpatient facility, public health center, rehabilitation facility, residential treatment facility, skilled nursing facility and adult day care center. Health care facility also includes, but is not limited to, the following related property when used for or in connection with the foregoing: a laboratory, research facility, pharmacy, laundry facility, health personnel training and lodging

facility, patient, guest and health personnel food service facility, and the portion of an office or office building used by persons engaged in health care professions or services.

"Health care provider" means any person or entity who provides health care services including, but not limited to: a health care facility, bioanalytical laboratory director, perfusionist, physician, physician assistant, pharmacist, dentist, nurse, paramedic, respiratory care practitioner, medical or laboratory technician, and ambulance and emergency medical workers.

"Infectious disease" means a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, virus or prion. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

"Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected, on the basis of signs, symptoms or laboratory analysis, with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

"Local health agency" means a county, regional, municipal or other governmental agency organized for the purpose of providing health services, administered by a full-time health officer and conducting a public health program pursuant to law.

"Local Information Network and Communications System Agency" or "LINCS agency" means the lead local public health agency in each county or identified city, as designated and determined by the commissioner pursuant to section 21 of this act, responsible for providing central planning, coordination and delivery of specialized services within the designated county or city, in partnership with the other local health agencies within that jurisdiction, in order to prepare for and respond to acts of bioterrorism and other forms of terrorism or other public health emergencies or threats, and to discharge the activities as specified under this act.

"Microorganism" includes, but is not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa.

"Nuclear or radiological device" means: any nuclear device which is an explosive device designed to cause a nuclear yield; an explosive radiological dispersal device used directly or indirectly to spread radioactive material; or a simple radiological dispersal device which is any act, container or any other device used to release radiological material for use as a weapon.

"Overlap agent or toxin" means: any microorganism or toxin that poses a risk to both human and animal health and includes:

Anthrax - *Bacillus anthracis*

Botulism - *Clostridium botulinum* toxin, *Botulinum* neurotoxins, *Botulinum* neurotoxin producing species of *Clostridium*

Plague - *Yersinia pestis*
Tularemia - *Francisella tularensis*
Viral Hemorrhagic Fevers - Ebola, Marburg, Lassa, Machupo
Brucellosis- *Brucella* species
Glanders - *Burkholderia mallei*
Meliodosis - *Burkholderia pseudomallei*
Psittacosis - *Chlamydia psittaci*
Coccidioidomycosis - *Coccidioides immitis*
Q Fever - *Coxiella burnetii*
Typhus Fever - *Rickettsia prowazekii*
Viral Encephalitis - VEE (Venezuelan equine encephalitis virus), EEE (Eastern equine encephalitis), WEE (Western equine encephalitis)
Toxins - *Ricinus communis*, *Clostridium perfringens*, *Staph. Aureus*, Staphylococcal enterotoxins, T-2 toxin, Shigatoxin
Nipah - Nipah virus
Hantavirus - Hantavirus
West Nile Fever - West Nile virus
Hendra - Hendra virus
Rift Valley Fever - Rift Valley Fever virus
Highly Pathogenic Avian Influenza

"Public health emergency" means an occurrence or imminent threat of an occurrence that:

- a. is caused or is reasonably believed to be caused by any of the following: (1) bioterrorism or an accidental release of one or more biological agents; (2) the appearance of a novel or previously controlled or eradicated biological agent; (3) a natural disaster; (4) a chemical attack or accidental release of toxic chemicals; or (5) a nuclear attack or nuclear accident; and
- b. poses a high probability of any of the following harms: (1) a large number of deaths, illness or injury in the affected population; (2) a large number of serious or long-term impairments in the affected population; or (3) exposure to a biological agent or chemical that poses a significant risk of substantial future harm to a large number of people in the affected population.

"Quarantine" means the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.

"Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

- a. any poisonous substance or biological product that may be engineered as a result of biotechnology or produced by a living organism; or
- b. any poisonous isomer or biological product, homolog, or derivative of such a substance.

C.26:13-3 Declaration of public health emergency.

3. a. The Governor, in consultation with the commissioner and the Director of the State Office of Emergency Management, may declare a public health emergency. In declaring a public health emergency, the Governor shall issue an order that specifies:

- (1) the nature of the public health emergency;
- (2) the geographic area subject to the declaration;
- (3) the conditions that have brought about the public health emergency to the extent known; and
- (4) the expected duration of the state of public health emergency, if less than 30 days. Such order may also prescribe necessary actions or counter-measures to protect the public's health.

b. Any public health emergency declared pursuant to this act shall be terminated automatically after 30 days unless renewed by the Governor under the same standards and procedures set forth in subsection a. of this section.

c. The commissioner shall coordinate all matters pertaining to the public health response to a public health emergency, and shall have primary jurisdiction, responsibility and authority for:

- (1) planning and executing public health emergency assessment, prevention, preparedness, response and recovery for the State;
- (2) coordinating public health emergency response between State and local authorities;
- (3) collaborating with relevant federal government authorities, elected officials and relevant agencies of other states, private organizations or companies;
- (4) coordinating recovery operations and prevention initiatives subsequent to public health emergencies; and
- (5) organizing public information activities regarding public health emergency response operations.

All such activities shall be taken in coordination with the State Office of Emergency Management and shall be executed in accordance with the State Emergency Operations Plan. The State Office of Emergency Management shall provide the commissioner with all required assistance.

d. In instances involving an overlap agent or toxin that causes or has the potential to cause a public health emergency, if the Commissioner of Health and Senior Services suspects or detects conditions that could poten-

tially affect animals, plants or crops under the jurisdiction of the Department of Agriculture pursuant to the provisions of Title 4 of the Revised Statutes, he shall immediately notify the Secretary of Agriculture. If the Secretary of Agriculture suspects or detects conditions that could potentially affect humans, he shall immediately notify the commissioner. Information shared by each department shall be held confidential by the departments and their employees and their designees, and shall not be released without the approval of the department that was the source of the information.

e. To the fullest extent practicable, the commissioner shall also promptly notify the elected municipal officials and applicable health care facilities of the jurisdiction affected by the public health emergency of the nature and extent of the emergency.

f. All orders of the commissioner shall remain in effect during the period of the public health emergency until superseded by order of the Governor pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.). Upon the issuance of an order by the Governor pursuant to P.L.1942, c.251, the commissioner shall coordinate the public health emergency in accordance with the State Emergency Operations Plan. Upon declaration of a disaster pursuant to P.L.1942, c.251, the Governor may exercise the powers granted to the commissioner pursuant to this act.

C.26:13-4 Investigation of incident, imminent threat; reporting requirements.

4. a. In order to detect the occurrence or imminent threat of an occurrence of a public health emergency as defined in this act, the commissioner may take reasonable steps to investigate any incident or imminent threat of any human disease or health condition. Such investigation may include, and the commissioner may issue and enforce orders requiring, information from any health care provider or other person affected by, or having information related to, the incident or threat, inspections of buildings and conveyances and their contents, laboratory analysis of samples collected during the course of such inspection, and where the commissioner has reasonable grounds to believe a public health emergency exists, requiring a physical examination or the provision of specimens of body secretions, excretions, fluids and discharge for laboratory examination of any person suspected of having a disease or health condition that necessitates an investigation under this subsection, except where such action would be reasonably likely to lead to serious harm to the affected person.

In instances involving an overlap agent or toxin, the Department of Agriculture shall be the lead agency with respect to surveillance, testing, sampling, detection and investigation related to animals, plants or crops under the jurisdiction of the Department of Agriculture pursuant to the

provisions of Title 4 of the Revised Statutes, and shall coordinate its activities with all appropriate local, State and federal agencies.

b. A health care provider or medical examiner shall report to the department and to the local health official all cases of persons who harbor or are suspected of harboring any illness or health condition that may be reasonably believed to be potential causes of a public health emergency. Reportable illnesses and health conditions include, but are not limited to, any illnesses or health conditions identified by the commissioner.

c. In addition to the foregoing requirements for health care providers, a pharmacist shall, at the direction of the commissioner, report:

(1) an unusual increase in the number or type of prescriptions to treat conditions that the commissioner identifies by regulation;

(2) an unusual increase in the number of prescriptions for antibiotics; and

(3) any prescription identified by the commissioner that treats a disease that is relatively uncommon or may be associated with terrorism.

d. The reports shall be made to such State and local officials in accordance with the method and time frame as specified by the commissioner. The reports shall include the specific illness or health condition that is the subject of the report and a case number assigned to the report that is linked to the patient file in possession of the health care provider or medical examiner, along with the name and address of the health care provider or medical examiner. Based on any such report, where the commissioner has reasonable grounds to believe that a public health emergency exists, the health care provider or medical examiner shall provide a supplemental report including the following information: the patient's name, date of birth, sex, race, occupation, current home and work addresses, including city and county, and relevant telephone contact numbers; the name and address of the health care provider or medical examiner and of the reporting individual, if different; designated emergency contact; and any other information needed to locate the patient for follow-up.

e. The provisions of this section shall not be deemed or construed to limit, alter or impair in any way the authority of the Department of Environmental Protection pursuant to "The Radiation Accident Response Act," P.L.1981, c.302 (C. 26:2D-37 et seq.), or of the State Office of Emergency Management in the Division of State Police, Department of Law and Public Safety. Any powers of inspection of buildings and conveyances for sources of radiation that are granted to the commissioner shall only be exercised upon the concurrence of the Commissioner of Environmental Protection.

f. The provisions of this section shall not be deemed or construed to limit, alter or impair in any way the authority of the Department of Agricul-

ture pursuant to its jurisdiction under the laws and policies governing that department.

C.26:13-5 Duties of commissioner relative to public health emergency.

5. Where the commissioner has reasonable grounds to believe a public health emergency exists, the commissioner shall: ascertain the existence of cases of an illness or health condition that may be potential causes of a public health emergency; investigate all such cases for sources of infection and ensure that they are subject to proper control measures; and define the distribution of the illness or health condition. To fulfill these duties, the commissioner shall identify exposed individuals as follows:

a. The commissioner shall identify individuals thought to have been exposed to an illness or health condition that may be a potential cause of a public health emergency.

b. The commissioner shall counsel and interview such individuals where needed to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. The information shall include the name and address, including city and county, of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.

C.26:13-6 Emergency Health Care Provider Registry.

6. The commissioner may establish a registry of health care workers, public health workers and support services personnel who voluntarily consent to provide health care, public health services and support logistics during a public health emergency. This registry shall be known as the Emergency Health Care Provider Registry.

The commissioner may require training related to the provision of health care, public health services and support services in an emergency or crisis as a condition of registration.

a. The commissioner may issue identification cards to health care workers, public health workers and support services personnel included in the registry established under this section that:

(1) Identify the health care worker, public health worker or support services personnel;

(2) Indicate that the individual is registered as a New Jersey emergency health care worker, public health worker or support services personnel;

(3) Identify the professional license or certification held by the individual; and

(4) Identify the individual's usual area of practice if that information is available and the commissioner determines that it is appropriate to provide that information.

b. The commissioner shall establish a form for identification cards issued under this section.

c. The commissioner may identify all or part of a health care facility or other location as an emergency health care center. Upon the declaration of a public health emergency, an emergency health care center may be used for:

(1) Evaluation and referral of individuals affected by the emergency or crisis;

(2) Provision of health care services, including vaccination, mass prophylaxis, isolation and quarantine; and

(3) Preparation of patients for transportation.

The commissioner may direct designated LINCS agencies, or their successors, and local public health authorities to identify emergency health care centers under this subsection.

d. In the event the Governor declares a public health emergency, the commissioner may direct health care workers, public health workers and support services personnel registered under this section who are willing to provide health care services on a voluntary basis to proceed to any place in this State where health care services or public health services are required by reason of the public health emergency.

e. An emergency health care worker, public health worker and support services personnel registered under this section may volunteer to perform health care or public health services at any emergency health care center.

f. In the event the Governor declares a public health emergency, the commissioner may waive health care facility medical staff privileging requirements for individuals registered as emergency health care workers, and hospitals shall permit registered emergency health care workers to exercise privileges at the hospital for the duration of the public health emergency.

g. An emergency health care worker, public health worker and support services personnel registered under this section who provides health care services on a voluntary basis shall not be liable for any civil damages as a result of the person's acts or omissions in providing medical care or treatment related to the public health emergency in good faith and in accordance with the provisions of this act.

C.26:13-7 Actions during state of public health emergency, coordination.

7. During a state of public health emergency or in response to a public health emergency:

a. The commissioner, State Medical Examiner and Commissioner of Environmental Protection shall coordinate and consult with each other on the performance of their respective functions regarding the safe disposition

of human remains, to devise and implement measures which may include, but are not limited to, the following:

(1) To take actions or issue and enforce orders to provide for the safe disposition of human remains as may be reasonable and necessary to respond to the public health emergency. Such measures may include, but are not limited to, the temporary mass burial or other interment, cremation, disinterment, transportation and disposition of human remains. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or his family shall be considered when determining disposition of any human remains;

(2) To determine whether there is a need to investigate any human deaths related to the public health emergency, and take such steps as may be appropriate to enable the State Medical Examiner, or his designee, to take possession or control of any human remains and perform an autopsy of the body under protocols of the State Medical Examiner consistent with safety as the public health emergency may dictate;

(3) To direct or issue and enforce orders requiring any business or facility, including but not limited to, a mortuary or funeral director, authorized to hold, embalm, bury, cremate, inter, disinter, transport and dispose of human remains under the laws of this State to accept any human remains or provide the use of its business or facility if such actions are reasonable and necessary to respond to the public health emergency and are within the safety precaution capabilities of the business or facility; and

(4) To direct or issue and enforce orders requiring that every human remains prior to disposition be clearly labeled with all available information to identify the decedent, which shall include the requirement that any human remains of a deceased person with a contagious disease shall have an external, clearly visible tag indicating that the human remains are infected and, if known, the contagious disease.

b. The person in charge of disposition of any human remains shall maintain a written or electronic record of each human remains and all available information to identify the decedent and the circumstances of death and disposition. If human remains cannot be identified prior to disposition, a person authorized by the State Medical Examiner shall, to the extent possible, take fingerprints and photographs of the human remains, obtain identifying dental information, and collect a DNA specimen, under protocols of the State Medical Examiner consistent with safety as the public health emergency may dictate. All information gathered under this subsection shall be promptly forwarded to the State Medical Examiner who shall forward relevant information to the commissioner.

c. The commissioner and State Medical Examiner shall coordinate with the appropriate law enforcement agencies in any case where human remains may constitute evidence in a criminal investigation.

C.26:13-8 Powers of commissioner relative to facilities, property; hearing.

8. During a state of public health emergency, the commissioner may exercise the following powers over facilities or property:

a. Facilities. To close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health.

(1) Concurrent with or within 24 hours of decontamination or closure of a facility, the commissioner shall provide the facility with a written order notifying the facility of:

(a) the premises designated for decontamination or closure;

(b) the date and time at which the decontamination or closure will commence;

(c) a statement of the terms and conditions of the decontamination or closure;

(d) a statement of the basis upon which the decontamination or closure is justified; and

(e) the availability of a hearing to contest a closure order of a health care facility, as provided in paragraph (2) of this subsection.

(2) A health care facility subject to a closure order pursuant to this section may request a hearing in the Superior Court to contest the order.

Upon receiving a request for a hearing, the court shall fix a date for a hearing. The hearing shall be held within 72 hours of receipt of the request by the court, excluding Saturdays, Sundays and legal holidays. The court may proceed in a summary manner. At the hearing, the burden of proof shall be on the commissioner to prove by a preponderance of the evidence that the health care facility poses a threat to the public health and the closure order issued by the commissioner is warranted to address the threat.

(3) If, upon a hearing, the court finds that the closure of the health care facility is not warranted, the facility shall be released immediately from the closure order and reopened.

(4) The manner in which the request for a hearing pursuant to this subsection is filed and acted upon shall be in accordance with the Rules of Court.

b. Property. To decontaminate or cause to be decontaminated, or destroy, subject to the payment of reasonable costs as provided for in sections 24 and 25 of this act, any material of which there is reasonable cause to believe that it may endanger the public health.

c. In instances involving an overlap agent or toxin that causes a public health emergency, the department and the Department of Agriculture shall be responsible for their roles under their respective jurisdictions.

C.26:13-9 Powers of commissioner relative to health care, other facilities, property, roads, public areas.

9. During a state of public health emergency, the commissioner may exercise, for such period as the state of public health emergency exists, the following powers concerning health care and other facilities, property, roads, or public areas:

a. Use of property and facilities. To procure, by condemnation or otherwise, subject to the payment of reasonable costs as provided for in sections 24 and 25 of this act, construct, lease, transport, store, maintain, renovate or distribute property and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such property and facilities include, but are not limited to, communication devices, carriers, real estate, food and clothing. This authority shall also include the ability to accept and manage those goods and services donated for the purpose of responding to a public health emergency. The authority provided to the commissioner pursuant to this section shall not affect the existing authority or emergency response of other State agencies.

b. Use of health care facilities.

(1) To require, subject to the payment of reasonable costs as provided for in sections 24 and 25 of this act, a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency, as a condition of licensure, authorization or the ability to continue doing business in the State as a health care facility. After consultation with the management of the health care facility, the commissioner may determine that the use of the facility may include transferring the management and supervision of the facility to the commissioner for a limited or unlimited period of time, but shall not exceed the duration of the public health emergency. In the event of such a transfer, the commissioner shall use the existing management of the health care facility.

(2) Concurrent with or within 24 hours of the transfer of the management and supervision of a health care facility, the commissioner shall provide the facility with a written order notifying the facility of:

- (a) the premises designated for transfer;
- (b) the date and time at which the transfer will commence;
- (c) a statement of the terms and condition of the transfer;
- (d) a statement of the basis upon which the transfer is justified; and

(e) the availability of a hearing to contest the order, as provided in paragraph (3) of this subsection.

(3) A health care facility subject to an order to transfer management and supervision to the commissioner pursuant to this section may request a hearing in the Superior Court to contest the order.

(a) Upon receiving a request for a hearing, the court shall fix a date for a hearing. The hearing shall be held within 72 hours of receipt of the request by the court, excluding Saturdays, Sundays and legal holidays. The court may proceed in a summary manner. At the hearing, the burden of proof shall be on the commissioner to prove by a preponderance of the evidence that transfer of the management and supervision of the health care facility is reasonable and necessary to respond to the public health emergency and the order issued by the commissioner is warranted to address the need.

(b) If, upon a hearing, the court finds that the transfer of the management and supervision of the health care facility is not warranted, the facility shall be released immediately from the transfer order.

(c) The manner in which the request for a hearing pursuant to this subsection is filed and acted upon shall be in accordance with the Rules of Court.

(4) A health care facility which provides services or the use of its facility or whose management or supervision is transferred to the commissioner pursuant to this subsection shall not be liable for any civil damages as a result of the commissioner's acts or omissions in providing medical care or treatment or any other services related to the public health emergency.

(5) For the duration of a state of public health emergency, the commissioner shall confer with the Commissioner of Banking and Insurance to request that the Department of Banking and Insurance waive regulations requiring compliance by a health care provider or health care facility with a managed care plan's administrative protocols, including but not limited to, prior authorization and pre-certification.

c. Control of property. To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation or other means, the use, sale, dispensing, distribution or transportation of food, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency.

d. To identify areas that are or may be dangerous to the public health and to recommend to the Governor and the Attorney General that movement of persons within that area be restricted, if such action is reasonable and necessary to respond to the public health emergency.

C.26:13-10 Powers of commissioner relative to safe disposal of infectious waste.

10. Notwithstanding the provisions of P.L.1989, c.34 (C.13:1E-48.1 et seq.) to the contrary, during a state of public health emergency the commis-

sioner may exercise in consultation with, and upon the concurrence of, the Commissioner of Environmental Protection, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of infectious waste including, but not limited to, regulated medical waste as defined under P.L.1989, c.34.

a. To issue and enforce orders to provide for the safe disposal of infectious waste as may be reasonable and necessary to respond to the public health emergency. Such orders may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste, including specific wastes generated in a home setting or in isolation or quarantine facilities.

b. To require any business or facility authorized to collect, store, handle, destroy, treat, transport and dispose of infectious waste under the laws of this State, and any landfill business or other such property, to accept infectious waste, or provide services or the use of the business, facility or property if such action is reasonable and necessary to respond to the public health emergency, as a condition of licensure, authorization or the ability to continue doing business in the State as such a business or facility. The use of the business, facility or property may include transferring the management and supervision of such business, facility or property to the department for a limited or unlimited period of time, but shall not exceed the duration of the public health emergency.

c. To procure, by condemnation or otherwise, subject to the payment of reasonable costs as provided for in sections 24 and 25 of this act, any business or facility authorized to collect, store, handle, destroy, treat, transport and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.

d. To require that all bags, boxes or other containers for infectious waste shall be clearly identified as containing infectious waste, and if known, the type of infectious waste.

C.26:13-11 Powers of commissioner relative to medications, medical supplies; rationing.

11. a. During a state of public health emergency, the commissioner may purchase, obtain, store, distribute or take for priority redistribution any anti-toxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.

b. If a state of public health emergency results in a Statewide or regional shortage or threatened shortage of any product under subsection a. of this

section, the commissioner may issue and enforce orders to control, restrict and regulate by rationing and using quotas, prohibitions on shipments, allocation or other means, the use, sale, dispensing, distribution or transportation of the relevant product necessary to protect the public health, safety and welfare of the people of the State.

c. In making rationing or other supply and distribution decisions, the commissioner may give preference to health care providers, disaster response personnel, mortuary staff and such other persons as the commissioner deems appropriate in order to respond to the public health emergency.

C.26:13-12 Measures to prevent transmission, exposure.

12. With respect to a declared state of public health emergency, the commissioner may take all reasonable and necessary measures to prevent the transmission of infectious disease or exposure to toxins or chemicals and apply proper controls and treatment for infectious disease or exposure to toxins or chemicals.

C.26:13-13 Orders to submit specimen for diagnostic purposes.

13. a. During a state of public health emergency, the commissioner may issue and enforce orders to any person to submit a specimen for physical examinations or tests as may be necessary for the diagnosis or treatment of individuals to prevent the spread of a contagious or possibly contagious disease, except where such actions are reasonably likely to lead to serious harm to the affected person, and to conduct an investigation as authorized under section 5 of this act.

b. Any person subject to an order to submit a specimen or for physical examination may request a hearing in the Superior Court to contest such order. The commissioner shall provide notice of the right to contest the order. The court may proceed in a summary manner. At the hearing, the burden of proof shall be on the commissioner to prove by a preponderance of the evidence that the person poses a threat to the public health and that the order issued by the commissioner is warranted to address such threat.

c. The commissioner may issue and enforce orders for the isolation or quarantine, pursuant to section 15 of this act, of any person whose refusal of medical examination or testing, or the inability to conduct such medical examination or testing due to the reasonable likelihood of serious harm caused to the person thereby, results in uncertainty regarding whether the person has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

C.26:13-14 Powers of commissioner during public health emergency.

14. During a state of public health emergency, the commissioner may exercise the following powers as necessary to address the public health:

a. Require the vaccination of persons as protection against infectious disease and to prevent the spread of a contagious or possibly contagious disease, except as provided in paragraph (3) of this subsection.

(1) Vaccination may be performed by any person authorized to do so under State law.

(2) No vaccine shall be administered without obtaining the informed consent of the person to be vaccinated.

(3) To prevent the spread of a contagious or possibly contagious disease, the commissioner may issue and enforce orders for the isolation or quarantine, pursuant to section 15 of this act, of persons who are unable or unwilling to undergo vaccination pursuant to this section.

b. Require and specify in consultation with and upon the concurrence of the Department of Environmental Protection and the State Office of Emergency Management, the procedures for the decontamination of persons, personal property, property and facilities exposed to or contaminated with biological agents, chemical weapons or release of nuclear or radiological devices.

c. Require, direct, provide, specify or arrange for the treatment of persons exposed to or infected with disease.

(1) Treatment may be administered by any person authorized to do so under State law.

(2) To prevent the spread of a contagious or possibly contagious disease, the commissioner may issue and enforce orders for the isolation or quarantine, pursuant to section 15 of this act, of persons who are unable or unwilling for reasons of health, religion or conscience to undergo treatment pursuant to this section.

C.26:13-15 Isolation, quarantine procedures.

15. The following isolation and quarantine procedures shall be in effect during a state of public health emergency:

a. The commissioner may exercise, for such period as the state of public health emergency exists, the following emergency powers over persons:

(1) to designate, including an individual's home when appropriate, and establish and maintain suitable places of isolation and quarantine;

(2) to issue and enforce orders for the isolation or quarantine of individuals subject to the procedures specified in this section; and

(3) to require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals, as well as

among the personnel maintaining and caring for individuals in isolation or quarantine.

b. The following standards shall apply for quarantine or isolation.

(1) Persons shall be isolated or quarantined if it is determined by a preponderance of the evidence that the person to be isolated or quarantined poses a risk of transmitting an infectious disease to others. A person's refusal to accept medical examination, vaccination, or treatment pursuant to section 13 or 14 of this act shall constitute prima facie evidence that the person should be quarantined or isolated.

(2) Isolation or quarantine of any person shall be terminated by the commissioner when the person no longer poses a risk of transmitting an infectious disease to others.

c. (1) To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in a safe and hygienic manner, designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication, means of communication, other necessities and competent medical care shall be provided.

(2) An isolated person shall be confined separately from a quarantined person, unless otherwise determined by the commissioner.

(3) The health status of isolated and quarantined persons shall be monitored regularly to determine if their status should change. If a quarantined person subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the person shall promptly be moved to isolation.

d. (1) A person subject to isolation or quarantine shall obey the commissioner's orders, shall not go beyond the isolation or quarantine premises, and shall not put himself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, or person authorized to enter the isolation or quarantine premises by the commissioner.

(2) No person, other than a person authorized by the commissioner, may enter the isolation or quarantine premises. Any person entering an isolation or quarantine premises may be isolated or quarantined.

e. (1) Except as provided in paragraph (4) of this subsection, the commissioner shall petition the Superior Court for an order authorizing the isolation or quarantine of a person or groups of persons.

(2) A petition pursuant to paragraph (1) of this subsection shall specify the following:

(a) the identity of the person or group of persons, by name or shared characteristics, subject to isolation or quarantine;

(b) the premises designated for isolation or quarantine;

(c) the date and time at which the commissioner requests isolation or quarantine to commence;

(d) the suspected contagious disease, if known;

(e) a statement of the terms and conditions of isolation and quarantine;

(f) a statement of the basis upon which isolation or quarantine is justified; and

(g) a statement of what effort, if any, has been made to give notice of the hearing to the person or group of persons to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

(3) Except as provided in paragraph (4) of this subsection, before isolating or quarantining a person, the commissioner shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. The order shall be requested as part of a petition filed in compliance with paragraphs (1) and (2) of this subsection. The court shall grant an order upon finding by a preponderance of the evidence that isolation or quarantine is warranted pursuant to the provisions of this section. A copy of the authorizing order shall be provided to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing pursuant to paragraph (5) of this subsection.

(4) Notwithstanding the provisions of paragraphs (1) through (3) of this subsection to the contrary, the commissioner may issue a verbal order, to be followed by a written order requiring the immediate, temporary isolation or quarantine of a person or group of persons, including those persons who have entered an isolation or quarantine premises, without first obtaining an order from the court if the commissioner determines that any delay in the isolation or quarantine of the person would significantly jeopardize the ability to prevent or limit the transmission of infectious or possibly infectious disease to others. The commissioner's written order shall specify:

(a) the identity of the person or group of persons, by name or shared characteristics, subject to isolation or quarantine;

(b) the premises designated for isolation or quarantine;

(c) the date and time at which the isolation or quarantine commences;

(d) the suspected contagious disease, if known;

(e) a statement of the terms and conditions of isolation and quarantine;

(f) a statement of the basis upon which isolation or quarantine is justified; and

(g) the availability of a hearing to contest the order.

The commissioner shall provide notice of the order for isolation or quarantine upon the person or group of persons specified in the order. If the commissioner determines that service of the notice required is impractical because of the number of persons or geographical areas affected, or other good cause, the commissioner shall ensure that the affected persons are fully

informed of the order using the best possible means available. A copy of the order shall also be posted in a conspicuous place in the isolation or quarantine premises.

Following the issuance of the commissioner's order directing isolation or quarantine, the commissioner shall file a petition pursuant to paragraphs (1) through (3) of this subsection as soon as possible, but not later than 72 hours thereafter.

(5) The court shall grant a hearing within 72 hours of the filing of a petition when a person has been isolated or quarantined pursuant to paragraph (3) or (4) of this subsection. In any proceedings brought for relief under this subsection, the court may extend the time for a hearing upon a showing by the commissioner that extraordinary circumstances exist that justify the extension.

(6) The court may order consolidation of individual claims into a group of claims where:

(a) the number of persons involved or to be affected is so large as to render individual participation impractical;

(b) there are questions of law or fact common to the individual claims or rights to be determined;

(c) the group claims or rights to be determined are typical of the affected individuals' claims or rights; and

(d) the entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

f. (1) Following a hearing as provided for in paragraph (5) of subsection e. of this section, on or after a period of time of no less than 10 days but not more than 21 days, as determined by the commissioner based on the generally recognized incubation period of the infectious disease warranting the isolation or quarantine, a person isolated or quarantined pursuant to the provisions of this section may request a court hearing to contest his continued isolation or quarantine. The court may proceed in a summary manner.

The hearing shall be held within 72 hours of receipt of the request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not act to stay the order of isolation or quarantine. At the hearing, the commissioner must show by a preponderance of the evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

(2) A person isolated or quarantined pursuant to the provisions of this section may request at any time a hearing in the Superior Court for injunctive relief regarding his treatment and the terms and conditions of the quarantine or isolation. Upon receiving a request for either type of hearing described in this paragraph, the court shall fix a date for a hearing. The court may proceed in a summary manner. The hearing shall be held no later than 10 days after

the receipt of the request by the court. A request for a hearing shall not act to stay the order of isolation or quarantine.

(3) If, upon a hearing, the court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the court finds that the isolation or quarantine of the person is not in compliance with the provisions of subsection c. of this section, the court may fashion remedies appropriate to the circumstances of the state of public health emergency and in keeping with the provisions of this section.

g. (1) The petitioner shall have the right to be represented by counsel.

(2) The manner in which the request for a hearing under this section is filed and acted upon shall be in accordance with the Rules of Court.

C.26:13-16 Reinstatement of employment after isolation, quarantine.

16. a. Any person who has been placed in isolation or quarantine pursuant to an order of the commissioner and who at the time of quarantine or isolation was in the employ of any public or private employer, other than a temporary position, shall be reinstated to such employment or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so, if the person:

(1) receives a certificate of completion of isolation or quarantine issued by the department or the authorized local health department;

(2) is still qualified to perform the duties of such position; and

(3) makes application for reemployment within 90 days after being released from isolation or quarantine.

b. If a public or private employer fails or refuses to comply with the provisions of this section, the Superior Court may, upon the filing of a complaint by the person entitled to the benefits of this section, specifically require the employer to comply with the provisions of this section, and may, as an incident thereto, order the employer to compensate the person for any loss of wages or benefits suffered by reason of the employer's unlawful action. A person claiming to be entitled to the benefits of this section may appear and be represented by counsel, or, upon application to the Attorney General, request that the Attorney General appear and act on his behalf. If the Attorney General is reasonably satisfied that the person so applying is entitled to the benefits, he shall appear and act as attorney for the person in the amicable adjustment of the claim, or in the filing of any complaint and the prosecution thereof. No fees or court costs shall be assessed against a person so applying for the benefits under this section. Attorney fees shall be awarded to the Attorney General or to the counsel for a person entitled to benefits under this section, who prevails in the proceeding.

c. The Attorney General may apply to the Superior Court and the court may grant additional relief to persons placed in isolation or quarantine under section 15 of this act, which relief may include, but is not limited to, relief similar to that accorded to military personnel under P.L.1979, c.317 (C.38:23C-1 et seq.).

C.26:13-17 Access to medical information.

17. With respect to a state of public health emergency:

a. Access to medical information of individuals who have participated in medical testing, treatment, vaccination, isolation or quarantine programs or efforts by the commissioner pursuant to this act shall be limited to those persons having a legitimate need to acquire or use the information to:

(1) provide treatment to the individual who is the subject of the health information;

(2) conduct epidemiologic research;

(3) investigate the causes of the transmission;

(4) assist law enforcement agencies in the identification and location of victims of the public health emergency; or

(5) provide payment by a responsible party for treatment or services rendered.

b. Medical information held by the commissioner shall not be disclosed to others without individual written, specific informed consent, except for disclosures made:

(1) directly to the individual;

(2) to the individual's immediate family members or personal representative;

(3) to appropriate federal agencies or authorities pursuant to federal law;

(4) to local health departments assisting in the epidemiological investigation or disease containment countermeasures;

(5) to law enforcement agencies, including the State Medical Examiner, investigating the circumstances giving rise to the public health emergency, or in the identification and location of victims of the public health emergency;

(6) pursuant to a court order to avert a clear danger to an individual or the public health; or

(7) to identify a deceased individual or determine the manner or cause of death.

c. Strictly for the purposes of controlling and containing the public health emergency, the commissioner may provide medical information to a health care facility about an employee who has participated in medical treatment or testing which may impact upon the public health emergency. This information may include, but is not limited to, medical testing, treat-

ment, vaccination, isolation or quarantine programs or efforts by the commission pursuant to this act when the commissioner deems that the health care facility should be advised of such medical information in order to take actions necessary to protect the health and well being of its patients, residents or other health care employees.

Nothing in this subsection shall be construed to allow for the release of medical information that is not related to the public health emergency or is protected under federal or State law.

C.26:13-18 Emergency powers regarding health care personnel.

18. During a state of public health emergency, the commissioner may exercise, for such period as the state of public health emergency exists, the following emergency powers regarding health care personnel:

a. To require in-State health care providers to assist in the performance of vaccination, treatment, examination or testing of any individual;

b. To appoint and prescribe the duties of such out-of-State emergency health care providers as may be reasonable and necessary to respond to the public health emergency, as provided in this subsection.

(1) The appointment of out-of-State emergency health care providers may be for such period of time as the commissioner deems appropriate, but shall not exceed the duration of the public health emergency. The commissioner may terminate the out-of-State appointments at any time or for any reason if the termination will not jeopardize the health, safety and welfare of the people of this State.

(2) The commissioner may waive any State licensing requirements, permits, fees, applicable orders, rules and regulations concerning professional practice in this State by health care providers from other jurisdictions; and

c. To authorize the State Medical Examiner, during the public health emergency, to appoint and prescribe the duties of county medical examiners, regional medical examiners, designated forensic pathologists, their assistants, out-of-State medical examiners and others as may be required for the proper performance of the duties of the office.

(1) The appointment of persons pursuant to this subsection may be for a limited or unlimited time, but shall not exceed the duration of the public health emergency. The State Medical Examiner may terminate the out-of-State appointments at any time or for any reason.

(2) The State Medical Examiner may waive any licensing requirements, permits or fees otherwise required for the performance of these duties, so long as the appointed emergency assistant medical examiner is competent to properly perform the duties of the office. In addition, if from another jurisdiction, the appointee shall possess the licensing, permit or fee require-

ment for medical examiners or assistant medical examiners in that jurisdiction.

d. (1) An in-State health care provider required to assist pursuant to subsection a. of this section and an out-of-State emergency health care provider appointed pursuant to subsection b. of this section shall not be liable for any civil damages as a result of the provider's acts or omissions in providing medical care or treatment related to the public health emergency in good faith and in accordance with the provisions of this act.

(2) An in-State health care provider required to assist pursuant to subsection a. of this section and an out-of-State emergency health care provider appointed pursuant to subsection b. of this section shall not be liable for any civil damages as a result of the provider's acts or omissions in undertaking public health preparedness activities, which activities shall include but not be limited to pre-event planning, drills and other public health preparedness efforts, in good faith and in accordance with the provisions of this act.

C.26:13-19 Definitions relative to, and immunity from liability.

19. a. As used in this section:

"Injury" means death, injury to a person or damage to or loss of property.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. Public entity also includes any foreign governmental body, which is acting in this State under the authority of this act.

"State" means the State and any office, department, division, bureau, board, commission or agency of the State.

b. (1) A public entity and the agents, officers, employees, servants or representatives of a public entity, including volunteers, shall not be liable for an injury caused by any act or omission in connection with a public health emergency, or preparatory activities, that is within the scope of the authority granted under this act, including any order, rule or regulation adopted pursuant thereto. An agent, officer, employee, servant, representative or volunteer is not immune under this section, however, for an injury that results from an act that is outside the scope of the authority granted by this act or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct.

(2) A public entity or agent, officer, employee, servant or representative or volunteer, shall not be liable for an injury arising out of property of any kind that is donated or acquired according to the provisions of this or any other act for use in connection with a public health emergency. An agent, officer, employee, servant, representative or volunteer is not immune under this section, however, for an injury that results from an act that is outside the

scope of the authority granted by this act or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct.

c. (1) A person or private entity who:

(a) owns, manages or controls property that is used in connection with a public health emergency shall not be liable for an injury with respect to the property, unless the injury is a result of gross negligence or willful misconduct. The immunity applies whether the person or entity owning, managing or controlling the property permits the use of the property voluntarily, with or without compensation, or the State or another public entity exercises the condemnation powers in this or any other act with respect to the use of the property;

(b) is acting in the performance of a contract with a public entity in connection with a public health emergency shall not be liable for an injury caused by the person or entity's negligence in the course of performing the contract, unless the injury is a result of gross negligence or willful misconduct; and

(c) in connection with a public health emergency, renders assistance or advice to a public entity or public employee or donates goods and services shall not be liable for an injury arising out of the person or entity's assistance, advice or services, or associated with the donated goods, unless the injury is a result of gross negligence or willful misconduct.

(2) A person or private entity and the employees of the entity shall not be liable for an injury caused by any act or omission in connection with a public health emergency, or preparatory activities, provided that the action of the person or entity is undertaken pursuant to the exercise of the authority provided pursuant to this act, including any order, rule or regulation adopted pursuant thereto. A person, entity or employee of the entity is not immune under this section, however, for an injury that results from an act that is outside the scope of the authority granted by this act or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct.

(3) The immunities established under this subsection shall not apply to a person or private entity whose act or omission caused or contributed to the public health emergency.

(4) As used in this subsection, "private entity" includes, but is not limited to, a health care provider.

d. The immunities established under this section shall be liberally construed to carry out the purposes of this act and shall apply to all public health preparedness activities, including pre-event planning, drills or other public health preparedness efforts. The immunities are in addition to, and shall not limit or abrogate in any way, other statutory immunities, common law immunities, statutory conditions on maintaining a lawsuit such as the

notice provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., or other defenses available to those who participate in responding to, or preparing for, a public health emergency.

C.26:13-20 Protective action relative to radiological emergency, conditions.

20. The commissioner may authorize any school, health care facility, child care center or youth camp to provide potassium iodide as a supplemental protective action during a radiological emergency to residents, staff members, minors or other persons present in such facility, if:

a. prior written permission has been obtained from each resident or representative of a resident, staff member, or parent or guardian of a minor for providing the potassium iodide; and

b. each person providing permission has been advised, in writing: (1) that the ingestion of potassium iodide is voluntary only, (2) about the contraindications of taking potassium iodide and (3) about the potential side effects of taking potassium iodide.

C.26:13-21 LINCS agencies to serve as planning, coordinating agency for local government entity.

21. a. In order to assist the department with comprehensive Statewide planning and coordination of all activities related to public health preparedness, LINCS agencies shall, at the direction of the commissioner, serve as the planning and coordinating agency for all municipalities and local health agencies within the county or city, as applicable.

b. The commissioner, either directly or through the LINCS agencies, shall coordinate the activities of all local health agencies in the county with regard to public health protection related to preparing for and responding to public health emergencies. The LINCS agency shall notify each local health agency in its jurisdiction of the nature and extent of the emergency, except that nothing in this subsection shall be construed to prevent the commissioner from notifying a local health agency directly.

c. The LINCS agency and all other local health agencies within the county shall be subject to the direction and authority of the commissioner, and shall perform such activities as are directed by the commissioner, in accordance with the provisions of this act.

d. The LINCS agencies shall be responsible for performing human disease surveillance, terrorism response and public health emergency response-related activities in such a manner as the commissioner may direct, and for reporting to the commissioner on the conduct of these activities as performed in the county or city, as applicable.

e. The commissioner may utilize the LINCS agencies to disseminate such information to the other local health agencies in the county, and to collect such information from those agencies, as the commissioner deems

necessary; and the LINCS agencies shall transmit the information to the commissioner or the other local health agencies as directed by the commissioner.

f. The commissioner is authorized to use available federal funds received by the State to offset the costs incurred by LINCS agencies in implementing the provisions of this act, and shall reimburse local health agencies, subject to the approval of the State Treasurer and in accordance with the provisions of this act.

C.26:13-22 Definitions relative to biological agents, Biological Agent Registry.

22. a. As used in this section:

"Biological Agent" means:

(1) any select agent that is a microorganism, virus, bacterium, fungus, rickettsia or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations;

(2) any genetically modified microorganism or genetic element from an organism listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease;

(3) any genetically modified microorganism or genetic element that contains nucleic acid sequences coding for any of the toxins listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic subunits;

(4) high consequence livestock pathogens and toxins as determined by the U.S. Department of Agriculture and the New Jersey Department of Agriculture;

(5) any agents defined pursuant to R.S. 4:5-107 et seq. and N.J.A.C. 2:6-1.1 et seq. and the Secretary of Agriculture;

(6) any other agent as determined by the commissioner to represent a significant risk to human and animal health.

"Possess or maintain" includes, but is not limited to, any of the following: development, production, acquisition, transfer, receipt, stockpiling, retention, ownership or use of a biological agent.

"Registry" means the Biological Agent Registry established pursuant to this section.

b. The commissioner, in coordination with the Secretary of Agriculture, shall establish a Biological Agent Registry and administer a program for the registration of biological agents. The registry shall identify the biological agents possessed or maintained by any person in this State and shall contain such other information as required by regulation of the commissioner pursuant to this section.

c. A person who possesses or maintains any biological agent required to be registered under this section shall report the information to the department by submitting a duplicate of the form required under Part 331 of Title 7, Part 121 of Title 9, and Parts 72 and 73 of Title 42 of the Code of Federal Regulations. Forms submitted pursuant to these provisions shall not be reproduced by photographic, electronic or other means, and shall be stored in a manner that is both confidential and secure.

d. Except as otherwise provided in this section, information prepared for or maintained in the registry shall be confidential.

(1) The commissioner may, in accordance with rules adopted by the commissioner, utilize information contained in the registry for the purpose of conducting or aiding in a communicable disease investigation.

(2) The commissioner shall cooperate, and may share information contained in the registry, with the United States Centers for Disease Control and Prevention, the Department of Homeland Security, the New Jersey Department of Agriculture, and State and federal law enforcement agencies pursuant to a communicable disease investigation commenced or conducted by the department, the New Jersey Domestic Security Preparedness Task Force established pursuant to P.L.2001, c.246 (C.App. A:9-64 et seq.), or other State or federal law enforcement agency having investigatory authority, or in connection with any investigation involving the release, theft or loss of a registered biological agent. Access to this information shall terminate upon the completion of the investigation.

(3) Release of information from the registry as authorized under this section shall not render the information released or information prepared for or maintained in the registry a public or government record under P.L.1963, c.73 (C. 47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

e. Any person who willfully or knowingly violates any provision of this section is liable for a penalty not to exceed \$10,000 per day of the violation, and each day the violation continues shall constitute a separate and distinct violation. A penalty imposed under this section may be recovered with costs in a summary proceeding before the Superior Court pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

f. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) that are consistent with Part 331 of Title 7, Part 121 of Title 9, and Parts 72 and 73 of Title 42 of the Code of Federal Regulations, to carry out the purposes of this section; 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 he deems necessary to implement the provisions of this section, which shall be effective for a period not to exceed six months and thereafter be amended, adopted or

readopted by the commissioner in accordance with the requirements of P.L.1968, c.410.

The regulations shall include, but not be limited to:

(1) a list of the biological agents required to be registered pursuant to this section;

(2) designation of the persons required to make reports, the specific information required to be reported, time limits for reporting, the form of the reports, and the person to whom the report shall be submitted;

(3) provisions for the release of information in the registry to State and federal law enforcement agencies, the Centers for Disease Control and Prevention, the Department of Homeland Security and the New Jersey Department of Agriculture pursuant to paragraph (2) of subsection d. of this section;

(4) establishment of a system of safeguards that requires a person who possesses or maintains a biological agent required to be registered under this section to comply with the federal standards that apply to a person registered to possess or maintain the agent under federal law;

(5) establishment of a process for a person that possesses or maintains a registered biological agent to alert appropriate authorities of unauthorized possession or attempted possession of a registered biological agent, and designation of appropriate authorities for receipt of the alerts; and

(6) establishment of criteria and procedures for the commissioner to grant exemptions to the requirements if it is determined that the public benefit of such exemption outweighs the need for regulation.

C.26:13-23 New Jersey Vaccine Education and Prioritization Plan.

23. a. The commissioner shall develop and implement a New Jersey Vaccine Education and Prioritization Plan, as provided in subsection b. of this section, when the commissioner determines that: (1) an emergent condition exists and there is clear evidence that adverse and avoidable health outcomes from a preventable and acute communicable disease are expected to affect identifiable categories of high-risk individuals throughout the State; and (2) in order to protect or treat such individuals, assistance with the administration of vaccine is warranted due to a vaccine shortage.

b. To protect the public health during a vaccine shortage, the commissioner shall issue an order to implement a New Jersey Vaccine Education and Prioritization Plan, which shall comprise:

(1) procedures for the assessment of available vaccine Statewide;

(2) procedures for the distribution and administration of vaccines that shall apply to physicians, nurses, health care facilities, pharmacies and others that dispense vaccines. The procedures shall include, but not be limited to,

a definition of high-risk groups for priority protection or treatment in the event a vaccine shortage is imminent or existent; and

(3) procedures for: (a) mobilizing public and private health resources to assist in vaccine distribution and administration; and

(b) reallocating available supplies of vaccine to most effectively meet the needs of the State's high-risk groups, if necessary.

c. As used in this section, "vaccine" includes vaccines, immune products and chemoprophylactic and treatment medications.

d. A person who willfully or knowingly violates the New Jersey Vaccine Education and Prioritization Plan or any procedures contained therein shall be liable for a civil penalty of \$500 for each violation. The penalty shall be sued for and collected by the commissioner in a summary proceeding before the Superior Court pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

e. The commissioner shall notify the appropriate professional or occupational licensing board or licensing authority, in the case of a facility, of repeated violations of the procedures by a health care professional or licensed facility.

C.26:13-24 State Public Health Emergency Claim Reimbursement Board.

24. a. There is hereby established in the Department of Health and Senior Services a State Public Health Emergency Claim Reimbursement Board. The board shall include the following members: the Commissioner of Health and Senior Services, who shall be the presiding officer, the Attorney General, the Adjutant General of the Department of Military and Veterans' Affairs, the State Director of Emergency Management, the Secretary of Agriculture, the Commissioner of Banking and Insurance, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Medical Examiner, and the State Treasurer, or their designees. The members of the board shall serve without pay in connection with all such duties as are prescribed in this act.

b. The board shall meet at such times as may be necessary to fulfill the requirements set forth herein. The Commissioner of Health and Senior Services shall convene the board within 45 days of the filing of a complete petition. The concurrence of six members of the board shall be necessary for the validity of all acts of the board.

c. Subject to available appropriations, the board shall have the authority to award reasonable reimbursement, as determined by the board, for any services required of any person under the provisions of this act, which shall be paid at the prevailing established rate for services of a like or similar nature as determined by the board. Subject to available appropriations, the board shall have the authority to award reasonable reimbursement, as deter-

mined by the board, for any property employed, taken or used under the provisions of this act.

d. All awards shall be paid from any funds appropriated by the State, any political subdivision of the State, or the federal government, for such purpose. In awarding reimbursement under this section, the board shall take into account any funds, or any other thing of value, received by a claimant from any other source, including but not limited to private donations, contributions and insurance proceeds. The board shall not award reimbursement unless the claimant has demonstrated, to the satisfaction of the board, that the claimant has first sought reimbursement for any loss incurred due to the declaration of a public health emergency from any and all appropriate third party payers.

C.26:13-25 Claims for reimbursement.

25. a. Any person making a claim for reimbursement for private property or services employed, taken or used for a public purpose under this act shall, subsequent to the termination of the public health emergency, file a petition for an award with the State Public Health Emergency Claim Reimbursement Board, established pursuant to section 24 of this act, through the Commissioner of Health and Senior Services. The petition shall be signed by the claimant and shall set forth the following:

- (1) a description of the services or property employed, taken or used;
- (2) the dates of the employment, taking or usage;
- (3) the person or entity ordering the employment, taking or usage;
- (4) such additional information as the petitioner deems relevant to a full consideration of the claim; and
- (5) any additional information that the board may require.

b. The board may establish such forms, documents and procedures as may be necessary to expedite the processing of claims, and all claimants shall utilize and follow the forms, documents and procedures, if so established. Subsequent to the filing of an initial petition, the board may request such additional information as it deems necessary from any claimant and may require the claimant, and any other person with knowledge of facts and circumstances relevant to the claim, to appear before the board for a hearing. No petition shall be filed with the board more than 180 days from the last date the services or property were employed, taken or used, except that this deadline may be extended by the board as is necessary to further the purposes of this act.

c. The board's determination concerning a claimant's petition for reimbursement shall be transmitted to the claimant in writing. The claimant may appeal the decision to the Superior Court subject to the Rules of Court regarding the review of State agency actions.

d. Any person seeking reimbursement under this act shall proceed in accordance with the provisions of this section unless the declaration of public health emergency which gives rise to the claim or petition for reimbursement is superseded by order of the Governor pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.). Upon the declaration of an emergency by the Governor pursuant to P.L.1942, c.251 which supersedes the declaration of a public health emergency, the person shall proceed in accordance with the provisions of P.L.1942, c.251 and the person's rights, remedies and entitlement to reimbursement shall be limited to that which is afforded in that act.

e. Notwithstanding the provisions of this section to the contrary, in the event funds are otherwise made available for reimbursement, a person shall not be required to file a petition for an award with the board pursuant to this section.

C.26:13-26 Material not considered public, government record.

26. Any correspondence, records, reports and medical information made, maintained, received or filed pursuant to this act shall not be considered a public or government record under P.L.1963, c.73 (C. 47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

C.26:13-27 Power of enforcement.

27. The commissioner shall have the power to enforce the provisions of this act through the issuance of orders and such other remedies as are provided by law.

C.26:13-28 Laws, regulations not preempted by act.

28. The provisions of this act do not explicitly preempt other laws or regulations that preserve to a greater degree the powers of the Governor or commissioner, provided such laws or regulations are consistent and do not otherwise restrict or interfere with the operation or enforcement of the provisions of this act.

C.26:13-29 Additional powers of State Medical Examiner.

29. The powers granted in the act are in addition to, and not in derogation of, powers otherwise granted by law to the State Medical Examiner.

C.26:13-30 Construction of act relative to Highway Traffic Safety Act.

30. The provisions of this act shall not be construed to abrogate the effect or status of the "New Jersey Highway Traffic Safety Act of 1987," P.L.1987, c.284 (C.27:5F-18 et seq.).

31. R.S.26:4-2 is amended to read as follows:

Powers of State department and local board.

26:4-2. In order to prevent the spread of disease affecting humans, the Department of Health and Senior Services, and the local boards of health

within their respective jurisdictions and subject to the State sanitary code, shall have power to:

- a. Declare what diseases are communicable.
- b. Declare when any communicable disease has become epidemic.
- c. Require the reporting of communicable diseases.
- d. Maintain and enforce proper and sufficient quarantine, wherever deemed necessary.
- e. Remove any person infected with a communicable disease to a suitable place, if in its judgment removal is necessary and can be accomplished without any undue risk to the person infected.
- f. Disinfect any premises when deemed necessary.
- g. Remove to a proper place to be designated by it all articles within its jurisdiction, which, in its opinion, shall be infected with any matter likely to communicate disease and to destroy such articles, when in its opinion the safety of the public health requires it.

In the event the Governor declares a public health emergency, the department shall oversee the uniform exercise of these powers in the State and the local board of health shall be subject to the department's exercise of authority under this section.

32. R.S.26:8-62 is amended to read as follows:

Certification, certified copy of records, search fee; uniform forms for vital records.

26:8-62. a. The State registrar or local registrar shall, upon request, supply to a person who establishes himself as one of the following: the subject of the record of a birth, death, fetal death, certificate of birth resulting in stillbirth, domestic partnership or marriage, as applicable; the subject's parent, legal guardian or other legal representative; the subject's spouse, child, grandchild or sibling, if of legal age, or the subject's legal representative; an agency of State or federal government for official purposes; a person possessing an order of a court of competent jurisdiction; or a person who is authorized under other emergent circumstances as determined by the commissioner, a certified copy, or release of the data and information of that record registered under the provisions of R.S.26:8-1 et seq., or any domestic partnership registered under the provisions of P.L.2003, c.246 (C.26:8A-1 et al.), for any of which, except as provided by R.S.26:8-63, the State registrar shall be entitled to a search fee, if any, as provided by R.S.26:8-64, to be paid by the person. A certification may be issued in other circumstances and shall state that it is for informational purposes only, and is not to be used for identification purposes. The registrar shall authenticate the identity of the requestor and the requestor's relationship with the subject of the vital record. For the purposes of this subsection, any employee of a mortuary registered pursuant to P.L.1952, c.340 (C.45:7-32 et seq.), or a funeral

director licensed pursuant to that act who is affiliated with a registered mortuary, if the mortuary was recorded on the original certificate of death, shall be construed to be the subject's legal representative and entitled to obtain full and complete copies of death certificates or certifications thereof.

b. The State registrar shall, upon request, supply to any applicant a certified transcript of any entry contained in the records of the New Jersey State census for which, except as provided by R.S.26:8-63, he shall be entitled to a search fee as provided by R.S.26:8-64, to be paid by the applicant.

c. For each death registration initiated on the NJ-EDRS on or after the first day of the first month following the date of enactment of P.L.2003, c.221 but before the first day of the thirty-seventh month following the date of enactment of P.L.2003, c.221, the State registrar shall be paid a recording fee for each record filed, whether by means of the current paper process or electronically, in an amount to be determined by the State registrar but not exceeding \$10, from the account of the funeral home, which may include this amount in the funeral expenses charged to the estate or person accepting responsibility for the disposition of the deceased's human remains and the costs associated therewith; provided however, this fee shall not apply to the death registration of a person who died while in the military or naval or maritime or merchant marine service of the United States whose death is recorded pursuant to section 1 of P.L.1950, c.299 (C.26:6-5.2). The State registrar shall deposit the proceeds from the recording fee into the New Jersey Electronic Death Registration Support Fund established pursuant to section 17 of P.L.2003, c.221 (C.26:8-24.2).

d. Notwithstanding any other provision of this section to the contrary, the Commissioner of Health and Senior Services shall designate specifications for uniform forms for the issuance of all vital records, which shall be used by registrars beginning on a date established by the commissioner. The form designated for certified copies of vital records shall contain safety features for authentication purposes and to deter forgery, and shall be readily distinguishable from the form designated for certifications of vital records. Local registrars may include in the fee for a certified copy the additional cost of the form containing such safety features.

The commissioner may issue and enforce orders to implement the provisions of this subsection.

33. R.S.34:15-43 is amended to read as follows:

Compensation for injury in line of duty.

34:15-43. Every officer, appointed or elected, and every employee of the State, county, municipality or any board or commission, or any other governing body, including boards of education, and governing bodies of service districts, individuals who are under the general supervision of the

Palisades Interstate Park Commission and who work in that part of the Palisades Interstate Park which is located in this State, and also each and every member of a volunteer fire company doing public fire duty and also each and every active volunteer, first aid or rescue squad worker, including each and every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, doing public first aid or rescue duty under the control or supervision of any commission, council, or any other governing body of any municipality, any board of fire commissioners of such municipality or of any fire district within the State, or of the board of managers of any State institution, every county fire marshal and assistant county fire marshal, every special, reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, every emergency management volunteer doing emergency management service for the State, every health care worker, public health worker and support services personnel, registered with the Emergency Health Care Provider Registry pursuant to section 6 of P.L.2005, c.222 (C.26:13-6), and any person doing volunteer work for the Division of Parks and Forestry, the Division of Fish and Wildlife, or the New Jersey Natural Lands Trust, as authorized by the Commissioner of Environmental Protection, or for the New Jersey Historic Trust, and any person doing work related to bioterrorism, or volunteering, for the Department of Agriculture, as authorized by the Secretary of Agriculture, who may be injured in line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (R.S.34:15-7 et seq.). No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical, surgical and other treatment and hospital services as set forth in R.S.34:15-15.

Benefits available under this section to emergency management volunteers and volunteers participating in activities of the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under R.S.34:15-1 et seq.

As used in this section, the terms "doing public fire duty" and "who may be injured in line of duty," as applied to members of volunteer fire companies, county fire marshals or assistant county fire marshals, and the term "doing public first aid or rescue duty," as applied to active volunteer first aid or rescue squad workers, shall be deemed to include participation in any

authorized construction, installation, alteration, maintenance or repair work upon the premises, apparatus or other equipment owned or used by the fire company or the first aid or rescue squad, participation in any State, county, municipal or regional search and rescue task force or team, participation in any authorized public drill, showing, exhibition, fund raising activity or parade, and to include also the rendering of assistance in case of fire and, when authorized, in connection with other events affecting the public health or safety, in any political subdivision or territory of another state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

Also, as used in this section, "doing public police duty" and "who may be injured in line of duty" as applied to special, reserve or auxiliary policemen, shall be deemed to include participation in any authorized public drill, showing, exhibition or parade, and to include also the rendering of assistance in connection with other events affecting the public health or safety in the municipality, and also, when authorized, in connection with any such events in any political subdivision or territory of this or any other state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

As used in this section, the terms "doing emergency management service" and "who may be injured in the line of duty," as applied to emergency management volunteers and health care workers, public health workers and support services personnel registered with the Emergency Health Care Provider Registry pursuant to section 6 of P.L.2005, c.222 (C.26:13-6), mean participation in any activities authorized pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), including participation in any State, county, municipal or regional search and rescue task force or team, except that the terms shall not include activities engaged in by a member of an emergency management agency of the United States Government or of another state, whether pursuant to a mutual aid compact or otherwise.

Every member of a volunteer fire company shall be deemed to be doing public fire duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district or board of managers of any State institution within the meaning of this section, if such control or supervision is provided for by statute or by rule or regulation of the board of managers or the superintendent of such State institution, or if the fire company of which he is a member receives contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district or if such fire company

has been or hereafter shall be designated by ordinance as the fire department of the municipality.

Every active volunteer, first aid or rescue squad worker, including every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, shall be deemed to be doing public first aid or rescue duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district within the meaning of this section if such control or supervision is provided for by statute, or if the first aid or rescue squad of which he is a member or authorized worker receives or is eligible to receive contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district, or if such first aid or rescue squad has been or hereafter shall be designated by ordinance as the first aid or rescue squad of the municipality.

As used in this section and in R.S.34:15-74, the term "authorized worker" shall mean and include, in addition to an active volunteer fireman and an active volunteer first aid or rescue squad worker, any person performing any public fire duty or public first aid or rescue squad duty, as the same are defined in this section, at the request of the chief or acting chief of a fire company or the president or person in charge of a first aid or rescue squad for the time being.

A member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or of any fire district within the State, or of the board of managers of any State institution, who participated in a search and rescue task force or team in response to the terrorist attacks of September 11, 2001 without the authorization of that volunteer organization's governing body and who suffered injury or death as a result of participation in that search and rescue task force or team shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Whenever a member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or

of any fire district within the State, or of the board of managers of any State institution, participates in a national, multi-state, State, municipal or regional search and rescue task force or team without the authorization of that volunteer organization's governing body but pursuant to a Declaration of Emergency by the Governor of the State of New Jersey specifically authorizing volunteers to respond immediately to the emergency without requiring the authorization of the volunteer company or squad, and the member of the volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer suffers injury or death as a result of participation in that search and rescue task force or team, he shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Nothing herein contained shall be construed as affecting or changing in any way the provisions of any statute providing for sick, disability, vacation or other leave for public employees or any provision of any retirement or pension fund provided by law.

34. R.S. 34:15-75 is amended to read as follows:

Compensation for injury, death for certain volunteers.

34:15-75. Compensation for injury and death, either or both, of any volunteer fireman, county fire marshal, assistant county fire marshal, volunteer first aid or rescue squad worker, volunteer driver of any municipally-owned or operated ambulance, forest fire warden or forest fire fighter employed by the State of New Jersey, member of a board of education, special reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, emergency management volunteer doing emergency management service, health care workers, public health workers and support services personnel registered with the Emergency Health Care Provider Registry pursuant to section 6 of P.L.2005, c.222 (C.26:13-6) and doing emergency management service for the State, or any volunteer worker for the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall:

- a. Be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized; and
- b. Not be subject to the seven-day waiting period provided in R.S.34:15-14.

35. The commissioner 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 carry out the purpose of this act.

36. This act shall take effect immediately.

Approved September 14, 2005.

CHAPTER 223

AN ACT concerning the remediation of contaminated sites, and amending and supplementing P.L.1993, c.139.

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

1. 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.);

"Brownfield development area" means an area that has been so designated by the department, in writing, pursuant to the provisions of section 7 of P.L.2005, c.223 (C.58:10B-25.1);

"Brownfield site" 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;

"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;

"Person" means an individual, corporation, company, partnership, firm, or other private business entity;

"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;

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both;

"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, provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources;

"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.).

2. 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 municipalities, counties, redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), and persons, 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 in the fund as repayment of recoverable grants made by the New Jersey Redevelopment Authority for brownfield redevelopment;

(6) moneys deposited into the fund from cost recovery subrogation actions; and

(7) moneys made available to the authority for the purposes of the fund.

3. 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 municipalities, counties, redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), 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, from receiving 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 a remediation funding source 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 a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for real property: (1) on which it holds a tax sale certificate; (2) that it has acquired through foreclosure or other similar means; or (3) that it has acquired, or in the case of a county governed by a board of chosen freeholders, has passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), has passed an ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste.

d. Grants may be made from the remediation fund 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 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.

f. Grants may be made from the remediation fund to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for the preliminary assessment, site investigation, remedial investigation and remedial action on contaminated real property within a brownfield development area. An ownership interest in the contaminated property shall not be required in order for a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) to receive a grant for a remediation of property in a brownfield redevelopment area. Notwithstanding the limitation on the total amount of financial assistance and grants that may be awarded in any one year pursuant to subsection b. of section 28 of P.L.1993, c.139 (C.58:10B-6), the authority may award an additional amount of financial assistance and grants in any one year, of up to \$2,000,000, to any one municipality, county, or redevelopment entity for the remediation of property in a brownfield development area. Any property on which a municipality, county, or redevelopment entity makes expenditures for a

remedial action and the property is not owned by that entity shall be subject to the provisions of section 8 of P.L.2005, c.223 (C.58:10B-25.2).

4. 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; purposes.

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. A written report shall be sent to the Senate Environment Committee, and the Assembly Environment and Solid Waste Committee, or their successors at the end of each calendar quarter detailing the allocation and expenditures related to the financial assistance and grants from the fund.

(1) Moneys shall be allocated for financial assistance to persons, 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) Moneys shall be allocated to: (a) municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), for:

(i) projects in brownfield development areas pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5),

(ii) matching grants up to a cumulative total amount from the fund of \$5,000,000 per year of up to 75% of the costs of the remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the comprehensive plan for the development or redevelopment of contaminated property, or up to 50% of the costs of the remedial action for projects involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.),

(iii) grants for preliminary assessment, site investigation or remedial investigation of a contaminated site,

(iv) financial assistance for the implementation of a remedial action, or

(v) financial assistance 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; or

(b) persons for financial assistance 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.

Except as provided in subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5), financial assistance and grants to municipalities, counties, or redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may be made for real property: (1) on which they hold a tax sale certificate; (2) that they have acquired through foreclosure or other similar means; or (3) that they have acquired, or, in the case of a county governed by a board of chosen freeholders, have passed a resolution or, in the case of a municipality or a county operating under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), have passed an ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, or for recreation and conservation purposes. Financial assistance and grants may only be awarded for real property on which there has been or on which there is suspected of being a discharge of a hazardous substance or a hazardous waste. Grants and financial assistance provided pursuant to this paragraph shall be used for performing preliminary assessments, site investigations, remedial investigations, and remedial actions on real property in order to determine the existence or extent of any hazardous substance or hazardous waste contamination, and to remediate the site in compliance with the applicable health risk and environmental standards on those properties. No financial assistance or grants for a remedial action shall be awarded until the municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), actually owns the real property, provided that a matching grant for 75% of the costs of a remedial action for a project involving the redevelopment of contaminated property for recreation and conservation purposes, or a matching grant for 50% of the costs of a remedial action for a project involving the redevelopment of contaminated property for affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et seq.) may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 even if it does not own the real property and a grant may be made to a municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) for a remediation in a brownfield development area

pursuant to subsection f. of section 27 of P.L.1993, c.139 (C.58:10B-5) even if the entity does not own the real property. No grant shall be awarded for a remedial action for a project involving the redevelopment of contaminated property for recreation or conservation purposes unless the use of the property is preserved for recreation and conservation purposes by conveyance of a development easement, conservation restriction or easement, or other restriction or easement permanently restricting development, which shall be recorded and indexed with the deed in the registry of deeds for the county. A municipality 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. No grant shall be awarded pursuant to this paragraph to a municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) unless that entity has adopted by ordinance or resolution a comprehensive plan specifically for the development or redevelopment of contaminated or potentially contaminated real property in that municipality or the entity can demonstrate to the authority that a realistic opportunity exists that the subject real property will be developed or redeveloped within a three-year period from the completion of the remediation;

(3) Moneys shall be allocated for financial assistance to persons who voluntarily perform a remediation of a hazardous substance or hazardous waste discharge;

(4) 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, the hazardous substance or hazardous waste that was discharged at the property was not used by the person at that site, and that person certifies that he did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered. A grant authorized pursuant to this paragraph may be for up to 50% of the remediation costs at the area of concern for which the person qualifies for an innocent party grant, except that no grant awarded pursuant to this paragraph to any person may exceed \$1,000,000;

(5) Moneys shall be allocated for (a) 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), or (b) matching grants for up to 25% of the project costs to qualifying persons, municipalities, counties, and

redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), who propose to perform a remedial action that uses an innovative technology, or 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 may exceed \$250,000; and

(6) Twenty 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 (5) of this subsection.

For the purposes of paragraph (5) 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. The unpaid balance of a loan for the remediation of real property that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the person who acquires the property. Loans to municipalities, counties, and redevelopment entities authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), 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 municipality, county, or redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not exceed \$3,000,000 in any calendar year except as provided in subsection f. of P.L.1993, c.139 (C.58:10B-5). Grants to a municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4) may not exceed 75% of the total costs of the remediation at any one site. 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.

The total amount of grant moneys awarded in any one year may not exceed 70 percent of the total amount of financial assistance and grants awarded in that year.

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 Environment and Solid Waste Committee, or their successors, a report detailing the amount of money that was available for financial assistance and grants from the remediation fund for the previous calendar year, the amount of money estimated to be available for financial assistance and grants for the current calendar year, the amount of financial assistance and grants issued for the previous calendar year and the category for which each financial assistance and grant was rendered, and any suggestions for legislative action the authority deems advisable to further the legislative intent to facilitate remediation and promote the redevelopment and use of existing industrial sites.

5. Section 29 of P.L.1993, c.139 (C.58:10B-7) is amended to read as follows:

C.58:10B-7 Awarding of financial assistance, grants, priorities.

29. a. A qualified applicant for financial assistance or a grant from the remediation fund shall be awarded financial assistance or a grant by the authority upon the availability of sufficient moneys in the remediation fund for the purpose of the financial assistance or grant. The authority shall award financial assistance and grants in the following order of priority:

(1) Sites on which 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 shall be given first priority; and

(2) Sites in areas designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L.1997, c.278 (C.58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas, shall be given second priority. The priority ranking of applicants within any priority category enumerated in this section for awarding financial assistance and grants from the remediation fund shall be based upon the date of receipt by the authority of an application from the applicant. If an application is determined to be incomplete by the authority, an applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within those 30 days, the filing date for that application for financial assistance or a grant for a site that is not within a priority category enumerated in this section, shall be the date that the additional information is received by the authority. An application shall be deemed complete when all the information required by the authority has been received in the required form.

b. Within 90 days, for a private entity, or 180 days for a municipality, county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), of notice of approval of a financial assistance or grant application, an applicant shall submit to the authority an executed contract for the remediation activities for which the financial assistance or grant application was made. The contract shall be consistent with the terms and conditions for which the financial assistance or grant was rendered. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for the alteration of an applicant's priority ranking for the awarding of financial assistance or a grant.

6. 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 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 municipality, a county, or a redevelopment entity authorized to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4), 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) provide that the amount of a grant for the costs of a remedial action 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;

(8) 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 municipalities, counties, or redevelopment entities authorized

to exercise redevelopment powers pursuant to section 4 of P.L.1992, c.79 (C.40A:12A-4); 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.

C.58:10B-25.1 Guidelines for designation of brownfield development areas.

7. The Department of Environmental Protection shall establish guidelines to establish a procedure for the designation of brownfield development areas. In establishing criteria for the establishment of a brownfield development area, the department shall require:

(1) that a brownfield development area includes at least two brownfield sites within a contiguous area;

(2) that the boundaries are consistent with the boundaries of a distinct neighborhood;

(3) broad community support for the establishment of a brownfield development area; and

(4) that the establishment of a brownfield development area will result in a benefit to the public health and safety, and the environment.

A brownfield development area shall be designated by the department, in writing, upon application by a person proposing to remediate a site or sites within the area, or upon the department's initiative.

The guidelines, and any subsequent revisions thereto, and a list of the brownfield development areas, and any subsequent revisions thereto, shall be published in the New Jersey Register. The adoption of the guidelines or

of the revisions thereto, shall not be subject to the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.58:10B-25.2 Grant expenditures for remedial action constitutes debt of property owner to fund; lien.

8. Any expenditure of grant moneys for a remedial action in a brownfield development area by a municipality, county, or redevelopment entity on property in which the municipality, county, or redevelopment entity does not have an ownership interest, shall constitute a debt of the property owner to the fund. The debt shall constitute a lien on the real property at which the remedial action is performed. The lien shall be in the amount of the grant awarded for the remedial action on that property. The lien shall attach when a notice of lien, incorporating the name of the property owner, a description of the property subject to the remedial action and an identification of the amount of the grant awarded from the fund, is duly filed with the county recording officer in the county in which the property is located. The lien filed pursuant to this section which affects the property subject to the remedial action 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. A lien that is filed on real property pursuant to this section shall be removed upon transfer of ownership of the property to the municipality, county, or redevelopment entity that expended grant moneys for a remedial action on that property.

C.58:10B-25.3 Pilot program for awarding grants to nonprofit organizations; conditions.

9. a. The Department of Environmental Protection, in consultation with the New Jersey Economic Development Authority, shall develop a pilot program to award grants from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) to nonprofit organizations described in section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3), that are exempt from taxation pursuant to section 501(a) of the federal Internal Revenue Code, 26 U.S.C. s.501(a), for the preliminary assessment, site investigation, and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the "Brownfield and Contaminated Site Remediation Act," P.L.1997, c.278 (C.58:10B-1.1 et al.) shall apply to the award of grants to a nonprofit organization pursuant

to this section. The total amount awarded pursuant to this pilot program shall not exceed \$5,000,000.

b. Prior to March 1 of each year, the Department of Environmental Protection shall prepare and transmit to the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, an annual report that provides a description of the projects for which grants have been awarded, the grant recipients for each project, the owner of the property being remediated, the amount of each grant, and the location of the property being remediated.

10. This act shall take effect immediately.

Approved September 15, 2005.

CHAPTER 224

AN ACT concerning false birth certificates and amending P.L.1983, c.565, N.J.S.2C:21-17, P.L.2002, c.85 and P.L.2003, c.184.

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

1. Section 1 of P.L.1983, c.565 (C.2C:21-2.1) is amended to read as follows:

C.2C:21-2.1 Offenses involving false government documents, degree of crime.

1. a. A person who knowingly sells, offers or exposes for sale, or otherwise transfers, or possesses with the intent to sell, offer or expose for sale, or otherwise transfer, a document, printed form or other writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

b. A person who knowingly makes, or possesses devices or materials to make, a document or other writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the second degree.

c. A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license, birth certificate

or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the third degree. A violation of N.J.S.2C:28-7, constituting a disorderly persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this subsection if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

d. A person who knowingly possesses a document or other writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the fourth degree. A violation of N.J.S.2C:28-7, constituting a disorderly persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this subsection if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

e. In addition to any other disposition authorized by this Title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating the dispositions that may be ordered for an adjudication of delinquency, and, notwithstanding the provisions of subsection c. of N.J.S.2C:43-2, every person convicted of or adjudicated delinquent for a violation of any offense defined in this section shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of the sentence is less than 17 years of age, the period of the suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for

a violation of any provision of this Title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this Title, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement.

The court before whom any person is convicted of or adjudicated delinquent for a violation of any offense defined in this section shall collect forthwith the New Jersey driver's license or licenses of that person and forward the license or licenses to the Chief Administrator of the New Jersey Motor Vehicle Commission along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the director. The report shall include the complete name, address, date of birth, eye color and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license, but shall notify forthwith the director who shall notify the appropriate officials in that licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privileges in this State.

In addition to any other condition imposed, a court, in its discretion, may suspend, revoke or postpone the driving privileges of a person admitted to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12 without a plea of guilty or finding of guilt.

2. N.J.S.2C:21-17 is amended to read as follows:

Impersonation; theft of identity; crime.

2C:21-17. Impersonation; Theft of Identity; crime.

a. A person is guilty of an offense if the person:

(1) Impersonates another or assumes a false identity and does an act in such assumed character or false identity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

(2) Pretends to be a representative of some person or organization and does an act in such pretended capacity for the purpose of obtaining a benefit for himself or another or to injure or defraud another;

(3) Impersonates another, assumes a false identity or makes a false or misleading statement regarding the identity of any person, in an oral or written application for services, for the purpose of obtaining services;

(4) Obtains any personal identifying information pertaining to another person and uses that information, or assists another person in using the information, in order to assume the identity of or represent himself as another person, without that person's authorization and with the purpose to fraudulently obtain or attempt to obtain a benefit or services, or avoid the payment of debt or other legal obligation or avoid prosecution for a crime by using the name of the other person; or

(5) Impersonates another, assumes a false identity or makes a false or misleading statement, in the course of making an oral or written application for services, with the purpose of avoiding payment for prior services. Purpose to avoid payment for prior services may be presumed upon proof that the person has not made full payment for prior services and has impersonated another, assumed a false identity or made a false or misleading statement regarding the identity of any person in the course of making oral or written application for services.

As used in this section:

"Benefit" means, but is not limited to, any property, any pecuniary amount, any services, any pecuniary amount sought to be avoided or any injury or harm perpetrated on another where there is no pecuniary value.

b. (Deleted by amendment, P.L.2005, c.224).

c. A person who violates subsection a. of this section is guilty of a crime as follows:

(1) If the actor obtains a benefit or deprives another of a benefit in an amount less than \$500 and the offense involves the identity of one victim, the actor shall be guilty of a crime of the fourth degree except that a second or subsequent conviction for such an offense constitutes a crime of the third degree; or

(2) If the actor obtains a benefit or deprives another of a benefit in an amount of at least \$500 but less than \$75,000, or the offense involves the identity of at least two but less than five victims, the actor shall be guilty of a crime of the third degree; or

(3) If the actor obtains a benefit or deprives another of a benefit in the amount of \$75,000 or more, or the offense involves the identity of five or more victims, the actor shall be guilty of a crime of the second degree.

d. A violation of N.J.S.2C:28-7, constituting a disorderly persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

e. The sentencing court shall issue such orders as are necessary to correct any public record or government document that contains false information as a result of a theft of identity. The sentencing court may provide restitution to the victim in accordance with the provisions of section 4 of P.L.2002, c.85 (C.2C:21-17.1).

3. Section 4 of P.L.2002, c.85 (C.2C:21-17.1) is amended to read as follows:

C.2C:21-17.1 Restitution to victim of unlawful use of personal identifying information.

4. Restitution to a victim of an offense under N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (C.2C:21-2.1), N.J.S.2C:21-17, section 5 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L. 2003, c.184 (C.2C:21-17.3) when the offense concerns personal identifying information may include costs incurred by the victim:

- a. in clearing the credit history or credit rating of the victim; or
- b. in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant.

4. Section 5 of P.L.2003, c.184 (C.2C:21-17.2) is amended to read as follows:

C.2C:21-17.2 Use of personal identifying information of another, certain; second degree crime.

5. a. A person is guilty of a crime of the second degree if, in obtaining or attempting to obtain a driver's license, birth certificate or other document issued by a governmental agency which could be used as a means of verifying a person's identity, age or any other personal identifying information, that person knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license, birth certificate or

other document issued by a governmental agency or which belongs or pertains to a person other than the person who possesses the document.

b. Notwithstanding the provisions of N.J.S.2C:1-8 or any other law, a conviction under this section shall not merge with a conviction of any other criminal offense, nor shall such other conviction merge with a conviction under this section, and the court shall impose separate sentences upon each violation of this section and any other criminal offense.

c. A violation of N.J.S.2C:28-7, constituting a disorderly persons offense, section 1 of P.L.1979, c.264 (C.2C:33-15), R.S.33:1-81 or section 6 of P.L.1968, c.313 (C.33:1-81.7) in a case where the person uses the personal identifying information of another to illegally purchase an alcoholic beverage or for using the personal identifying information of another to misrepresent his age for the purpose of obtaining tobacco or other consumer product denied to persons under 18 years of age shall not constitute an offense under this section if the actor received only that benefit or service and did not perpetrate or attempt to perpetrate any additional injury or fraud on another.

5. Section 7 of P.L.2003, c.184 (C.2C:21-17.4) is amended to read as follows:

C.2C:21-17.4 Action by person defrauded by unauthorized use of personal identifying information.

7. a. Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use of that person's personal identifying information, in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1), N.J.S.2C:21-17, section 5 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.2003, c.184 (C.2C:21-17.3), may bring an action 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 damages in an amount three times the value of all costs incurred by the victim as a result of the person's criminal activity. These costs may include, but are not limited to, those incurred by the victim in clearing his credit history or credit rating, or those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant. The victim may also recover those costs incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to damages, but damages to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

b. The standard of proof in actions brought under this section is a preponderance of the evidence, and the fact that a prosecution for a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (2C:21-2.1) or N.J.S.2C:21-17 is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this section. A final judgment rendered in favor of the State in any criminal proceeding shall estop the defendant from denying the same conduct in any civil action brought pursuant to this section.

c. The cause of action authorized by this section shall be in addition to and not in lieu of any forfeiture or any other action, injunctive relief or any other remedy available at law, except that where the defendant is convicted of a violation of this act, the court in the criminal action, upon the application of the Attorney General or the prosecutor, shall in addition to any other disposition authorized by this Title sentence the defendant to pay restitution in an amount equal to the costs incurred by the victim as a result of the defendant's criminal activity, regardless of whether a civil action has been instituted. These costs may include, but are not limited to those incurred by the victim in clearing his credit history or credit rating; those incurred in connection with any civil or administrative proceeding to satisfy any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant; or those incurred for attorneys' fees, court costs and any out-of-pocket losses. A financial institution, insurance company, bonding association or business that suffers direct financial loss as a result of the offense shall also be entitled to restitution, but restitution to natural persons shall be fully satisfied prior to any payment to a financial institution, insurance company, bonding association or business.

6. Section 8 of P.L.2003, c.184 (C.2C:21-17.5) is amended to read as follows:

C.2C:21-17.5 Deletion of certain items from victim's consumer reporting files.

8. a. On motion of a person who has been the victim of a violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (C.2C:21-2.1), N.J.S.2C:21-17, section 5 of P.L.2003, c.184 (C.2C:21-17.2) or section 6 of P.L.2003, c.184 (C.2C:21-17.3), or on its own motion, the court may, without a hearing, grant an order directing all consumer reporting agencies doing business within the State of New Jersey to delete those items of information from the victim's file that were the result of the unlawful use of the victim's personal identifying information. The consumer reporting agency shall thereafter, provide the victim with a copy of the corrected credit history report at no charge.

b. Following any deletion of information pursuant to this section, the consumer reporting agency shall, at the request of the victim, furnish notification that the item has been deleted, to any person specifically designated by the victim who has within two years prior thereto received a consumer report for employment purposes, or within one year prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information.

7. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 225

AN ACT concerning scanning devices and reencoders and supplementing chapter 20 of Title 2C of the New Jersey Statutes.

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

C.2C:21-6.1 Definitions relative to scanning devices, reencoders; criminal use, degree of crime.

1. a. Definitions. As used in this section:

(1) "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.

(2) "Payment card" means a credit card, charge card, debit card or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money or anything of value from a merchant.

(3) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card or any electronic medium that allows a transaction to occur.

(4) "Scanning device" means a scanner, skimmer, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

b. It shall be a crime of the third degree for a person, with the intent to defraud an authorized user of a payment card, the issuer of the authorized user's payment card or a merchant, to use:

(1) a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card, without the permission of the authorized user of the payment card; or

(2) a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card or any electronic medium that allows a transaction to occur without the permission of the authorized user of the card from which the information is being reencoded.

c. It shall be a crime of the fourth degree for a person to knowingly possess with intent to commit a violation of paragraph (1) or (2) of subsection b. of this section any device, apparatus, equipment, software, article, material, good, property or supply that is specifically designed or adapted for use as or in a scanning device or reencoder.

2. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 226

AN ACT concerning identity theft, amending P.L.1997, c.172 and supplementing various parts of the statutory law.

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

C.56:11-44 Short title.

1. This act shall be known and may be cited as the "Identity Theft Prevention Act."

C.56:11-45 Findings, declarations relative to identity theft.

2. The Legislature finds and declares that:

a. The crime of identity theft has become one of the major law enforcement challenges of the new economy, as vast quantities of sensitive, personal information are now vulnerable to criminal interception and misuse; and

b. A number of indicators reveal that, despite increased public awareness of the crime, incidents of identity theft continue to rise; and

c. An integral part of many identity crimes involves the interception of personal financial data or the fraudulent acquisition of credit cards or other financial products in another person's name; and

d. Identity theft is an act that violates the privacy of our citizens and ruins their good names: victims can suffer restricted access to credit and diminished employment opportunities, and may spend years repairing damage to credit histories; and

e. Credit reporting agencies and issuers of credit should have uniform reporting requirements and effective fraud alerts to assist identity theft victims in repairing and protecting their credit; and

f. The Social Security number is the most frequently used record keeping number in the United States. Social Security numbers are used for employee files, medical records, health insurance accounts, credit and banking accounts, university ID cards and many other purposes; and

g. Social Security numbers are frequently used as identification numbers in many computer files, giving access to information an individual may want kept private and allowing an easy way of linking data bases. Therefore, it is wise to limit access to an individual's Social Security number whenever possible; and

h. It is therefore a valid public purpose for the New Jersey Legislature to ensure that the Social Security numbers of the citizens of the State of New Jersey are less accessible in order to detect and prevent identity theft and to enact certain other protections and remedies related thereto and thereby further the public safety.

C.2C:21-17.6 Report of identity theft to local law enforcement agency.

3. a. A person who reasonably believes or reasonably suspects that he has been the victim of identity theft in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (C.2C:21-2.1) or N.J.S.2C:21-17 may contact the local law enforcement agency in the jurisdiction where he resides, which shall take a police report of the matter and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in that different jurisdiction.

b. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

4. Section 3 of P.L.1997, c.172 (C.56:11-30) is amended to read as follows:

C.56:11-30 Definitions relative to consumer credit reports.

3. As used in this act:

"Adverse action" has the same meaning as in subsection (k) of section 603 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681a.

"Consumer" means an individual.

"Consumer report" (1) means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(a) credit or insurance to be used primarily for personal, family or household purposes;

(b) employment purposes; or

(c) any other purpose authorized under section 4 of this act.

(2) The term "consumer report" does not include:

(a) any:

(i) report containing information solely on transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among those persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that the information not be communicated among those persons;

(b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(c) any report in which a person, who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, conveys his decision with respect to that request, if the third party advises the consumer of the name and address of the person to whom the request was made, and the person makes the disclosures to the consumer required under 15 U.S.C. s.1681m; or

(d) communication excluded from the definition of consumer report pursuant to subsection (o) of section 603 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681a.

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer reports.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Employment purposes" means, when used in connection with a consumer report, a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

"File" means, when used in connection with information on any consumer, all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or a portion thereof in which information on a consumer's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends or associates of the consumer who is the subject of the report or with others with whom the consumer is acquainted or who may have knowledge concerning any of those items of information. However, this information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"Medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

"Security freeze" means a notice placed in a consumer's consumer report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the report or any information from it without the express authorization of the consumer, but does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

C.56:11-46 Election of placement of security freeze on consumer report, procedure.

5. a. A consumer may elect to place a security freeze on his consumer report by:

(1) making a request in writing by certified mail or overnight mail to a consumer reporting agency; or

(2) making a request directly to the consumer reporting agency through a secure electronic mail connection, if an electronic mail connection is provided by the consumer reporting agency.

b. A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving a written request from the consumer.

c. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time.

d. If the consumer wishes to allow his consumer report to be accessed for a specific party or period of time while a freeze is in place, he shall contact the consumer reporting agency via certified or overnight mail or secure electronic mail and request that the freeze be temporarily lifted, and provide all of the following:

- (1) Information generally deemed sufficient to identify a person;
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection c. of this section; and
- (3) The proper information regarding the third party who is to receive the consumer report or the time period for which the consumer report shall be available to users of the consumer report.

e. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection d. of this section shall comply with the request no later than three business days after receiving the request.

f. A consumer reporting agency shall develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection d. of this section in an expedited manner. The director shall promulgate regulations necessary to allow the use of electronic media to receive and process a request from a consumer to temporarily lift a security freeze pursuant to subsection d. of this section as quickly as possible, with the goal of processing a request within 15 minutes of that request.

g. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

- (1) Upon consumer request, pursuant to subsection d. or j. of this section; or
- (2) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing at least five business days prior to removing the freeze on the consumer report.

h. If a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his

consumer report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

i. (1) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681g, the following notice shall be included:

**New Jersey Consumers Have the Right to Obtain a
Security Freeze**

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to New Jersey law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (i) The unique personal identification number or password provided by the consumer reporting agency;
- (ii) Proper identification to verify your identity; and
- (iii) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days or less, as provided by regulation, after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

(2) If a consumer requests information about a security freeze, he shall be provided with the notice provided in paragraph (1) of this subsection and with any other information, as prescribed by the director by regulation, about how to place, temporarily lift and permanently lift a security freeze.

j. A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection c. of this section.

k. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

l. The provisions of this section do not apply to the use of a consumer report by the following:

(1) A person, or subsidiary, affiliate, or agent of that person, or an assignee of a financial obligation owing by the consumer to that person, or a prospective assignee of a financial obligation owing by the consumer to that person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection d. of this section, for purposes of facilitating the extension of credit or other permissible use;

(3) Any State or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

(4) The Division of Taxation in the Department of the Treasury for the purpose of enforcing the tax laws of this State;

(5) A State or local child support enforcement agency;

(6) The use of credit information for the purposes of prescreening as provided for by the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq.;

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; or

(8) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

m. (1) A consumer reporting agency shall not charge a consumer any fee to place a security freeze on that consumer's consumer report.

(2) A consumer reporting agency may charge a reasonable fee, not to exceed \$5, to a consumer who elects to remove or temporarily lift a security freeze on that consumer's consumer report.

(3) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original personal identification number provided by the consumer reporting agency and must be reissued the same or a new personal identification number.

C.56:11-47 Actions of consumer reporting agency relative to security freeze.

6. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name; date of birth; Social Security number; or address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

C.56:11-48 Inapplicability of sections 4 through 9 of act to resellers.

7. The provisions of sections 4 through 9 of this amendatory and supplementary act shall not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new consumer reports are produced, except that such a reseller of credit information shall honor any security freeze placed on a consumer report by another consumer reporting agency.

C.56:11-49 Entities not required to place security freeze in consumer report.

8. The following entities are not required to place a security freeze in a consumer report, pursuant to section 5 of this amendatory and supplementary act:

a. A check services company or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose

of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

b. A demand deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

C.56:11-50 Noncompliance, liability.

9. a. Any person who willfully fails to comply with the requirements of sections 4 through 9 of this amendatory and supplementary act shall be liable to a consumer as provided in section 11 of P.L.1997, c.172 (C.56:11-38).

b. Any person who is negligent in failing to comply with the requirements of sections 4 through 9 of this amendatory and supplementary act shall be liable to a consumer as provided in section 12 of P.L.1997, c.172 (C.56:11-39).

C.56:8-161 Definitions relative to security of personal information.

10. As used in sections 10 through 15 of this amendatory and supplementary act:

"Breach of security" means unauthorized access to electronic files, media or data containing personal information that compromises the security, confidentiality or integrity of personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Good faith acquisition of personal information by an employee or agent of the business for a legitimate business purpose is not a breach of security, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

"Business" means a sole proprietorship, partnership, corporation, association, or other entity, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

"Communicate" means to send a written or other tangible record or to transmit a record by any means agreed upon by the persons sending and receiving the record.

"Customer" means an individual who provides personal information to a business.

"Individual" means a natural person.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Personal information" means an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver's license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked, would constitute personal information is personal information if the means to link the dissociated data were accessed in connection with access to the dissociated data.

For the purposes of sections 10 through 15 of this amendatory and supplementary act, personal information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.

"Private entity" means any individual, corporation, company, partnership, firm, association, or other entity, other than a public entity.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. For the purposes of sections 10 through 15 of this amendatory and supplementary act, public entity does not include the federal government.

"Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

"Records" means any material, regardless of the physical form, on which information is recorded or preserved by any means, including written or spoken words, graphically depicted, printed, or electromagnetically transmitted. Records does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed.

C.56:8-162 Methods of destruction of certain customer records.

11. A business or public entity shall destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information, which is no longer to be retained by the business or public entity, by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable, undecipherable or nonreconstructable through generally available means.

C.56:8-163 Disclosure of breach of security to customers.

12. a. Any business that conducts business in New Jersey, or any public entity that compiles or maintains computerized records that include personal information, shall disclose any breach of security of those computerized

records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The disclosure to a customer shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection c. of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Disclosure of a breach of security to a customer shall not be required under this section if the business or public entity establishes that misuse of the information is not reasonably possible. Any determination shall be documented in writing and retained for five years.

b. Any business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity shall notify that business or public entity, who shall notify its New Jersey customers, as provided in subsection a. of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

c. (1) Any business or public entity required under this section to disclose a breach of security of a customer's personal information shall, in advance of the disclosure to the customer, report the breach of security and any information pertaining to the breach to the Division of State Police in the Department of Law and Public Safety for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

(2) The notification required by this section shall be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request that the notification be delayed. The notification required by this section shall be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

d. For purposes of this section, notice may be provided by one of the following methods:

- (1) Written notice;
- (2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the federal "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. s.7001); or
- (3) Substitute notice, if the business or public entity demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the business or

public entity does not have sufficient contact information. Substitute notice shall consist of all of the following:

(a) E-mail notice when the business or public entity has an e-mail address;

(b) Conspicuous posting of the notice on the Internet web site page of the business or public entity, if the business or public entity maintains one; and

(c) Notification to major Statewide media.

e. Notwithstanding subsection d. of this section, a business or public entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the business or public entity notifies subject customers in accordance with its policies in the event of a breach of security of the system.

f. In addition to any other disclosure or notification required under this section, in the event that a business or public entity discovers circumstances requiring notification pursuant to this section of more than 1,000 persons at one time, the business or public entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis, as defined by subsection (p) of section 603 of the federal "Fair Credit Reporting Act" (15 U.S.C. s.1681a), of the timing, distribution and content of the notices.

C.56:8-164 Prohibited actions relative to display of social security numbers.

13. a. No person, including any public or private entity, shall:

(1) Publicly post or publicly display an individual's Social Security number, or any four or more consecutive numbers taken from the individual's Social Security number;

(2) Print an individual's Social Security number on any materials that are mailed to the individual, unless State or federal law requires the Social Security number to be on the document to be mailed;

(3) Print an individual's Social Security number on any card required for the individual to access products or services provided by the entity;

(4) Intentionally communicate or otherwise make available to the general public an individual's Social Security number;

(5) Require an individual to transmit his Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted; or

(6) Require an individual to use his Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site.

b. Nothing in this section shall prevent a public or private entity from using a Social Security number for internal verification and administrative purposes, so long as the use does not require the release of the Social Security number to persons not designated by the entity to perform associated functions allowed or authorized by law.

c. Nothing in this section shall prevent the collection, use or release of a Social Security number, as required by State or federal law.

d. Notwithstanding this section, Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the Social Security number. A Social Security number that is permitted to be mailed under this subsection may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been open.

e. Nothing in this section shall apply to documents that are recorded or required to be open to the public pursuant to Title 47 of the Revised Statutes. This section shall not apply to records that are required by statute, case law, or New Jersey Court Rules, to be made available to the public by entities provided for in Article VI of the New Jersey Constitution.

f. Nothing in this section shall apply to the interactive computer service provider's transmissions or routing or intermediate temporary storage or caching of an image, information or data that is otherwise subject to this section.

C.56:8-165 Regulations concerning security of personal information.

14. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Banking and Insurance, shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate sections 4 through 15 of this amendatory and supplementary act.

C.56:8-166 Unlawful practice, violation.

15. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to willfully, knowingly or recklessly violate sections 10 through 13 of this amendatory and supplementary act.

16. This act shall take effect on January 1 next following enactment, except that section 3 of this act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 227

AN ACT concerning research in sudden death in infancy and early childhood and amending and supplementing P.L.2000, c.24.

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

1. Section 2 of P.L.2000, c.24 (C.52:17B-88.10) is amended to read as follows:

C.52:17B-88.10 Standardized protocols for autopsies of suspected SIDS victims.

2. a. The State Medical Examiner, in consultation with the Commissioner of Health and Senior Services, shall develop standardized protocols for autopsies performed in those cases in which the suspected cause of death of a child under one year of age is sudden infant death syndrome and in which the child is between one and three years of age and the death is sudden and unexpected.

b. The State Medical Examiner shall establish a Sudden Child Death Autopsy Protocol Committee to assist in developing and reviewing the protocol. The committee shall include, but shall not be limited to, the State Medical Examiner or his designee, the Assistant Commissioner of the Division of Family Health Services in the Department of Health and Senior Services or his designee, the Director of the Division of Youth and Family Services in the Department of Human Services or his designee, the director of the SIDS Resource Center established pursuant to P.L.1987, c.331 (C.26:5D-4), an epidemiologist, a forensic pathologist, a pediatric pathologist, a county medical examiner, a pediatrician who is knowledgeable about sudden infant death syndrome and child abuse, a law enforcement officer, an emergency medical technician or a paramedic, a family member of a sudden infant death syndrome victim and a family member of a sudden unexpected death victim who was between one and three years of age at the time of death.

The committee shall annually review the protocol and make recommendations to the State Medical Examiner to revise the protocol, as appropriate.

c. The protocols shall include requirements and standards for scene investigation, criteria for ascertaining the cause of death based on autopsy, criteria for specific tissue sampling, and such other requirements as the committee deems appropriate. The protocols shall take into account nationally recognized standards for pediatric autopsies.

The State Medical Examiner shall be responsible for ensuring that the protocols are followed by all medical examiners and other persons

authorized to conduct autopsies in those cases in which the suspected cause of death is sudden infant death syndrome or in which the child is between one and three years of age and the death is sudden and unexpected.

d. The protocols shall authorize the State Medical Examiner, county medical examiner or other authorized person to take tissue samples for research purposes, as provided in section 2 of P.L.2005, c.227 (C.52:17B-88.11).

e. The sudden infant death syndrome autopsy protocol shall provide that if the findings in the autopsy are consistent with the definition of sudden infant death syndrome specified in the protocol, the person who conducts the autopsy shall state on the death certificate that sudden infant death syndrome is the cause of death.

C.52:17B-88.11 Protocol for participation of medical examiners in certain research activities concerning SIDS.

2. The Legislature finds and declares that: advances in genetics, biochemistry and other areas of medical research are yielding new information about the specific causes of sudden death in infancy and early childhood; these findings are of great importance because the largest subgroup of these deaths, Sudden Infant Death Syndrome, remains a "rule-out" diagnosis for which the family learns what did not, rather than what did, cause the death of their child; without knowing the actual cause, families are not able to determine if there is a genetic basis that places their other children at risk, and physicians are not able to prevent a death by prospectively diagnosing and treating a potentially fatal medical problem; and if the State is to meet its public health goal of reducing infant mortality, it is in the public interest to accelerate efforts to identify actual causes of death in infants and young children.

a. The State Medical Examiner, in consultation with the Commissioner of Health and Senior Services and the Sudden Child Death Autopsy Protocol Committee established pursuant to section 2 of P.L.2000, c.24 (C.52:17B-88.10) shall establish, pursuant to this section, a protocol for participation by medical examiners in research activities concerning deaths of children three years of age and younger. The protocol shall be revised as necessary. The research shall include all autopsies in which the suspected cause of death of a child under one year of age is sudden infant death syndrome and the suspected cause of death of a child three years of age and younger is not considered a violent death pursuant to subsection a. of section 9 of P.L.1967, c.234 (C.52:17B-86).

The protocol shall authorize the State Medical Examiner, county medical examiner or other authorized person to take and transfer tissue samples to an approved research project prior to obtaining the consent of the

parent or legal guardian of the deceased infant or young child, but the research project shall not be permitted to use the tissue prior to its obtaining consent as provided in paragraph (3) of this subsection.

Notwithstanding the provisions of this section to the contrary, the protocol shall provide that no tissue sample shall be taken from a deceased infant or young child whose parent or legal guardian has objected to an autopsy because it is contrary to the religious beliefs of the deceased, in accordance with section 2 of P.L.1983, c.535 (C.52:17B-88.2).

The protocol shall, at a minimum, stipulate that:

(1) the research project first be approved by the institutional review board of the facility at which the research shall be conducted, then by the Sudden Child Death Autopsy Protocol Committee, and finally by the Institutional Review Board of the New Jersey Department of Health and Senior Services. If a research project is submitted by the Department of Health and Senior Services, the final review of the project shall be conducted by an independent review board;

(2) the research project delineate the information, other than the tissue sample, that will be required from the investigation of the death of the infant or young child;

(3) the research project develop a plan for the release by the State Medical Examiner or county medical examiner, as applicable, of a decedent's tissue, as well as obtaining written consent for the use of the tissue and other identifying information from the parent or legal guardian of the deceased infant or young child;

(4) the research project develop a plan for the disposal of a decedent's tissue in the event that the parent or guardian does not give consent for use of the tissue, and in cases in which consent is given, upon completion of the research. The plan shall incorporate accepted procedures for disposal of surgical biopsies and biohazardous materials, and shall include procedures to inform the parent or guardian and the Sudden Child Death Autopsy Protocol Committee of the disposal plan;

(5) the research project reimburse the State Medical Examiner, county medical examiner or other authorized person participating in the research for reasonable costs incurred in taking, storing and providing tissue samples for the project. The estimated costs subject to reimbursement shall be reviewed and approved by the State Medical Examiner;

(6) the research project provide the State Medical Examiner and the Sudden Child Death Autopsy Protocol Committee with periodic updates on the status of the project; and

(7) the Sudden Child Death Autopsy Protocol Committee may terminate a research project that is not in compliance with the research project as approved pursuant to this subsection.

b. Upon receiving notification from the research project that the research project has obtained written consent from the parent or legal guardian of the deceased infant or young child for the use of tissue samples and identifying information, the State Medical Examiner, county medical examiner or other authorized person, as applicable, shall provide the research project with copies of the autopsy reports and any reports generated by the State Medical Examiner or county medical examiner concerning the subject of the research.

c. The information and tissue samples provided by the State Medical Examiner, county medical examiner or other authorized person to the research project shall be used by the research project only for the purposes approved by the Sudden Child Death Autopsy Protocol Committee and as specified in the protocol, and shall not otherwise be divulged or made public so as to disclose the identity of any person to whom they relate. The information provided to the research project shall not be considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

d. The Sudden Child Death Autopsy Protocol Committee shall oversee the approved research projects.

e. The State Medical Examiner, county medical examiner, their employees and other persons authorized by the State Medical Examiner to provide tissue samples and identifying information to the research project, and the members of the Sudden Child Death Autopsy Protocol Committee shall not be liable for civil damages as the result of any actions or omissions performed in good faith and in accordance with the provisions of this act.

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

Approved September 22, 2005.

CHAPTER 228

AN ACT concerning dam safety, and amending R.S.58:4-5 and R.S.58:4-6.

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

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

Alterations, additions and repairs of unsafe reservoirs or dams; duties of owner.

58:4-5. a. An owner or person having control of a reservoir or dam shall:

(1) Implement all measures required pursuant to this chapter or the provisions of P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation, code, permit or order issued pursuant thereto, including but not limited to, performance of periodic inspections required pursuant to section 2 of P.L.1981, c.249 (C.58:4-8.2) or development, updating and implementation of emergency action plans;

(2) Provide to the Department of Environmental Protection, upon request, any reports or information required pursuant to this chapter or the provisions of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto; and

(3) Implement any action ordered by the Commissioner of Environmental Protection to correct conditions that render the reservoir or dam to be considered, as determined by the commissioner, unsafe or improperly maintained or to bring the reservoir or dam into compliance with standards established pursuant to this chapter, or any rule or regulation adopted, or permit or order issued pursuant thereto.

b. If, in the judgment of the commissioner, any reservoir or dam is not sufficiently strong to resist the pressure of water that is or may be upon it or there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam, or if for any other cause the commissioner shall determine the reservoir or dam to be unsafe or improperly maintained, the commissioner shall take any action authorized pursuant to this section to compel compliance with the provisions of this chapter, or any rule or regulation adopted, or permit or order issued pursuant thereto, and shall determine whether the water in the reservoir or above the dam shall be drawn off in whole or in part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained or whether the dam or appurtenant structures located therein should be removed. The commissioner also may take action as authorized pursuant to R.S.58:4-6 against the owner or person having control of the reservoir or dam for such relief as the commissioner may determine. The commissioner shall forthwith in writing order the owner or person having control of the reservoir or dam to cause the alterations, additions and repairs to be made within the time to be limited in the order. A copy of any order issued by the commissioner pursuant to this section shall be sent to the clerk of the municipality and the clerk of the county in which the reservoir or dam is located. The commissioner also may order the water in the reservoir or above the dam to be drawn off in whole or in part as the commissioner may determine. The commissioner shall not approve the decommissioning of a reservoir or dam until the commissioner has provided 30 days' prior notice and the commissioner has complied with the provisions of R.S.58:4-10 as applicable. The notice of the proposed

decommissioning shall be published at least 30 days prior to the decommissioning of the reservoir or dam in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located. The commissioner shall have the right to enter upon any and all properties for the purpose of obtaining information about the safety and proper maintenance of any reservoir, dam or appurtenant structures located therein.

c. Any owner or person having control of a reservoir or dam who fails to comply with an order issued pursuant to this section or R.S.58:4-6 may be liable to the department in an amount equal to the cost of removal of the dam or appurtenant structures located therein undertaken by the department, including attorney's fees and court costs, pursuant to subsection d. of this section.

Whenever two or more owners or persons having control of a reservoir or dam are liable for the cost of removal, including attorney's fees and court costs, the department may allocate the cost of removal among the liable parties using such factors as the department determines are appropriate. Nothing in this subsection shall affect the right of any party to seek contribution from any other person responsible for the cost of removal of the dam pursuant to any other statute or under common law.

d. (1) Whenever the commissioner determines that a dam is in imminent danger of failure and has reasonable cause to believe that danger to life or property may be anticipated from the reservoir, dam or appurtenant structures located therein, and the owner of the dam or person having control of the reservoir or dam has failed to comply with an order to repair the dam issued pursuant to subsection a. of this section or R.S.58:4-6, or to take such interim measures as the department determines are appropriate, including reducing the amount of water impounded by the dam or breaching the dam, the department may, in addition to actions authorized pursuant to R.S.58:4-6, enter upon any and all properties wherein the reservoir, dam or appurtenant structures are located and, using resources and personnel available to the department, remove or cause to be removed the dam or appurtenant structures located therein, allowing the water to flow freely.

Prior to any action by the department pursuant to this subsection, the owner or person having control of the reservoir or dam, shall, no later than 60 days after receipt of a notice from the department of a pending removal action, submit to the department, in writing, an acceptable implementation plan addressing the proposed actions to be taken regarding the failed or failing reservoir or dam.

(2) Any expenditures made by the department pursuant to this section shall constitute, in each instance, a debt to the State. The debt shall constitute a lien on all property owned by the owner or person having control of the reservoir or dam when a certificate of debt, incorporating a

description of the property of the owner or person having control of the reservoir or dam subject to the repair, and related costs, is duly filed with the clerk of the Superior Court. The clerk shall promptly enter upon the civil judgment and order docket the name and address of the owner or person having control of the reservoir or dam and the amount of the lien as set forth in the certificate of debt. Upon entry by the clerk, the lien, to the amount committed by the department for dam repair, shall attach to the revenues and all real and personal property of the owner or person having control of the reservoir or dam, whether or not the owner or person having control of the reservoir or dam is insolvent.

The certificate of debt filed pursuant to this paragraph which affects the property of an owner or person having control of a reservoir or dam subject to the dam repairs 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 certificate of debt shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of this certificate of debt.

The certificate of debt filed pursuant to this subsection which affects any property of an owner or person having control of a reservoir or dam, other than the property subject to the repairs, shall have priority from the day of the filing of the certificate of debt 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 certificate of debt pursuant to this subsection.

Whenever the owner or person having control of the reservoir or dam is a private lake association or other body representing owners of property adjacent to the reservoir or lake created by the dam or impoundment, liens may be imposed upon the individual owners of the property represented by the association. An owner whose property has such a lien imposed may release the property from a lien claimed under this subsection by filing with the clerk of the Superior Court a cash or surety bond, payable to the department in the amount of the sums expended by the department pursuant to this section, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less.

e. The provisions of this section shall not limit the use of other remedies available to the department pursuant to law.

f. The commissioner 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 the provisions of this section.

2. R.S.58:4-6 is amended to read as follows:

Enforcement powers of department, civil, criminal; violations; penalties.

58:4-6. a. Whenever the Commissioner of Environmental Protection finds that a person has violated any provision of the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.), or any rule, regulation or order issued pursuant thereto, the commissioner may:

- (1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or
- (2) Bring a civil action in accordance with subsection c. of this section; or
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, the commissioner may issue an administrative order: (1) specifying the provision or provisions of the law, rule, regulation, or order, of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto. Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction, including an order or judgment as will effectually secure the persons interested from danger of loss from the breaking of a dam. The court may proceed in the action in a summary manner or otherwise;
- (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 bringing legal action under this subsection;
- (3) Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any

violation for which legal action under this subsection may have been brought;

(4) Assessment against the violator for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by a violation;

(5) A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

d. The commissioner is authorized to assess a civil administrative penalty of up to \$25,000 for each violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. In adopting rules and regulations establishing the amount of any penalty to be assessed, the commissioner may take into account the economic benefits from the violation gained by the violator. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall: (1) identify the section of the law, rule, regulation or order violated; (2) recite the facts alleged to constitute a violation; (3) state the amount of the civil penalties to be imposed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 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 specifying the amount of the fine imposed. If no hearing is requested, the notice shall become final 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 an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, 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. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

e. A person who violates any provision of P.L.1981, c.249 or any rule, regulation or order issued pursuant thereto, an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, shall be subject,

upon order of a court, to a civil penalty not to exceed \$10,000 per day of such violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of actual economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this section.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes. A second or subsequent offense under this subsection shall subject the violator to a fine, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, of not less than \$5,000 nor more than \$50,000 per day of violation, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes. A person who knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the provisions of P.L.1981, c.249 shall be guilty, upon conviction, of a crime of the fourth degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more than \$10,000, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes.

g. In addition to the penalties prescribed in this section, a notice of violation of any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto, shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and with the clerk of the Superior Court and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed.

h. The department may require an owner or person having control of a reservoir or dam to provide any information the department requires to determine compliance with any provision of P.L.1981, c.249, or any rule, regulation or order issued pursuant thereto.

i. Any person who knowingly, recklessly, or negligently makes a false statement, representation or certification in any application, record, or other document filed or required to be maintained under the provisions of P.L.1981, c.249, shall be in violation of the act and shall be subject to the penalties assessed pursuant to subsections d. and e. of this section.

j. All penalties collected pursuant to this section or sums collected pursuant to R.S.58:4-5 shall be deposited in the "Environmental Services Fund," established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts deposited therein, and appropriated to the department for the removal of dams in the State.

k. The department shall have the authority to enter any property, facility, premises, or site for the purpose of conducting inspections to determine the condition of any dam, or to conduct inspections of ordered repairs or to otherwise determine compliance with the provisions of P.L.1981, c.249.

3. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 229

AN ACT concerning certain viatical settlements, supplementing Title 17B of the New Jersey Statutes, amending P.L.1967, c.93 and repealing P.L.1999, c.211.

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

C.17B:30B-1 Short title.

1. This act shall be known and may be cited as the "Viatical Settlements Act."

C.17B:30B-2 Definitions relative to viatical settlements.

2. As used in this act:

"Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

"Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating of, or in any other manner involving, viatical settlement contracts.

"Chronically ill" means:

(1) Being unable to perform at least two activities of daily living, including, but not limited, to eating, toileting, transferring, bathing, dressing or continence;

(2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(3) Having a level of disability similar to that described in paragraph (1) of this subsection as determined by the United States Secretary of Health and Human Services.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Financing entity" means:

(1) an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract but:

(a) whose principal activity related to the transaction is providing funds to effect the viatical settlement contract or purchase of one or more viaticated policies; and

(b) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

(2) "Financing entity" does not include a non-accredited investor or purchaser of a policy from a viatical settlement provider.

"Fraudulent viatical settlement act" means and includes:

(1) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

(a) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, life insurance producer, financing entity, insurer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

(i) An application for the issuance of a viatical settlement contract or insurance policy;

- (ii) The underwriting of a viatical settlement contract or insurance policy;
- (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
- (iv) Premiums paid on an insurance policy;
- (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
- (vi) The reinstatement or conversion of an insurance policy;
- (vii) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;
- (viii) The issuance of written evidence of a viatical settlement contract or insurance; or
- (ix) A financing transaction;
- (b) Employing any device, scheme, or artifice to defraud related to viaticated policies;
- (2) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:
 - (a) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a viatical settlement provider licensee or other person engaged in the business of viatical settlements;
 - (b) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
 - (c) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or
 - (d) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;
- (3) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner or any other person engaged in the business of viatical settlements or insurance;
- (4) Recklessly entering into, brokering or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of

the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or

(5) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

"Life insurance producer" means any person licensed as a resident or nonresident insurance producer with a life insurance line of authority pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

"Person" means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability partnership, limited liability company, association, trust or corporation.

"Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.

"Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in viaticated policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

"Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

"Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

"Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a

viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. A viatical settlement contract does not mean or include a written agreement between a viator and a person having an insurable interest in the insured's life. A viatical settlement contract shall not include any accelerated benefit pursuant to the terms of a life insurance policy issued in accordance with Title 17B of the New Jersey Statutes.

"Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

(1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) The issuer of a life insurance policy providing accelerated benefits pursuant to regulations prescribed by the commissioner and pursuant to the policy;

(3) An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, financing entity, special purpose entity or related provider trust;

(4) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(5) A financing entity;

(6) A special purpose entity;

(7) A related provider trust; or

(8) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the federal "Securities Act of 1933" (15 U.S.C. s.77a et seq.) as amended, and who purchases a viaticated policy from a viatical settlement provider.

"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

"Viator" means the owner of a policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this act, a viator shall not be limited to an owner of a policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. Viator shall not include:

- (1) A viatical settlement provider licensed under this act;
- (2) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the federal "Securities Act of 1933" (15 U.S.C. s.77a et seq.), as amended;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

C.17B:30B-3 License to operate as viatical settlement provider.

3. a. A person shall not operate as a viatical settlement provider without first obtaining a license from the commissioner of the state of residence of the viator.

b. (1) No person shall act on behalf of a viator residing in this State, or otherwise negotiate, as that term is defined in section 3 of P.L.2001, c.210 (C.17:22A-28), viatical settlement contracts between a viator residing in this State and one or more viatical settlement providers unless that person is licensed as a life insurance producer pursuant to the "New Jersey Insurance Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.) and has been licensed as a resident insurance producer in his home state for not less than one year.

(2) Irrespective of the manner in which the life insurance producer is compensated, a life insurance producer is deemed to represent only the viator and not the viatical settlement provider or any insurer, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

(3) Not later than 30 days from the first day of negotiating a viatical settlement contract on behalf of a viator, such producer shall notify the commissioner of that activity on a form or in a manner that may be prescribed by, and shall pay any applicable fees determined by, the commissioner by regulation. The notification shall include an acknowledgment by the producer that he will operate in accordance with the provisions of this act.

(4) Notwithstanding paragraph (1) of this subsection, a person licensed as an attorney, or a certified public accountant, representing a viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate a viatical settlement contract without a license as a life insurance producer.

c. Application for a viatical settlement provider license pursuant to subsection a. of this section shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee, the amount of which shall be set by the

commissioner by regulation, provided, however, that the license and renewal fees for a viatical settlement license shall not exceed that established by law or regulation for a domestic stock life insurance company.

d. A viatical settlement provider license may be renewed from year to year on the anniversary date upon payment of the annual renewal fee in an amount set by the commissioner by regulation. Failure to pay the fee by the renewal date shall result in expiration of the license.

e. The applicant for a license pursuant to subsection a. of this section shall provide information on forms required by the commissioner. The commissioner shall have the authority, at any time, to require the applicant to fully disclose the identity of all stockholders except those owning fewer than five percent of the shares of an applicant whose shares are publicly traded, partners, officers, members and employees, and the commissioner may, in his discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this act.

f. A license pursuant to subsection a. of this section issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers, under the license, and all those persons shall be named in the application and any supplements to the application.

g. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) Has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
- (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
- (4) If a legal entity, provides a certificate of good standing from the state of its domicile; and
- (5) Has provided an anti-fraud plan that meets the requirements of section 12 of this act.

h. The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner, or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

i. A viatical settlement provider shall provide to the commissioner any new or revised information about officers, stockholders holding 10% or more of the outstanding shares, partners, directors, members or designated employees within 30 days of the change.

C.17B:30B-4 Refusal to issue, suspension, revocation, refusal to renew license.

4. a. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider, if the commissioner finds that:

(1) There was any material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(3) The licensee demonstrates a pattern of unreasonable payments to viators;

(4) The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) The licensee has entered into any settlement contract that has not been approved pursuant to this act;

(6) The licensee has failed to honor contractual obligations set out in a viatical settlement contract;

(7) The licensee no longer meets the requirements for initial licensure;

(8) The licensee has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this State, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the federal "Securities Act of 1933" (15 U.S.C. s.77a et seq.), as amended, financing entity, special purpose entity or related provider trust; or

(9) The licensee or any officer, partner, member or key management personnel has violated any provision of this act.

b. The commissioner may suspend, revoke or refuse to renew the license of a life insurance producer if the commissioner finds that the life insurance producer has violated the provisions of this act.

c. Before the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or suspends, revokes or refuses to renew the license of a life insurance

producer pursuant to this act, the commissioner shall conduct a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.17B:30B-5 Approval of viatical settlement forms by commissioner.

5. A person shall not use a viatical settlement contract form or provide a disclosure statement or application form to a viator in this State unless it has been filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract form, disclosure form, or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. The commissioner may require the submission of advertising material used in connection with a viatical settlement contract.

C.17B:30B-6 Filing of annual statement.

6. a. Each viatical settlement provider licensee shall file with the commissioner on or before March 1 of each year an annual statement containing that information which the commissioner by regulation may prescribe. This information is limited to only those transactions in which the viator is a resident of this State and shall not include individual transaction data or data which compromises the privacy of personal, financial, and health information of the viator or insured.

b. Except as otherwise allowed or required by law, a viatical settlement provider, insurance company, life insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of the identity of the insured, shall not disclose that identity, or the insured's financial or medical information, to any other person unless the disclosure:

(1) Is necessary to effect a viatical settlement contract between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(2) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of subsection e. of section 12 of this act;

(3) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(4) Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(5) Is necessary to allow the viatical settlement provider or its authorized representative to make contacts for the purpose of determining health status; or

(6) Is required to purchase stop loss coverage.

c. In addition to the information required in this section, the commissioner may require that either or both viatical settlement providers and life insurance producers provide to the commissioner that information the commissioner determines by regulation, regarding the amount and method of compensation paid to life insurance producers for negotiating a viatical settlement contract pursuant to this act.

C.17B:30B-7 Examinations of licensees by commissioner.

7. a. (1) The commissioner may conduct an examination of a licensee under this act as often as the commissioner, in his sole discretion, deems appropriate.

(2) For purposes of completing an examination of a licensee under this act, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

(3) In lieu of an examination under this act of any foreign or alien licensee licensed in this State, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner or other regulator for the licensee's state of domicile or port-of-entry state.

b. (1) A person required to be licensed by this act shall for five years retain copies of all:

(a) Proposed, offered or executed viatical settlement contracts, underwriting documents, policy forms and applications from the date of the proposal, offer, or execution of the viatical settlement contract, whichever is later;

(b) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(c) All other records and documents related to the requirements of this act.

(2) This subsection shall not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if that person has retained the documents.

(3) Records required to be retained pursuant to this subsection shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

c. (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ other guidelines or procedures as the commissioner deems appropriate.

(2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the business of viatical settlements or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(5) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(6) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate.

d. (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and either:

(a) Adopt the examination as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or

(b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to paragraph (1) of this subsection; or

(c) Call for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(4) (a) All determinations made pursuant to subparagraph (a) of paragraph (3) of this subsection shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such determination shall be served upon the company, together with a copy of the adopted examination report. Within

30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) Any hearing under subparagraph (c) of paragraph (3) of this subsection shall be conducted by the commissioner or an authorized representative of the commissioner as a nonadversarial, confidential investigatory proceeding, as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of any such hearing, the commissioner shall make a determination pursuant to subparagraph (a) of paragraph (3) of this subsection.

(i) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents relevant to the investigation whether under the control of the department, the company or other persons. Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(ii) The hearing shall proceed with the commissioner or his representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

(5) Upon the adoption of the examination report under subparagraph (a) of paragraph (3) of this subsection, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of 90 days except to the extent provided in paragraph (6) of subsection c. of this section.

(6) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

e. (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

(2) Except as otherwise provided in this act, all examination reports, working papers, recorded information, documents and copies thereof

produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to any State or federal freedom of information law, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(a) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this act, or assisting the commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(b) Disclosed to the NAIC and its affiliates and subsidiaries under paragraph (4) of this subsection by the commissioner.

(c) For the purposes of paragraph (2) of this subsection, "act" includes the law of another state or jurisdiction that is substantially similar to this act.

(4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph (1) of this subsection.

(5) In order to assist in the performance of the commissioner's duties, the commissioner:

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

(b) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from

regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph (5) of this subsection.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this State.

(8) Nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as that agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

f. (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This subsection shall not be construed to automatically preclude an examiner from being:

- (a) A viator;
- (b) An insured in a viaticated insurance policy; or
- (c) A beneficiary in an insurance policy that is proposed to be viaticated.

(2) Notwithstanding the requirements of this subsection, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this act.

g. (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

(2) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information

or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph shall not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph (1) of this subsection.

(3) A person identified in paragraph (1) or (2) of this subsection shall be entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

h. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

C.17B:30B-8 Disclosures to viator, procedure.

8. a. With each application for a viatical settlement, a viatical settlement provider or life insurance producer shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider, and shall provide the following information:

(1) There are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(2) Some or all of the proceeds of the viatical settlement contract may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor;

(3) Proceeds of the viatical settlement contract could be subject to the claims of creditors;

(4) Receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(5) The viator has the right to rescind a viatical settlement contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in subsection c. of section 9 of this act. If exercised by the viator, rescission is effective only if both notice of the rescission is given and repayment of all

proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider;

(6) Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract;

(7) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator and that assistance should be sought from a financial adviser;

(8) Disclosure to a viator shall include distribution of a brochure, describing the process of viatical settlements approved by the commissioner. The National Association of Insurance Commissioners (NAIC) form for the brochure shall be used unless one is developed by the commissioner;

(9) The disclosure document shall contain the following language:

"All medical, financial or personal information solicited or obtained by a viatical settlement provider or life insurance producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."; and

(10) The insured may be contacted by the viatical settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

b. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider and provide the following information:

(1) State the affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be acquired pursuant to a viatical settlement contract;

(2) The document shall include the name, address and telephone number of the viatical settlement provider;

(3) If the policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a viatical settlement contract, the viator shall be informed of the possible loss of coverage on the other lives;

(4) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy. The viatical settlement provider shall, if known, also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy and the viatical settlement provider's interest in those benefits; and

(5) State the name, business address and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

c. If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

C.17B:30B-9 Material required prior to entering into viatical settlement contract.

9. a. (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(a) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(b) A document in which the insured consents to the release of his medical records to a viatical settlement provider, life insurance producer and, if the policy was issued less than two years from the date of application for a viatical settlement contract, to the insurance company that issued the policy covering the life of the insured.

(2) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider not later than 30 calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract.

(3) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness was diagnosed after the life insurance policy was issued.

(4) If a life insurance producer performs any of the activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

b. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of State law relating to confidentiality of medical information.

c. All viatical settlement contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the receipt of the viatical settlement proceeds by the viator. If exercised by the viator, rescission is effective only if both notice of the rescission is given and a full repayment of all proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the settlement provider.

d. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the documents (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a State or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership or

designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

e. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to paragraph (6) of subsection a. of section 8 of this act renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

f. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider after the viatical settlement has occurred shall only be made by the settlement provider licensed in this State or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider shall explain to the insured the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers shall be responsible for the actions of their authorized representatives.

g. If the insured is not terminally or chronically ill, viatical settlement providers shall pay an amount greater than the cash surrender value or accelerated death benefit then available.

C.17B:30B-10 Two-year period required between issuance of policy and viatical settlement; exceptions.

10. a. It is a violation of this act for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual life insurance policy, so long as the total amount of time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(2) The viator submits independent evidence to the viatical settlement provider that within the two-year period: (a) the viator or insured was terminally ill or chronically ill; or (b) the viator or insured disposed of his ownership interests in a closely held corporation pursuant to a buyout or

other similar agreement in effect at the time the insurance policy was initially issued; or (c) both.

b. Copies of the independent evidence described in paragraph (2) of subsection a. of this section and documents required by subsection a. of section 9 of this act shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

c. If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in subsection a. of this section when the provider submits a request to the insurer to effect the transfer of the policy to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

C.17B:30B-11 Advertisement of viatical settlement contracts; guidelines, standards.

11. The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlement contracts and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlement contracts to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees under this act.

a. This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this State, including Internet advertising viewed by persons located in this State. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

b. Every viatical settlement provider licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement provider licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular, routine notification, at least

once a year, to life insurance producers and others authorized by the viatical settlement provider who disseminates advertisements, of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider.

c. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract, product or service shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

d. Certain advertisements are deemed false and misleading on their face and are prohibited. False and misleading advertisements include, but are not limited to, the following representations:

(1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;

(2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

(3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) "No sales charges or fees" or similar representations; and

(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

e. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the

capacity, tendency or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(3) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is the fact.

(4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(5) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(6) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement provider licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the licensee, or receives any payment or other

consideration from the licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of five years after its use.

f. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

g. An advertisement shall not disparage insurers, viatical settlement providers, life insurance producers, policies, services or methods of marketing.

h. The name of the licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

i. An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the licensee, or to create the impression that a company other than the licensee would have any responsibility for the financial obligation under a viatical settlement contract.

j. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

k. An advertisement may state that a licensee is licensed in the state where the advertisement appears so long as it does not exaggerate that fact or suggest or imply that competing licensees may not be so licensed. The advertisement may ask the audience to consult the licensee's website or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider, or life insurance producer is licensed.

l. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its

claims or the merits, desirability, or advisability of its viatical settlement contracts forms are recommended or endorsed by any government entity.

m. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

n. An advertisement shall not directly or indirectly create the impression that any division or agency of the State or of the federal government endorses, approves or favors:

(1) Any viatical settlement provider licensee or its business practices or methods of operation;

(2) The merits, desirability or advisability of any viatical settlement contract;

(3) Any viatical settlement contract; or

(4) Any life insurance policy or life insurance company.

o. If the advertiser emphasizes the speed with which the viatication will occur, the advertising shall disclose the average time from the date of the completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

p. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

C.17B:30B-12 Fraudulent viatical settlement acts, prohibited, reporting, investigation, prosecution.

12. a. A person shall not commit a fraudulent viatical settlement act as defined in section 2 of this act.

b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this act or investigations of suspected or actual violations of this act.

c. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

d. (1) Viatical settlement contracts and applications for viatical settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance

or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(2) The lack of a statement as required in paragraph (1) of this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

e. (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

f. (1) No civil liability shall be imposed on and no cause of action shall arise from the furnishing of information concerning suspected, anticipated or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(a) The commissioner or the commissioner's employees, agents or representatives;

(b) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(c) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;

(d) The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administration Association or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

(e) The life insurer, including its agents and employees, that issued the life insurance policy covering the life of the insured.

(2) Paragraph (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) A person identified in paragraph (1) of this subsection shall be entitled to an award of attorney's fees and costs if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes

of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1) of this subsection.

g. (1) The documents and evidence provided pursuant to subsection e. of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) The provisions of paragraph (1) of this subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(a) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(b) To federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the National Association of Insurance Commissioners (NAIC); or

(c) At the discretion of the commissioner, to a person in the business of viatical settlements or the business of life insurance that is aggrieved by a fraudulent viatical settlement act.

(3) Release of documents and evidence under paragraph (2) of this subsection shall not abrogate or modify the privilege granted in paragraph (1) of this subsection.

h. This act shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(2) Prevent or prohibit a person from disclosing voluntarily information concerning a fraudulent viatical settlement act to a law enforcement or regulatory agency other than the department; or

(3) Limit the powers granted elsewhere by the laws of this State to the commissioner or the Insurance Fraud Prosecutor to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

i. Viatical settlement providers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may

reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(1) Fraud investigators, who may be viatical settlement provider employees or independent contractors; and

(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(a) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(c) A description of the plan for antifraud education and training of underwriters and other personnel; and

(d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(3) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(4) The commissioner may refer suspected fraudulent viatical settlement acts to the Department of Law and Public Safety, Office of Insurance Fraud Prosecutor, for investigation, prosecution or other action or disposition involving such suspected fraudulent viatical settlement acts.

C.17B:30B-13 Injunction in addition to penalties, enforcement provisions.

13. a. In addition to the penalties and other enforcement provisions of this act, if any person violates this act or any regulation implementing this act, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

b. Any person damaged by the acts of a person in violation of this act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

c. The commissioner may issue, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a cease and desist order upon a person that violates any provision of this act, any regulation or order adopted by the commissioner, or any written agreement entered into with the commissioner.

d. When the commissioner finds that an activity in violation of this act presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. In addition to the penalties and other enforcement provisions of this act, any person who violates this act shall be subject to civil penalties of up to \$10,000 per violation which may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner's order may require a person found to be in violation of this act to make restitution to persons aggrieved by violations of this act.

f. A person convicted of a violation of this act shall be ordered to pay restitution to persons aggrieved by the violation of this act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

g. A person convicted of a violation of this act may be sentenced in accordance with paragraph (1), (2), (3) or (4) of this subsection based on the greater of: the value of property, services, or other benefit wrongfully obtained or attempted to be obtained; or the aggregate economic loss suffered by any person as a result of the violation. A person convicted of a fraudulent viatical settlement act shall be ordered to pay restitution to persons aggrieved by the fraudulent viatical settlement act. Restitution shall be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment.

(1) Imprisonment for not more than 20 years or payment of a fine of not more than \$100,000, or both, if the value of the viatical settlement contract is more than \$35,000;

(2) Imprisonment for not more than 10 years or payment of a fine of not more than \$20,000, or both, if the value of the viatical settlement contract is more than \$2,500 but not more than \$35,000;

(3) Imprisonment for not more than five years or payment of a fine of not more than \$10,000, or both, if the value of the viatical settlement contract is more than \$500 but not more than \$2,500; or

(4) Imprisonment for not more than one year or payment of a fine of not more than \$3,000, or both, if the value of the viatical settlement contract is \$500 or less.

h. In any prosecution under paragraphs (1), (2), (3) and (4) of subsection g. of this section the value of the viatical settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided that, when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision shall not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven years after the act has occurred.

C.17B:30B-14 Violation considered unfair trade practice; penalties.

14. A violation of this act shall be considered an unfair trade practice pursuant to N.J.S.17B:30-1 et seq. and shall be subject to the penalties contained in N.J.S.17B:30-17.

C.17B:30B-15 Regulations, authority of commissioner.

15. The commissioner shall have the authority to promulgate regulations implementing the provisions of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) including, but not limited to, the following:

- a. Establishing standards for evaluating reasonableness of payments under viatical settlement contracts for persons terminally or chronically ill;
- b. Establishing appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers;
- c. Requiring a bond or other mechanism for financial accountability for viatical settlement providers; and
- d. Governing the relationship and responsibilities of insurers, viatical settlement providers, life insurance producers and others in the business of viatical settlements during the period of consideration or effectuation of a viatical settlement contract.

C.17B:30B-16 Construction of act with Uniform Securities Law.

16. Nothing in this act shall be construed to preempt or otherwise limit the provisions of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.) or any regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the Attorney General or his designee acting pursuant thereto. Compliance with the provisions of this act does not constitute compliance with any applicable provisions of the "Uniform Securities Law (1967)."

C.17B:30B-17 Continuation of negotiating viatical settlements, certain circumstances prior to act.

17. a. Notwithstanding the provisions of sections 1 through 16 of this act, a person who has lawfully negotiated viatical settlement contracts between a viator and one or more viatical settlement providers for at least one year immediately prior to the effective date of this act may continue to negotiate viatical settlements in this State for a period of one year from the effective date of this act, provided that person registers with the department on a form prescribed by the department. The registration form shall be published by the department not later than 30 days from the effective date of this act and shall require a person registering to evidence that he has lawfully negotiated viatical settlement contracts and include an acknowledgment by that person that he will operate in accordance with and comply with this act.

b. A viatical settlement provider that is either licensed or is lawfully transacting business in this State immediately prior to the effective date of this act may continue to do so pending approval or disapproval of the viatical settlement provider's application for a license pursuant to this act.

18. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read as follows:

C.49:3-49 Definitions relative to Uniform Securities Law.

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 Commis-

sion, 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; a viatical

investment; 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(a)(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. ss.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);

(w) "Viatical investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. Viatical investment does not include:

(1) any transaction between a viator and a viatical settlement provider as defined by the "Viatical Settlements Act", P.L.2005, c.229 (C.17B:30B-1 et al.);

(2) any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined in the "Viatical Settlements Act", P.L.2005, c.229 (C.17B:30B-1 et al.) or to any legal entity formed solely for the purpose of

holding ownership or beneficial interest in a life insurance policy or policies;

(3) the bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan;

(4) the exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the provisions of Title 17B of the New Jersey Statutes; or

(5) a loan by a life insurance company pursuant to the terms of the life insurance contract.

Repealer.

19. P.L.1999, c.211 (C.17B:30A-1 et seq.) is repealed.

20. Section 15 of this act shall take effect immediately and the remainder of this act shall take effect on the 90th day after enactment.

Approved September 22, 2005.

CHAPTER 230

AN ACT concerning unlicensed drivers and designated Christopher's Law, amending section 2 of P.L.2001, c.213 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. Section 2 of P.L.2001, c.213 (C.2C:40-22) is amended to read as follows:

C.2C:40-22 Penalty for causing death or injury while driving in violation of R.S.39:3-40 or unlicensed.

2. a. A person who, while operating a motor vehicle in violation of R.S.39:3-40 or while the person's driver's license is suspended or revoked in any other State, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico or the Virgin Islands, or by another country, or without ever having been issued a driver's license by this or any other State, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico or the Virgin Islands, or by another country, is involved in a motor vehicle accident resulting in the death of another person, shall be guilty of a crime of the third degree, in addition to

any other penalties applicable under R.S.39:3-40 or any other provision of law. Upon conviction, the person's driver's license or reciprocity privilege shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40 and shall be consecutive to any existing suspension or revocation. If the person did not have a driver's license at the time the accident occurred, the person shall be disqualified from obtaining a driver's license in this State for a period of one year. The additional period of suspension, revocation or disqualification shall commence upon the completion of any term of imprisonment.

b. A person who, while operating a motor vehicle in violation of R.S.39:3-40 or while the person's driver's license is suspended or revoked in any other State, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico or the Virgin Islands, or by another country, or without ever having been issued a driver's license by this or any other State, the District of Columbia or the United States Territories of American Samoa, Guam, Puerto Rico or the Virgin Islands, or by another country, is involved in a motor vehicle accident resulting in serious bodily injury, as defined in N.J.S.2C:11-1, to another person shall be guilty of a crime of the fourth degree, in addition to any other penalties applicable under R.S.39:3-40 or any other provision of law. Upon conviction, the person's driver's license or reciprocity privilege shall be suspended for an additional period of one year, in addition to any suspension applicable under R.S.39:3-40, and shall be consecutive to any existing suspension or revocation. If the person did not have a driver's license at the time the motor vehicle accident occurred, the person shall be disqualified from obtaining a driver's license in this State for a period of one year. The additional period of suspension, revocation or disqualification shall commence upon the completion of any term of imprisonment.

c. The provisions of N.J.S.2C:2-3 governing the causal relationship between conduct and result shall not apply in a prosecution under this section. For purposes of this offense, the defendant's act of operating a motor vehicle while his driver's license or reciprocity privilege has been suspended or revoked or who operates a motor vehicle without being licensed to do so is the cause of death or injury when:

(1) The operation of the motor vehicle is an antecedent but for which the death or injury would not have occurred; and

(2) The death or injury was not:

(a) too remote in its occurrence as to have a just bearing on the defendant's liability; or

(b) too dependent upon the conduct of another person which was unrelated to the defendant's operation of a motor vehicle as to have a just bearing on the defendant's liability.

d. It shall not be a defense to a prosecution under this section that the decedent contributed to his own death or injury by reckless or negligent conduct or operation of a motor vehicle.

e. Nothing in this section shall be construed to preclude or limit any prosecution for homicide.

2. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 231

AN ACT appropriating \$25,000,000 from the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162 to finance the costs of State flood control projects.

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

1. a. There is appropriated to the Department of Environmental Protection from the "2003 Dam, Lake, Stream and Flood Control Project Fund," established pursuant to section 15 of the "Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003," P.L.2003, c.162, the sum of \$25,000,000 to finance the costs of State flood control projects.

This sum shall include an amount of not more than \$1,000,000 for administrative costs incurred by the department in implementing the provisions of this section.

The sum appropriated pursuant to this subsection shall be allocated as follows:

Project	Project Sponsor	Grant Amount
Regional Flood Management Plan	Atlantic County	\$200,000
Weasel Brook Culvert	Clifton City	\$1,318,500
Pine Mt. Levee and Tide Gate	Cumberland County	\$600,000
Culvert Replacement	Dunellen Borough	\$900,000
Bulkhead Construction	Egg Harbor Township	\$2,000,000

Detention Basin	Franklin Township (Warren County)	\$200,000
Storm Sewer Repaupo Creek Flood Gate	Galloway Township	\$640,897
	Greenwich Township (Gloucester County)	\$2,250,000
Buyout	Lawrence Township (Mercer County)	\$750,000
Flood Management Plan	Mahwah Township	\$150,000
Flood Management Plan	Maplewood Township	\$182,250
Storm Sewer	Mount Arlington Borough	\$208,000
Channel Improvement	North Caldwell Borough	\$261,750
Channel Improvement Bridge and Channel Improvement	Oakland Borough	\$346,725
	Roselle Borough	\$5,055,000
Pine Brook Culvert	Washington Township	\$255,000
Buyout	Wayne Township	\$1,800,000
W. Br. Elizabeth River Sewer	Union Township	\$1,185,000
Map Modernization	NJDEP	\$1,000,000
Lower Saddle River Project	NJDEP	\$3,696,878
USGS Stream Gage	NJDEP	\$1,000,000
Total		\$24,000,000

Any unexpended balances of the amounts listed in this subsection remaining after completion of the State flood control projects listed in this subsection shall be returned to the "2003 Dam, Lake, Stream and Flood Control Project Fund" for reappropriation to finance the costs of additional projects authorized pursuant to section 16 of P.L.2003, c.162.

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

2. The expenditures of sums appropriated by this act are subject to the provisions of P.L.2003, c.162, and the rules and regulations adopted pursuant thereto.

3. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 232

AN ACT authorizing the establishment of a New Jersey Hall of Fame, amending P.L.1985, c.325 and supplementing chapter 10 of Title 5 of the Revised Statutes.

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

C.5:10-6.4 Short title.

1. This act shall be known and may be cited as the "New Jersey Hall of Fame Act."

C.5:10-6.5 Findings, determinations relative to establishment of New Jersey Hall of Fame.

2. The Legislature finds and determines that:
 - a. New Jersey has given rise to many nationally and internationally known leaders in many diverse areas including the visual and performing arts, music, literature, science, education, sports, entertainment, business, religion, government, military and philanthropy;
 - b. While the New Jersey Sports Hall of Fame has taken the lead during the past twenty years in honoring many New Jersey athletes who have distinguished themselves in the world of sports, it is entirely fitting and proper to establish a broader-based hall of fame project that would allow the State to promote the accomplishments of such individuals who have excelled in many different fields of endeavor in addition to sports;
 - c. Other states including South Carolina and South Dakota have successfully established and operated their own hall of fame projects for over 30 years and have utilized such projects to not only improve their state's image but to also raise millions of dollars for their respective halls of fame;
 - d. It is therefore in the public interest for this State to publicly recognize the unique achievements of outstanding New Jerseyans from many diverse fields through the creation of a New Jersey Hall of Fame in order to honor outstanding persons from New Jersey for their contributions in many different fields of endeavor, and to utilize revenues obtained from the New Jersey Hall of Fame events and ceremonies to support the funding of the New Jersey Hall of Fame and to contribute to charitable organizations that directly benefit children in need in New Jersey and throughout the world.

3. Section 1 of P.L.1985, c.325 (C.5:10-6.1) is amended to read as follows:

C.5:10-6.1 New Jersey Hall of Fame.

1. a. The New Jersey Sports and Exposition Authority created by P.L.1971, c.137 (C.5:10-1 et seq.) is authorized to establish and operate a New Jersey Hall of Fame as part of the Meadowlands complex. With respect to this project, the authority may exercise all the rights and powers relating to the Meadowlands complex granted to the authority under P.L.1971, c.137 (C.5:10-1 et seq.) as though the rights and powers were granted under P.L.1985, c. 25 (C.5:10-6.1) and P.L.2005, c.232 (C.5:10-6.4 et al.), and made applicable to a New Jersey Hall of Fame.

b. The New Jersey Sports and Exposition Authority is authorized, in its discretion, to establish a New Jersey Hall of Fame corporation, hereinafter referred to as the "hall of fame corporation," to operate and manage a New Jersey Hall of Fame project authorized by subsection a. of this section. The corporation may be established as a separate, nonprofit corporation to be incorporated as a New Jersey nonprofit corporation pursuant to P.L.1983, c.127 (C.15A:1-1 et seq.), and organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status, and shall be authorized to sue and to be sued as a legal entity separate from the authority and from the State of New Jersey.

c. The terms of the 11 members appointed by the Governor to the board of directors of the New Jersey Sports Hall of Fame pursuant to P.L.1985, c.325 (C.5:10-6.1), shall continue after the effective date of P.L.2005, c.232 (C.5:10-6.4 et al.) and such board members serving on the effective date of P.L.2005, c.232 (C.5:10-6.4 et al.) shall serve as members of the New Jersey Hall of Fame Advisory Commission established pursuant to section 4 of P.L.2005, c.232 (C.5:10-6.6) until the expiration of their terms.

C.5:10-6.6 New Jersey Hall of Fame Advisory Commission.

4. a. There is established to advise the New Jersey Sports and Exposition Authority, a commission to be known as the New Jersey Hall of Fame Advisory Commission, hereinafter referred to as the "commission." The commission shall consist of two ex officio members, one of whom shall be the Chairman of the New Jersey Sports and Exposition Authority and one of whom shall be the President and Chief Executive Officer of the New Jersey Sports and Exposition Authority, and 15 appointed members, eleven of whom shall be the members appointed by the Governor pursuant to P.L.1985, c.325 (C.5:10-6.1), who shall continue to serve as members of the commission until the expiration of their terms, and four of whom shall be appointed after the effective date of P.L.2005, c.232 (C.5:10-6.4 et al.) as follows: one member shall be appointed for a term of two years by the Governor upon the recommendation of the New Jersey Presswriters Association, one member shall be appointed for a term of two years by the

President of the Senate, one member shall be appointed for a term of two years by the Speaker of the General Assembly and one member shall be appointed for a term of two years by the authority.

b. After the expiration of the terms of the appointed members set forth in subsection a. of this section, the commission members shall thereafter be appointed to the commission as follows: eight members shall be appointed by the Governor with the advice and consent of the Senate, two members shall be appointed by the Governor upon the recommendation of the New Jersey Presswriters Association, two members shall be appointed by the President of the Senate, two members shall be appointed by the Speaker of the General Assembly and one member shall be appointed by the authority.

c. Of the ten members initially appointed by the Governor pursuant to subsection b. of this section, three shall serve terms of one year, three shall serve terms of two years, three shall serve terms of three years and one shall serve a term of four years. Of the four members initially appointed by the President of the Senate and the Speaker of the General Assembly pursuant to subsection b. of this section, each of the members shall serve terms of three years. The member initially appointed pursuant to subsection b. of this section by the authority shall serve a term of three years. The terms of all members thereafter appointed, other than ex officio members and those members appointed to fill unexpired terms, shall run for five years from the date of expiration of the terms of their predecessors.

d. As soon as may be practical after the appointment of the commission's members, the Governor shall appoint a chairperson and the commission shall meet and elect a vice-chairperson and such other officers as it shall determine, all from among its membership. Vacancies in the membership of the commission and in the offices of chairperson and vice-chairperson shall be filled in the manner provided for the original appointments pursuant to P.L.2005, c.232 (C.5:10-6.4 et al.).

e. The members to be appointed to the commission shall represent a diversity of areas consistent with the goals of the New Jersey Hall of Fame including, but not limited to, persons who are representative of the areas of the visual and performing arts, music, literature, science, education, sports, entertainment, business, religion, government, military and philanthropy, persons who are familiar with these areas as they relate directly to the State of New Jersey and everyday New Jersey residents who have contributed to making this State a great place to live and work.

C.5:10-6.7 Duties, authority of commission.

5. a. It shall be the duty of the commission to develop plans for establishing and operating a New Jersey Hall of Fame and to advise the authority with respect to the operation and management of the New Jersey

Hall of Fame as a project within the Meadowlands complex, giving due consideration to architectural designs, development of new structures or the adapting of existing structures within which the New Jersey Hall of Fame may be located, criteria for selection of nominees to the Hall of Fame, the annual ceremonies for the induction of nominees into the Hall of Fame and other areas the commission may deem relevant to the creation at the Meadowlands complex of a New Jersey Hall of Fame including, but not limited to, such programs and events that the Foundation for the New Jersey Hall of Fame, established pursuant to section 6 of P.L.2005, c.232 (C.5:10-6.8), may wish to consider in connection with the foundation's fund-raising activities to support the operation, maintenance, support and promotion of the New Jersey Hall of Fame and to support charitable organizations that directly benefit children in need in New Jersey and throughout the world.

b. The commission shall also develop policies to improve the image of New Jersey, promote the heritage of the residents of this State and instill pride in the State by increasing the public's awareness of the contributions made to society by past and present residents of New Jersey, make recommendations for local and State actions to follow up the commission's goals and consider such other matters relating to the accomplishment of its goals as the commission may deem appropriate.

c. The commission shall be authorized, within the limits of the funds made available to it for its purposes, to employ an executive director and professional, technical and administrative personnel and to contract for such professional and administrative services, and incur traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties. No member of the commission shall engage in any business transaction or professional activity for profit with the State of New Jersey. Employees of the commission shall not be construed to be employees of the State of New Jersey.

d. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for this purpose.

e. The foundation is authorized to receive and administer gifts, contributions, and funds from public and private sources to be expended solely for the purposes provided in this section.

C.5:10-6.8 Foundation for the New Jersey Hall of Fame.

6. a. The authority is also authorized to establish a nonprofit, educational and charitable organization to be known as the Foundation for the New Jersey Hall of Fame, hereinafter referred to as the "foundation." The foundation shall be incorporated as a New Jersey nonprofit corporation

pursuant to P.L.1983, c.127 (C.15A:1-1 et seq.), and organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status and for the receipt of tax-deductible contributions, and shall be authorized to sue and to be sued as a legal entity separate from the authority and from the State of New Jersey.

b. The foundation shall be responsible for the planning, promoting and coordinating of fund-raising drives and the soliciting of contributions for the purposes set forth in P.L.2005, c.232 (C.5:10-6.4 et al.) and for determining how such funds and contributions shall be allocated for: (1) the support of the New Jersey Hall of Fame project including, but not limited to, the annual induction ceremonies for nominees to the New Jersey Hall of Fame and other events sponsored in connection with the New Jersey Hall of Fame project; (2) the support of charitable organizations that directly benefit children in need in New Jersey and throughout the world; (3) the administrative and other expenses of the commission and hall of fame corporation, as appropriate; and (4) other purposes of P.L.2005, c.232 (C.5:10-6.4 et al.).

C.5:10-6.9 Board of trustees to govern foundation.

7. a. The foundation shall be governed by a board of trustees whose members shall be appointed based on their fund-raising ability and other qualifications that are consistent with the goals of the foundation. The number of members of the board of trustees, their terms and the manner of selection including, but not limited to, the naming of a chairperson shall be determined upon incorporation of the foundation.

b. The board of trustees shall be authorized, within the limits of its own funds, to employ an executive director and professional, technical and administrative personnel. Employees of the foundation shall not be construed to be employees of the State of New Jersey. The board shall also be authorized to contract for such professional and administrative services as it shall deem necessary.

C.5:10-6.10 Adoption of bylaws.

8. Upon the incorporation of the foundation and the establishment of the first board of trustees, the board shall adopt bylaws setting forth the structure, offices, powers and duties of the foundation, based upon the following guidelines:

a. Members of the board of trustees of the foundation shall serve without compensation, but shall be entitled to reimbursement for necessary expenses incurred in the performance of their duties.

b. The chairperson may appoint such subcommittees as deemed necessary or desirable, and if a subcommittee is appointed, the members of

the subcommittee shall elect one of the members to serve as chairperson and one of the members to serve as vice-chairperson of the subcommittee.

C.5:10-6.11 Annual report to Governor, Legislature, public.

9. The foundation shall, in conjunction with the commission and the hall of fame corporation, as applicable, annually report its findings and recommendations to the Governor, the Legislature and the public. The report shall address the responsibilities of the foundation, commission and hall of fame corporation, as set forth in P.L.2005, c.232 (C.5:10-6.4 et al.), along with all other issues which the foundation, commission and hall of fame corporation, as applicable, find to be necessarily related.

C.5:10-6.12 Use of funds.

10. All funds received by the foundation, other than those necessary to pay the expenses of the foundation, shall be used exclusively for the establishment, support and promotion of the purposes as set forth in P.L.2005, c.232 (C.5:10-6.4 et al.).

C.5:10-6.13 Expenses payable by funds raised by foundation.

11. All expenses incurred by the commission, the foundation and the hall of fame corporation, as appropriate, shall be payable from funds raised by the foundation and from such other funds as may be made available to the commission, the foundation or hall of fame corporation, as the case may be, and no liability or obligation, in tort or contract, shall be incurred by the State for the operation of the commission, foundation or hall of fame corporation. The commission, foundation and hall of fame corporation shall, if necessary, obtain private counsel, and shall not be represented by the Attorney General or indemnified by the State of New Jersey.

C.5:10-6.14 Annual audit.

12. A certified public accountant shall be selected by the foundation to annually audit the foundation's funds. The foundation shall contract for and receive such audit annually, and shall submit the audit to the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury.

C.5:10-6.15 References to New Jersey Sports Hall of Fame deemed to mean New Jersey Hall of Fame.

13. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the New Jersey Sports Hall of Fame, the same shall mean and refer to the "New Jersey Hall of Fame."

14. This act shall take effect immediately.

Approved September 22, 2005.

CHAPTER 233

AN ACT concerning advance directives for mental health care and supplementing Titles 26 and 30 of the Revised Statutes.

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

C.26:2H-102 Short title.

1. This act shall be known and may be cited as the "New Jersey Advance Directives for Mental Health Care Act."

C.26:2H-103 Findings, declarations relative to advance directives for mental health care.

2. The Legislature finds and declares that:

a. This State recognizes, in its law and public policy, a patient's right to make voluntary, informed choices to accept, reject, or choose among alternative courses of medical and surgical treatment, and specifically for a competent adult to plan ahead for health care decisions through the execution of an advance directive for health care, otherwise known as a living will or durable power of attorney for health care, and to have the wishes expressed therein respected, subject to certain limitations;

b. Advance directives for health care provide a vehicle for competent adults to operationalize their fundamental legal right to accept or refuse medical treatment in the event that they are rendered unable to make decisions and communicate with a health care provider about their treatment options because of serious illness, injury or permanent loss of mental capacity;

c. The issues affecting persons with mental illness and their psychiatric needs warrant enactment of a separate statute governing advance directives for these individuals, who: find their civil rights and due process protections frequently compromised; often lack the resources, societal supports and self-esteem needed to make advance directives for health care work for them; and are disadvantaged by the fact that many physicians and attorneys are unaware of the specific issues that typically enter into the decisions that a person with mental illness may make for himself when in crisis;

d. The provision by statute of advanced directives for mental health care will assure respect for the rights of patients with mental illness with

respect to the provision of mental health services and their decision-making in regard thereto; and

e. In order to permit a person with mental illness to execute an advance directive that specifies preferences for mental health services in the event that the declarant is subsequently determined to lack decision-making capacity, the Legislature hereby enacts the "New Jersey Advance Directives for Mental Health Care Act."

C.26:2H-104 Definitions relative to advance directives for mental health care.

3. As used in this act:

"Adult" means an individual 18 years of age or older.

"Advance directive for mental health care" or "advance directive" means a writing executed in accordance with the requirements of this act. An "advance directive" may include a proxy directive or an instruction directive, or both.

"Decision-making capacity" means a patient's ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health care, and to reach an informed decision. A patient's decision-making capacity is evaluated relative to the demands of a particular mental health care decision.

"Declarant" means a competent adult who executes an advance directive for mental health care.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Instruction directive" means a writing which provides instructions and direction regarding the declarant's wishes for mental health care in the event that the declarant subsequently lacks decision-making capacity.

"Mental health care decision" means a decision to accept or refuse any treatment, service or procedure used to diagnose, treat or care for a patient's mental condition. "Mental health care decision" also means a decision to accept or refuse the services of a particular mental health care professional or psychiatric facility, including a decision to accept or to refuse a transfer of care.

"Mental health care professional" means an individual licensed or certified by this State to provide or administer mental health care in the ordinary course of business or practice of a profession.

"Mental health care representative" means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for mental health care for the purpose of making mental health care decisions on the declarant's behalf, and includes an individual designated as an alternate mental health care representative who is acting as the declarant's

mental health care representative in accordance with the terms and order of priority stated in an advance directive for mental health care.

"Patient" means an individual who is under the care of a mental health care professional.

"Proxy directive" means a writing which designates a mental health care representative in the event that the declarant subsequently lacks decision-making capacity.

"Psychiatric facility" means a State psychiatric facility listed in R.S.30:1-7, a county psychiatric hospital or the psychiatric unit of a county hospital, a short-term care facility, special psychiatric hospital or psychiatric unit of a general hospital or other health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), or a hospital or community-based mental health center or other entity licensed or funded by the Department of Human Services to provide community-based mental health services.

"Responsible mental health care professional" means a person licensed or certified by the State to provide or administer mental health care who is selected by, or assigned to, the patient and has primary responsibility for the care and treatment of the patient.

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

C.26:2H-105 Execution, reaffirmation, modification, revocation, suspension of advance directive for mental health care.

4. a. A declarant may execute, reaffirm, modify, revoke or suspend an advance directive for mental health care at any time, except as provided in subsection f. of section 5 of this act.

(1) The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of at least one subscribing adult witness, who shall attest that the declarant is of sound mind and free of duress and undue influence.

(2) The advance directive may be supplemented by a video or audio tape recording.

b. The following persons shall not act as a witness to the execution of an advance directive for mental health care:

(1) a designated mental health care representative; and

(2) the responsible mental health care professional responsible for, or directly involved with, the patient's care at the time that the advance directive is executed.

c. A person shall not act as a sole witness to the execution of an advance directive for mental health care if that person is:

(1) related to the declarant by blood, marriage or adoption, or is the declarant's domestic partner or otherwise shares the same home with the declarant;

(2) entitled to any part of the declarant's estate by will or by operation of law at the time that the advance directive is executed; or

(3) an operator, administrator or employee of a rooming or boarding house or a residential health care facility in which the declarant resides.

C.26:2H-106 Validity of advance directive for mental health care, reaffirmation, modification, revocation.

5. a. (1) An advance directive for mental health care shall be deemed to be valid for an indefinite period of time if it does not include an expiration date, subject to a declarant's right to modify, revoke or suspend the advance directive in accordance with the provisions of this section.

(2) If an advance directive includes an expiration date that occurs during a period of time in which the declarant has been determined by the responsible mental health care professional to lack the capacity to make a particular mental health care decision, the advance directive shall remain in effect until the declarant is determined by the responsible mental health care professional to have regained the capacity to make a particular mental health care decision.

b. A declarant may state in an advance directive for mental health care, including a proxy directive or an instruction directive, or both, whether the declarant wishes to be able to modify, revoke or suspend the advance directive after it has become operative pursuant to section 7 of this act; however, the failure to include such a statement in the advance directive shall not be construed to prevent the declarant from modifying, revoking or suspending the advance directive under the circumstances described in this subsection.

c. A declarant may reaffirm or modify an advance directive for mental health care, including a proxy directive or an instruction directive, or both, subject to the provisions of subsection b. of this section. The reaffirmation or modification shall be made in accordance with the requirements for execution of an advance directive for mental health care pursuant to section 4 of this act.

d. A declarant may revoke an advance directive for mental health care, including a proxy directive or an instruction directive, or both, subject to the provisions of subsection b. of this section, by the following means:

(1) notification, orally or in writing, to the mental health care representative or mental health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

(2) execution of a subsequent proxy directive or instruction directive, or both, in accordance with section 4 of this act.

e. Designation of the declarant's spouse as mental health care representative shall be revoked upon divorce or legal separation, and designation of the declarant's domestic partner as mental health care representative shall be revoked upon termination of the declarant's domestic partnership, unless otherwise specified in the advance directive.

f. An inpatient in a psychiatric facility may modify, revoke or suspend an advance directive for mental health care, including a proxy directive or an instruction directive, or both, by any of the means stated in paragraph (1) of subsection d. of this section, unless a responsible mental health professional determines, in accordance with the provisions of section 8 of this act, that the patient lacks decision-making capacity to make the decision to modify, revoke or suspend the advance directive. A patient who has modified, revoked or suspended an advance directive may reinstate that advance directive by oral or written notification to the mental health care representative or mental health care professional of an intent to reinstate the advance directive.

g. Reaffirmation, modification or revocation of an advance directive for mental health care is effective upon communication to any person capable of transmitting the information, including the mental health care representative or mental health care professional responsible for the patient's care.

C.26:2H-107 Execution of proxy directive.

6. a. A declarant may execute a proxy directive, pursuant to the requirements of section 4 of this act, designating a competent adult to act as the declarant's mental health care representative.

(1) A competent adult, including, but not limited to, a declarant's spouse, domestic partner, adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a mental health care representative.

(2) An operator, administrator or employee of a psychiatric facility in which the declarant is a patient or resident shall not serve as the declarant's mental health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

This restriction shall not apply to a mental health care professional if that individual does not serve as the patient's responsible mental health care professional or other provider of mental health care services to the patient and the patient's mental health care representative at the same time.

(3) A declarant may designate one or more alternate mental health care representatives, listed in order of priority. In the event that the primary

designee is unavailable, unable or unwilling to serve as mental health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as mental health care representative. In the event that the primary designee subsequently becomes available and able to serve as mental health care representative, the primary designee may, insofar as then practicable, serve as mental health care representative.

(4) A declarant may direct the mental health care representative to consult with specified individuals, including alternate designees, family members and friends, in the course of the decision-making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the mental health care representative.

(6) If a declarant explicitly authorizes the mental health care representative to consent to the declarant's admission to a psychiatric facility, the declarant shall separately initial each paragraph in which that authorization is granted at the time that the proxy directive is signed and witnessed.

b. A declarant may execute an instruction directive, pursuant to the requirements of section 4 of this act, which specifies preferences for mental health services in the event that the declarant is subsequently determined to lack decision-making capacity.

(1) The instruction directive may include: a statement of the declarant's general mental health care philosophy and objectives; the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of mental health care; or both.

(2) The declarant's specific wishes regarding the provision, withholding or withdrawal of any form of mental health care may include:

(a) the identification of mental health care professionals and programs and psychiatric facilities that the declarant would prefer to provide mental health services;

(b) consent to admission to a psychiatric facility for up to a specified number of days;

(c) a refusal to accept specific types of mental health treatment, including medications;

(d) a statement of medications preferred by the declarant for mental health treatment;

(e) a statement of the preferred means of crisis intervention or other preferences for mental health treatment; and

(f) additional instructions or information concerning mental health care.

(3) An instruction directive may, but need not, be executed contemporaneously with, or be attached to, a proxy directive.

C.26:2H-108 Operative date of advance directive for mental health care.

7. a. An advance directive for mental health care shall become operative:

(1) when it is transmitted to the responsible mental health care professional or the psychiatric facility; and it is determined pursuant to section 8 of this act that the patient lacks capacity to make a particular mental health care decision; or

(2) at an earlier date if stipulated by the declarant in the advance directive.

b. Treatment decisions pursuant to an advance directive for mental health care shall not be made and implemented until there has been a reasonable opportunity to establish, and where appropriate confirm, a reliable diagnosis and prognosis for the patient.

C.26:2H-109 Determination of patient's decision-making capacity.

8. a. The responsible mental health care professional shall determine whether the patient lacks the capacity to make a particular mental health care decision. The determination shall: be stated in writing; include the responsible mental health care professional's opinion concerning the nature, cause, extent and probable duration of the patient's incapacity; and be made a part of the patient's medical records.

b. The responsible mental health care professional's determination of a lack of decision-making capacity shall be confirmed by one or more mental health care professionals. The opinion of the confirming mental health care professional shall be stated in writing and made a part of the patient's medical records in the same manner as that of the responsible mental health care professional.

c. A mental health care professional designated by the patient's advance directive as a mental health care representative shall not make the determination of a lack of decision-making capacity.

d. The responsible mental health care professional shall inform the patient, if the patient has any ability to comprehend that he has been determined to lack decision-making capacity, and the mental health care representative that:

(1) the patient has been determined to lack decision-making capacity to make a particular mental health care decision;

(2) each has the right to contest this determination; and

(3) each may have recourse to the dispute resolution process established by the psychiatric facility pursuant to section 14 of this act. Notice to the patient and the mental health care representative shall be documented in the patient's medical records.

e. A determination of lack of decision-making capacity under this act shall be solely for the purpose of implementing an advance directive for mental health care in accordance with the provisions of this act, and shall not be construed as a determination of a patient's incapacity or incompetence for any other purpose.

f. For the purposes of this section, a determination that a patient lacks decision-making capacity shall be based upon, but need not be limited to, an evaluation of the patient's ability to understand and appreciate the nature and consequences of a particular mental health care decision, including the benefits and risks of, and alternatives to, the proposed mental health care, and to reach an informed decision.

g. For the purposes of this section, "mental health care decision" includes a decision to modify, revoke or suspend an advance directive for mental health care as provided in subsection f. of section 5 of this act.

C.26:2H-110 Authority of mental health care representative.

9. a. If it has been determined that the patient lacks decision-making capacity, a mental health care representative shall have authority to make mental health care decisions on behalf of the patient.

(1) The mental health care representative shall act in good faith and within the bounds of the authority granted by the advance directive for mental health care and by this act.

(2) The mental health care representative may consent to the patient's admission to a psychiatric facility only as authorized pursuant to paragraph (6) of subsection a. of section 6 of this act.

b. If a different individual has been appointed as the patient's legal guardian, the mental health care representative shall retain legal authority to make mental health care decisions on the patient's behalf, unless the terms of the legal guardian's court appointment or other court decree provide otherwise.

c. The conferral of legal authority on the mental health care representative shall not be construed to impose liability upon that person for any portion of the patient's health care costs.

d. An individual designated as a mental health care representative or as an alternate mental health care representative may decline to serve in that capacity.

e. The mental health care representative shall exercise the patient's right to be informed of the patient's mental health condition, prognosis and treatment options, and to give informed consent to, or refusal of, health care.

f. In the exercise of these rights and responsibilities, the mental health care representative shall seek to make the mental health care decision that the patient would have made if the patient possessed decision-making capacity under the circumstances, or, when the patient's wishes cannot

adequately be determined, shall make a mental health care decision in the best interests of the patient.

g. Departure from the decisions of a mental health care representative shall be permitted only if the responsible mental health care professional determines that compliance with those decisions would:

- (1) violate the accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition;
- (2) require the use of a form of care or treatment that is not available to the mental health care professional responsible for the provision of mental health services to the patient;
- (3) violate a court order or provision of statutory law; or
- (4) endanger the life or health of the patient or another person.

C.26:2H-111 Additional responsibilities of responsible mental health care professional.

10. In addition to any rights and responsibilities recognized or imposed by or pursuant to this act, or by any other law, a mental health care professional shall have the following responsibilities:

a. The responsible mental health care professional shall make an affirmative inquiry of the patient, the patient's family or others, as appropriate under the circumstances, concerning the existence of an advance directive for mental health care. The responsible mental health care professional shall note in the patient's medical records whether or not an advance directive exists, and the name of the patient's mental health care representative, if any, and shall attach a copy of the advance directive to the patient's medical records. The responsible mental health care professional shall document in the same manner the reaffirmation, modification, revocation or suspension of an advance directive, if he has knowledge of such action.

b. In the event of a transfer of a patient's care:

(1) The responsible mental health care professional shall assure the timely transfer of the patient's medical records, including a copy of the patient's advance directive for mental health care; and

(2) A mental health care professional other than the responsible mental health care professional, who is responsible for the patient's care, shall cooperate in effecting an appropriate, respectful and timely transfer of care, and to assure that the patient is not abandoned or treated disrespectfully.

C.26:2H-112 Discussion of patient's mental health condition.

11. a. (1) The responsible mental health care professional, the patient to the extent possible, the mental health care representative, and, when appropriate, any additional mental health care professional responsible for the patient's care, shall discuss the nature and consequences of the patient's mental health condition, and the risks, benefits and burdens of the proposed mental health care and its alternatives. Except as provided in paragraph (2)

of subsection b. of this section, the responsible mental health care professional shall obtain informed consent for, or refusal of, health care from the mental health care representative.

(2) The decision-making process shall allow, as appropriate under the circumstances, adequate time for the mental health care representative to understand and deliberate about all relevant information before a treatment decision is implemented.

b. (1) The mental health care representative and the responsible mental health care professional shall seek to promote the patient's capacity for effective participation.

(2) Once decision-making authority has been conferred upon a mental health care representative pursuant to an advance directive for mental health care, if the patient is subsequently found to possess adequate decision-making capacity with respect to a particular mental health care decision, the patient shall have legal authority to make that decision. In those circumstances, the mental health care representative may continue to participate in the decision-making process in an advisory capacity, unless the patient objects.

c. If a mental health care representative is authorized to consent to the patient's admission to a psychiatric facility pursuant to paragraph (6) of subsection a. of section 6 of this act and the responsible mental health care professional has obtained informed consent for admission from the mental health care representative, the responsible mental health professional may admit the patient based upon the responsible mental health professional's:

(1) thorough investigation of the patient's psychiatric and psychological history, diagnosis and need for care or treatment, and expressed wishes;

(2) written determination that the patient is in need of an inpatient evaluation or would benefit from the care or treatment of a mental, emotional or other personality disorder in an inpatient setting, and that the evaluation, care or treatment cannot be accomplished in a less restrictive setting; and

(3) documentation in the patient's medical records of the responsible mental health professional's findings and recommendations with regard to the patient's care or treatment.

d. In acting to implement a patient's wishes pursuant to an advance directive for mental health care, the mental health care representative shall give priority to the patient's instruction directive, and may also consider, as appropriate and necessary, the following forms of evidence of the patient's wishes:

(1) the patient's contemporaneous expressions, including nonverbal expressions;

(2) other reliable sources of information, including the mental health care representative's personal knowledge of the patient's values, preferences and goals; and

(3) reliable oral or written statements previously made by the patient, including, but not limited to, statements made to other persons.

e. If the instruction directive, in conjunction with other evidence of the patient's wishes, does not provide, in the exercise of reasonable judgment, clear direction as applied to the patient's mental health condition and the treatment alternatives, the mental health care representative shall exercise reasonable discretion, in good faith, to effectuate the provisions, intent, and spirit of the instruction directive and other evidence of the patient's wishes.

f. Subject to the provisions of this act, and unless otherwise stated in the advance directive, if the patient's wishes cannot be adequately determined, then the mental health care representative shall make a mental health care decision in the patient's best interests.

C.26:2H-113 Instruction directive legally operative, conditions.

12. a. If the patient has executed an instruction directive but has not designated a mental health care representative, or if neither the designated mental health care representative or any alternate designee is able or available to serve, the instruction directive shall be legally operative. If the instruction directive provides clear and unambiguous guidance under the circumstances, it shall be honored in accordance with its specific terms by a legally appointed guardian, if any, family member, mental health care professional and psychiatric facility involved with the patient's mental health care, and any other person acting on the patient's behalf, except as provided in subsection c. of this section.

b. If the instruction directive is, in the exercise of reasonable judgment, not specific to the patient's mental health condition and the treatment alternatives, the responsible mental health care professional, in consultation with a legally appointed guardian, if any, family member, or other person acting on the patient's behalf, shall exercise reasonable judgment to effectuate the wishes of the patient, giving full weight to the terms, intent and spirit of the instruction directive.

c. Departure from the specific provisions of the instruction directive shall be permitted only if the responsible mental health care professional determines that compliance with those terms or provisions would:

(1) violate the accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition;

(2) require the use of a form of care or treatment that is not available to the mental health care professional responsible for the provision of mental health services to the patient;

- (3) violate a court order or provision of statutory law; or
- (4) endanger the life or health of the patient or another person.

C.26:2H-114 Additional rights, responsibilities of psychiatric facility.

13. In addition to any rights and responsibilities recognized or imposed by or pursuant to this act, or any other law, a psychiatric facility shall have the following responsibilities:

a. A psychiatric facility shall adopt such policies and practices as are necessary to provide for routine inquiry, at the time of admission, and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care.

b. A psychiatric facility shall adopt such policies and practices as are necessary to provide appropriate informational materials concerning advance directives for mental health care to all interested patients and their families and mental health care representatives, and to assist patients interested in discussing and executing an advance directive for mental health care.

c. In situations in which a transfer of care is necessary, including a transfer for the purpose of effectuating a patient's wishes pursuant to an advance directive for mental health care, a psychiatric facility shall, in consultation with the responsible mental health care professional, take all reasonable steps to effect the appropriate, respectful and timely transfer of the patient to the care of an alternative mental health care professional or psychiatric facility, as necessary, and shall assure that the patient is not abandoned or treated disrespectfully. In those circumstances, a psychiatric facility shall assure the timely transfer of the patient's medical records, including a copy of the patient's advance directive for mental health care.

d. A psychiatric facility shall establish procedures and practices for dispute resolution in accordance with section 14 of this act.

e. A psychiatric facility shall adopt such policies and practices as are necessary to: inform mental health care professionals of their rights and responsibilities under this act; assure that those rights and responsibilities are understood; and provide a forum for discussion and consultation regarding the requirements of this act.

C.26:2H-115 Procedures, practices for resolving disagreements.

14. a. In the event of disagreement among the patient, mental health care representative and responsible mental health care professional concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care to the patient's course of treatment, the parties may seek to resolve the disagreement by means of procedures and practices established by the psychiatric facility, including but not limited to, consultation

with an institutional ethics committee, or with a person designated by the psychiatric facility for this purpose, or may seek resolution by a court of competent jurisdiction.

b. A mental health care professional involved in the patient's care, other than the responsible mental health care professional, or an administrator of a psychiatric facility may also invoke the dispute resolution process established by the psychiatric facility to seek to resolve a disagreement concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care.

C.26:2H-116 Construction of act; severability.

15. The provisions of this act shall not be construed to supersede any court order relating to, or the provisions of any other statute governing, commitment or admission to a psychiatric facility or the provision of mental health care, including, but not limited to, P.L.1987, c.116 (C.30:4-27.1 et seq.). Any conflict between a court order or the provisions of another statute and the provisions of an advance directive for mental health care, which renders those provisions of the advance directive invalid, shall not be deemed to invalidate any other provisions of the advance directive that do not conflict with the court order or statute.

C.26:2H-117 Rules, regulations relative to psychiatric facilities operated by DHSS.

16. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health and Senior Services, in consultation with the Commissioner of Human Services, shall adopt rules and regulations, with respect to psychiatric facilities licensed by the Department of Health and Senior Services, to:

a. provide for the annual reporting by those psychiatric facilities to the Department of Health and Senior Services, and the gathering of such additional data, as is reasonably necessary to oversee and evaluate the implementation of this act; except that the commissioner shall seek to minimize the burdens of record-keeping imposed by the rules and regulations and ensure the appropriate confidentiality of patient records; and

b. require those psychiatric facilities to adopt policies and practices designed to:

(1) make routine inquiry, at the time of admission and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;

(2) provide appropriate informational materials concerning advance directives for mental health care, including information about the registry of advance directives for mental health care established or designated pursuant to section 17 of this act, to all interested patients and their families

and mental health care representatives, and to assist patients interested in discussing and executing an advance directive for mental health care, as well as to encourage declarants to periodically review their advance directives for mental health care as needed;

(3) inform mental health care professionals of their rights and responsibilities under this act, to assure that the rights and responsibilities are understood, and to provide a forum for discussion and consultation regarding the requirements of this act; and

(4) otherwise comply with the provisions of this act.

C.30:4-177.59 Rules, regulations relative to psychiatric facilities operated by DHS.

17. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services, in consultation with the Commissioner of Health and Senior Services, shall:

a. adopt rules and regulations, with respect to psychiatric facilities operated by the Department of Human Services, to:

(1) provide for the annual reporting by those psychiatric facilities to the Department of Human Services, and the gathering of such additional data, and the sharing of such reported information and additional data by the Department of Human Services with the Department of Health and Senior Services, as is reasonably necessary to oversee and evaluate the implementation of P.L.2005, c.233 (C.26:2H-102 et al.); except that the commissioner shall seek to minimize the burdens of record-keeping imposed by the rules and regulations and ensure the appropriate confidentiality of patient records; and

(2) require those psychiatric facilities to adopt policies and practices designed to:

(a) make routine inquiry, at the time of admission and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;

(b) provide appropriate informational materials concerning advance directives for mental health care, including information about the registry of advance directives for mental health care established or designated pursuant to subsection b. of this section, to all interested patients and their families and mental health care representatives, and to assist patients interested in discussing and executing an advance directive for mental health care, as well as to encourage declarants to periodically review their advance directives for mental health care as needed;

(c) inform mental health care professionals of their rights and responsibilities under P.L.2005, c.233 (C.26:2H-102 et al.), to assure that the rights and responsibilities are understood, and to provide a forum for

discussion and consultation regarding the requirements of P.L.2005, c.233 (C.26:2H-102 et al.); and

(d) otherwise comply with the provisions of P.L.2005, c.233 (C.26:2H-102 et al.).

b. adopt rules and regulations to establish or designate a registry of advance directives for mental health care, which rules and regulations include procedures for accessing the registry

C.26:2H-118 Joint evaluation, report to Governor, Legislature.

18. The Department of Health and Senior Services and the Department of Human Services shall jointly evaluate the implementation of this act and report to the Governor and the Legislature, including recommendations for any changes deemed necessary, within five years after the effective date of this act.

C.26:2H-119 Immunity from criminal, civil liability.

19. a. A mental health care representative shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive for mental health care.

b. A mental health care professional shall not be subject to criminal or civil liability, or to discipline by the psychiatric facility or the respective State licensing board for professional misconduct, for any actions performed to carry out the terms of an advance directive for mental health care in good faith and in accordance with: the provisions of this act; any rules and regulations adopted by the Commissioner of Health and Senior Services or the Commissioner of Human Services pursuant to this act; and accepted professional standards.

c. A psychiatric facility shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive for mental health care.

C.26:2H-120 Construction of act with advance directive for health care.

20. Nothing in this act shall be construed to impair the legal force and effect of an advance directive for health care executed pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.) either prior to or after the enactment of this act.

C.26:2H-121 Absence of directive, no presumption created.

21. The absence of an advance directive for mental health care shall create no presumption with respect to a patient's wishes regarding the provision, withholding or withdrawing of any form of health care. The

provisions of this act shall not apply to persons who have not executed an advance directive for mental health care.

C.26:2H-122 Existing rights, obligations unaffected under health insurance programs.

22. The execution of an advance directive for mental health care pursuant to this act shall not in any manner affect, impair or modify the terms of, or rights or obligations created under, any existing policy of health insurance, life insurance or annuity, or governmental benefits program. No health care provider, and no health benefits plan, insurer or governmental authority, shall exclude from health care services or deny coverage to any individual because that individual has executed or has not executed an advance directive for mental health care. The execution, or non-execution, of an advance directive for mental health care shall not be made a condition of coverage under any policy of health insurance, life insurance or annuity, or governmental benefits program.

C.26:2H-123 Validity of directive executed out-of-State.

23. An advance directive for mental health care executed under the laws of another state in compliance with the laws of that state or the State of New Jersey is validly executed for the purposes of this act. An advance directive for mental health care executed in a foreign country in compliance with the laws of that country or the State of New Jersey, and not contrary to the public policy of this State, is validly executed for the purposes of this act.

C.26:2H-124 Priority of provisions of act.

24. a. (1) To the extent that any of the provisions of this act are inconsistent with P.L.2000, c.109 (C.46:2B-8.1 et seq.) concerning the designation of a mental health care representative, the provisions of this act shall have priority over those of P.L.2000, c.109.

(2) Durable powers of attorney for health care executed pursuant to P.L.2000, c.109 prior to the effective date of this act shall have the same legal force and effect as if they had been executed in accordance with the provisions of this act.

b. Nothing in this act shall be construed to impair the rights of emancipated minors under existing law.

C.26:2H-125 Intentional disregard for act, professional misconduct; fines; fourth degree crime for certain acts relative to advance directives.

25. a. A mental health care professional who intentionally fails to act in accordance with the requirements of this act is subject to discipline for professional misconduct pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

b. A psychiatric facility that intentionally fails to act in accordance with the requirements of this act shall be subject to a fine of not more than

\$1,000 for each offense. For the purposes of this subsection, each violation shall constitute a separate offense. Penalties for violations of this act shall be recovered in a summary civil proceeding, brought in the name of the State in a court of competent jurisdiction pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. It shall be a crime of the fourth degree for a person to:

(1) willfully conceal, cancel, deface, obliterate or withhold personal knowledge of an advance directive for mental health care, or a modification, revocation or suspension thereof, without the declarant's consent;

(2) falsify or forge an advance directive for mental health care of another person, or a modification, revocation or suspension thereof;

(3) coerce or fraudulently induce the execution of an advance directive for mental health care, or a modification, revocation or suspension, thereof; or

(4) require or prohibit the execution of an advance directive for mental health care, or a modification, revocation or suspension thereof, as a condition of coverage under any policy of health insurance, life insurance or annuity, or governmental benefits program, or as a condition of the provision of health care.

d. The sanctions provided in this section shall not be construed to repeal any sanctions applicable under other law.

26. This act shall take effect on the 180th day after enactment, except that the Commissioners of Health and Senior Services and Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved September 22, 2005.

CHAPTER 234

AN ACT concerning intermodal chassis, requiring a systematic maintenance check program, allocating responsibility for equipment defects, and supplementing Title 39 of the Revised Statutes.

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

C.39:3-79.10 Definitions relative to intermodal chassis.

1. As used in this act:

"Department" means the New Jersey Department of Transportation.

"Equipment interchange receipt" or "interchange receipt" means the receipt exchanged between an intermodal equipment provider or its agent and a motor carrier or its driver confirming acceptance of an intermodal

chassis by a motor carrier and indicating the name of the intermodal equipment provider for such equipment.

"Intermodal chassis" or "chassis" means a trailer designed to carry intermodal freight containers.

"Intermodal equipment facility" means any facility in New Jersey at which intermodal chassis are maintained and interchanged to motor carriers by or on behalf of an intermodal equipment provider.

"Intermodal equipment provider" or "equipment provider" means the person or entity that provides an intermodal chassis to a motor carrier pursuant to a written interchange agreement or has responsibility for maintenance of the intermodal chassis.

"Systematic maintenance check program" or "SMC" means the eight-point intermodal chassis inspection program established by this act.

C.39:3-79.11 Systematic maintenance check program required; violations, penalties.

2. a. An intermodal equipment provider shall not tender for interchange in New Jersey with a motor carrier an intermodal chassis that has not passed the systematic maintenance check program required by this act or that fails to meet the requirements set forth in the Federal Motor Carrier Safety Regulations, 49 C.F.R. sections 393 and 396. Any intermodal equipment provider tendering to, or interchanging with, a motor carrier such equipment shall provide certification that the chassis is currently in compliance with the SMC program set forth in this act.

b. An intermodal equipment provider that violates this section shall be assessed a civil administrative penalty by the department up to \$5,000, per occurrence, commensurate with the gravity of the offense. A civil administrative penalty imposed pursuant to this subsection may be recovered by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. Nothing in this act is intended to supersede or interfere with the commercial motor vehicle inspection requirements and standards set forth in 49 C.F.R. sections 393 and 396. Rather, this act imposes an additional requirement that an intermodal equipment provider inspect chassis on a routine basis and as otherwise required by this act.

C.39:3-79.12 Establishment, implementation of systematic maintenance check program.

3. a. An intermodal equipment provider shall establish and implement a systematic maintenance check program for the intermodal chassis that it tenders for interchange to motor carriers. The SMC program shall be consistent with Federal Motor Carrier Safety Regulations set forth in 49 C.F.R. sections 393 and 396 and shall include, but not be limited to, the following components or actions:

- (1) tires;

- (2) brakes;
- (3) lights;
- (4) a twist lock and safety lock inspection which includes ensuring that twist locks are operational and safety locks are working;
- (5) wheel lubrication;
- (6) frame;
- (7) registration and federal and State inspection stickers; and
- (8) upon the satisfactory completion of the inspection and any required actions necessary to bring the chassis into compliance with the inspection standards, the application of an SMC inspection sticker with the equipment provider's name, the inspector's name, and an expiration date set at six months following the inspection. Chassis which fail a SMC inspection shall be processed in accordance with section 4 of this act.

b. Each SMC inspection shall be recorded on a SMC inspection report that shall include, but not be limited to, all of the following:

- (1) Positive identification of the intermodal chassis, including company identification number and vehicle license plate number;
- (2) Date of and reason for each SMC inspection; and
- (3) Signature, under penalty of perjury, of the inspector that the SMC inspection has been performed and that the chassis is roadworthy or, if the chassis failed the inspection, the specific reason for the failure.

C.39:3-79.13 Identification of out-of-service intermodal chassis.

4. a. Intermodal equipment providers shall implement a process to positively identify by means of a tag those intermodal chassis that are out-of-service as a result of having failed an inspection required by this act. The tag shall contain the name of the intermodal equipment provider, the inspector and the date that the chassis failed inspection. The tag shall be supplied by the intermodal equipment provider and shall meet the specifications determined by the department.

b. A chassis which is out-of-service as a result of having failed an inspection required by this act shall be transported, without a container, to a facility where repairs and maintenance may be performed. Defects identified during an SMC inspection of a chassis shall be repaired, and the repairs shall be recorded on the chassis maintenance file and on the SMC inspection report.

A chassis subject to this section shall not be interchanged with a motor carrier or operated on a public road in New Jersey until all defects listed during the inspection have been corrected, the chassis passes an SMC inspection, and an authorized inspector attests to that fact and affixes an SMC inspection sticker to the chassis.

C.39:3-79.14 Additional events causing immediate inspection.

5. In addition to the routine SMC inspection which must take place at least once every six months in accordance with section 3 of this act, the following events shall cause a full SMC eight-point inspection to be done immediately:

- a. a repair is done to remedy a defect that would be the basis for failure of an SMC inspection other than a minor repair or minor equipment defect,
- b. a defect is noted on an in-gate interchange receipt that would be the basis for failure of an SMC inspection other than a minor repair or minor equipment defect, or
- c. an SMC inspection sticker has expired.

For purposes of this section, "minor repair or minor equipment defect" means any one of the following: the need to inflate tires; the need to replace lights, a lens or a reflector; a twistlock or safety lock inspection or a safety latch replacement; a simple confirmation of federal or State inspection stickers; or the reapplication of an SMC inspection sticker that has not expired.

C.39:3-79.15 Qualifications of inspectors.

6. Individuals performing SMC inspections pursuant to this act shall be qualified, at a minimum, as set forth in 49 C.F.R. sections 396.19 and 396.25. Evidence of each inspector's qualification shall be retained by the intermodal equipment provider at the intermodal equipment facility for the period of time during which the inspector is performing SMC inspections at that facility.

C.39:3-79.16 Request for repair, replacement prior to completion of interchange; violations, penalties.

7. a. Any motor carrier or driver who, as a result of the pre-trip inspection of the intermodal chassis, determines the intermodal chassis to be in an unsafe operating condition shall request that the intermodal equipment provider repair or replace the intermodal chassis prior to completion of the interchange. It shall be at the discretion of the intermodal equipment provider whether to repair or to replace the chassis.

In the event a driver is forced to wait for more than one hour while the chassis is repaired or replaced, the intermodal equipment provider shall compensate the driver at an hourly rate to be set by the department based upon the average rate in comparable situations.

b. If a driver's request for repair or replacement is refused by the equipment provider, which shall be a violation of this section, the driver may file a complaint with the department. If, after an equipment provider has been afforded an opportunity for a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the department

determines that the equipment provider has violated this section, that person shall be subject to a civil administrative penalty to be imposed by the department not to exceed \$1,000 for the first violation and not more than \$5,000 for each subsequent violation. A civil administrative penalty imposed pursuant to this subsection may be recovered by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.39:3-79.17 Records maintained for three years, format.

8. Records of inspections, maintenance or repairs of chassis performed pursuant to this act shall be maintained for three years and made available upon request of the department or a motor carrier which has transported the chassis.

All records required by this act may be kept in a digital format or other media allowing for the storage and retrieval of data if printouts of those records can be provided upon request at the intermodal equipment facility.

C.39:3-79.18 Registration for intermodal equipment provider required.

9. a. Any intermodal equipment provider that tenders intermodal chassis for interchange in New Jersey with a motor carrier shall register with the New Jersey Department of Transportation in accordance with regulations promulgated pursuant to this act.

b. Every registered intermodal equipment provider shall certify to the department on an annual basis that the equipment provider is conducting a systematic maintenance check program for intermodal chassis that is in compliance with this act.

c. The department may conduct audits at an intermodal equipment facility as it deems necessary to effectuate the purposes of this act, including, but not limited to, when an intermodal equipment provider has demonstrated a history of non-compliance with any requirements of this act. The audit shall include, but not be limited to, SMC inspection, tagging and processing of failed chassis, repair, and record-keeping requirements. The department is authorized to enter any intermodal equipment facility for the purposes of conducting the audits.

As part of the audits, the department may request the New Jersey State Police or, if the chassis is tendered at a port, the police of the authority operating that port, to accompany the department and to conduct a limited number of chassis inspections in order to determine that SMC inspection and identification requirements are being met. Any New Jersey State Police officer trained to inspect intermodal chassis is authorized to enter any intermodal equipment facility for the purposes of conducting inspections as part of an audit by the department. Nothing herein shall limit the authority

of an authorized member of the State Police or the police of the authority operating the port to enter upon and perform inspections of vehicles in operation upon the highways of this State or at the premises or places of business of the owner or lessee of such vehicles.

d. If, during an audit, the department determines that an intermodal equipment provider has failed to comply with any of the requirements of this act, the department shall:

(1) direct the intermodal equipment provider to comply immediately with the requirements of this act; and

(2) impose a civil administrative penalty on the intermodal equipment provider of up to \$5,000, commensurate with the gravity of the offense, for every day that the intermodal equipment provider fails to comply with the requirements of this act. A civil administrative penalty imposed pursuant to this subsection may be recovered by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.39:3-79.19 Contents of summons, complaint, violation report.

10. a. When, upon roadside inspection of an intermodal chassis, there is found a violation of State law or regulations or Federal Motor Carrier Safety Administration Regulations, 49 C.F.R. sections 393 and 396, relating to the chassis, any summons, complaint, or violation report shall cite the motor carrier, the intermodal equipment provider, or the registered owner as follows:

(1) for latent equipment defects on the chassis, the summons, complaint, or violation report shall cite the intermodal equipment provider identified on the equipment interchange receipt; in the event there is no equipment interchange receipt, the summons, complaint or violation report shall cite the equipment provider shown on the SMC inspection sticker. If there is neither an interchange receipt or a SMC inspection sticker, the summons, complaint or violation report shall cite the registered owner of the chassis as determined by a registration document, a company identification number or the chassis license plate number. When the summons, complaint or violation report cites the registered owner because it is not possible to identify an equipment provider, the registered owner may seek reimbursement for any fine from the equipment provider; and

(2) for equipment defects when the equipment is one of the specific equipment components required to be inspected by the driver during the pre-trip inspection, the summons, complaint or violation report shall cite the motor carrier. The pre-trip inspection shall be conducted as part of the walk-around inspection required by federal law prior to use of the chassis.

The department, in conjunction with representatives of intermodal equipment providers, motor carriers and the New Jersey State Police, shall

establish a list of the specific chassis equipment components to be inspected during the pre-trip inspection and for which the driver shall be cited on the summons, complaint or violation report.

b. (1) An intermodal equipment provider, registered chassis owner, or any other entity shall not seek reimbursement of a fine or penalty imposed by a municipal court for a violation of State law or regulations or Federal Motor Carrier Safety Administration Regulations, 49 C.F.R. sections 393 and 396, relating to the chassis from the motor carrier or its driver, or otherwise hold the motor carrier or its driver responsible for summons or complaint related to the chassis, unless the violation was caused by the negligence or willful misconduct of the motor carrier, its driver, agent, subcontractor or assigns.

(2) A motor carrier or its driver shall not seek reimbursement of a fine or penalty imposed by a municipal court for a violation of State law or regulations or Federal Motor Carrier Safety Administration Regulations, 49 C.F.R. sections 393 and 396, relating to the chassis from the intermodal equipment provider, registered chassis owner, or any other entity, or otherwise hold the intermodal equipment provider, registered chassis owner, or any other entity responsible for summons or complaint related to the chassis, unless the violation was caused by the negligence or willful misconduct of the intermodal equipment provider, registered chassis owner, or other entity.

c. (1) Whenever the act or omission of an intermodal equipment provider is deemed the cause for a violation report citing a motor carrier, the motor carrier may petition the appropriate authorities to request that the violation not be used or applied against the motor carrier's overall compliance record maintained in accordance with Federal Motor Carrier Safety Administration Regulations.

(2) Whenever the act or omission of a motor carrier or its driver is deemed the cause for a violation report citing an intermodal equipment provider, the intermodal equipment provider may petition the appropriate authorities to request that the violation not be used or applied against the intermodal equipment provider's overall compliance record maintained in accordance with Federal Motor Carrier Safety Administration Regulations.

(3) The State Police and the department shall establish a process whereby, upon application of a motor carrier, a violation report improperly citing a motor carrier may be administratively removed from its compliance record.

The State Police and the department shall establish a process whereby, upon application of an intermodal equipment provider, a violation report improperly citing an intermodal equipment provider may be administratively removed from its compliance record.

d. The provisions of this section shall apply only to a summons, complaint, or violation report issued on or after the effective date of this act.

e. This section is intended solely to determine which party shall be cited on a summons, complaint or violation report for a violation of State law or regulations or Federal Motor Carrier Safety Administration Regulations, 49 C.F.R. sections 393 and 396, relating to an intermodal chassis. Nothing in this section is intended to affect any indemnification agreement among an intermodal equipment provider, a motor carrier or any other entity concerning intermodal chassis.

C.39:3-79.20 Interference with act deemed violation; penalties.

11. It shall be a violation of this act to interfere with or attempt to interfere with the duties, obligations, rights or remedies of a motor carrier or its driver, an intermodal equipment provider, or an SMC inspector as provided in this act. If, after a person has been afforded an opportunity for a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the department determines that the person has violated this section, that person shall be subject to a civil administrative penalty to be imposed by the department not to exceed \$1,000 for the first violation and not more than \$5,000 for each subsequent violation. A civil administrative penalty imposed pursuant to this subsection may be recovered by a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.39:3-79.21 Rules, regulations.

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

13. This act shall take effect on the first day of the twelfth month following enactment. This act shall expire upon:

- a. the effective date of a federal statute to regulate the inspection and maintenance of intermodal chassis; or
- b. when final rules by the Federal Motor Carrier Safety Administration regulating the inspection and maintenance of intermodal chassis take effect.

Approved September 22, 2005.

CHAPTER 235

AN ACT concerning school district monitoring and amending, supplementing and repealing parts of the statutory law.

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

1. Section 3 of P.L.1975, c.212 (C.18A:7A-3) is amended to read as follows:

C.18A:7A-3 Definitions.

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

"Administrative order" means a written directive ordering specific corrective action by a district which has shown insufficient compliance with the quality performance indicators.

"Highly skilled professional" means a designee of the commissioner deemed to have the skills and experience necessary to assist a school district in improving its effectiveness or to provide oversight in a school district in one or more of the five key components of school district effectiveness.

"Joint Committee on the Public Schools" means the committee created pursuant to P.L.1975, c.16 (C.52:9R-1 et seq.).

"Targeted assistance" means the assistance provided to a school district in a specific area to support the teaching and learning process and overall district effectiveness.

"Technical assistance" means guidance and support provided to a school district to enable the district to meet State and federal policy and regulatory requirements and to ensure the provision of a thorough and efficient education.

2. Section 10 of P.L.1975, c.212 (C.18A:7A-10) is amended to read as follows:

C.18A:7A-10 New Jersey Quality Single Accountability Continuum for evaluating school performance.

10. For the purpose of evaluating the thoroughness and efficiency of all the public schools of the State, the commissioner, with the approval of the State board and after review by the Joint Committee on the Public Schools, shall develop and administer the New Jersey Quality Single Accountability Continuum for evaluating the performance of each school. The goal of the New Jersey Quality Single Accountability Continuum shall be to ensure that all districts are operating at a high level of performance. The system shall be based on an assessment of the degree to which the thoroughness and efficiency standards established pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4) are being achieved and an evaluation of school district capacity in the following five key components of school district effectiveness: instruction and program; personnel; fiscal management; operations; and governance. A school district's capacity and effectiveness shall be

determined using quality performance indicators comprised of standards for each of the five key components of school district effectiveness. The quality performance indicators shall take into consideration a school district's performance over time, to the extent feasible. Based on a district's compliance with the indicators, the commissioner shall assess district capacity and effectiveness and place the district on a performance continuum that will determine the type and level of oversight and technical assistance and support the district receives.

3. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to read as follows:

C.18A:7A-11 Annual report by school districts, commissioner.

11. Each school district and county vocational school district shall make an annual report of its progress in complying with the quality performance indicators adopted pursuant to section 10 of P.L.1975, c.212 (C.18A:7A-10).

The district reports shall be submitted to the commissioner annually on a date and in such form as prescribed by the commissioner, who shall make them the basis for an annual report to the Governor and the Legislature, describing the condition of education in New Jersey, the efforts of New Jersey schools in meeting the standards of a thorough and efficient education, the steps underway to correct deficiencies in school performance, and the progress of New Jersey schools in comparison to other state education systems in the United States.

4. Section 14 of P.L.1975, c.212 (C.18A:7A-14) is amended to read as follows:

C.18A:7A-14 Review, evaluation of reports, performance continuum placement, procedure.

14. a. (1) The commissioner shall review the results of the report submitted pursuant to sections 10 and 11 of P.L.1975, c.212 (C.18A:7A-10 and 18A:7A-11) and after examination of all relevant data, including student assessment data, determine where on the performance continuum the district shall be placed. The commissioner, through collaboration, shall establish a mechanism for parent, school employee and community resident input into the review process. If the commissioner finds that a school district or county vocational school district satisfies 80 percent to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall issue to the district a letter of recognition designating the district as a high performing district, provided that the district has submitted to the department a statement of assurance which attests that the contents of the report are valid.

The commissioner shall recommend that the State board certify the school district for a period of seven years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators.

b. If a school district satisfies 50 percent to 79 percent of the quality performance indicators, the district shall be considered a moderate performing district. The commissioner shall require the district to develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to and approved by the commissioner. In accordance with the improvement plan, the commissioner shall provide targeted assistance, technical assistance, or both, to the district. If necessary, the commissioner may authorize an in-depth examination of the district to determine the causes for the district's noncompliance with the quality performance indicators.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. If the commissioner finds, based on those reviews, that after two years the district has not satisfied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

If a district effectively implements its improvement plan and is able to satisfy 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter of recognition designating the district as a high performing district. The commissioner shall recommend that the State board certify the school district for a period of seven years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators. If the district has not effectively implemented its improvement plan and has not satisfied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter detailing the areas in which the district remains deficient.

c. (1) If a school district satisfies less than 50 percent of the quality performance indicators in four or fewer of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity. Based on the findings and recommendations of that evaluation, the district, in cooperation with the

department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in one or more of the key components of school district effectiveness, the commissioner shall require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the commissioner or the State board, as applicable, from directing the district to enter partial State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to satisfy the quality performance indicators. Each highly skilled professional shall work collaboratively with the district to increase local capacity in the areas of need identified in the improvement plan. The cost for the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost of these salaries and the school district being responsible for one-half of the costs.

(3) If the district satisfies less than 50% of the quality performance indicators in one of the five key components of school district effectiveness, the commissioner may also order the district to enter partial State intervention. The board of education which is directed to enter partial State intervention may appeal that decision to the State Board of Education. The State board may refer the hearing of that appeal to a committee of not less than three of its members, which committee shall hear the appeal and report thereon, recommending its conclusions, to the board and the board shall decide the appeal by resolution in open meeting. A determination of the appeal by the State board shall be considered final.

(4) If the district satisfies less than 50% of the quality performance indicators in two to four of the five key components of school district effectiveness, the commissioner may also order the district board of education to show cause why an administrative order placing the district

under partial State intervention should not be implemented. The plenary hearing before a judge of the Office of Administrative Law pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), upon said order to show cause, shall be conducted on an expedited basis and in the manner prescribed by subdivision B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes. In the proceeding the State shall have the burden of showing that the recommended administrative order is not arbitrary, unreasonable or capricious.

If, after a plenary hearing, the commissioner determines that it is necessary to take corrective action, the commissioner shall have the power to order necessary budgetary changes within the district or other measures the commissioner deems appropriate to establish a thorough and efficient system of education.

If the board fails to show cause why an administrative order placing the district under partial State intervention should not be implemented, the commissioner shall recommend to the State board that it issue an order placing the district under partial State intervention. Notwithstanding any other provision of law to the contrary and upon its determining that the school district is not providing a thorough and efficient system of education, the State board may place the district under partial State intervention. Nothing herein shall limit the right of any party to appeal the State board's order to the Superior Court.

(5) If the position of superintendent of schools is vacant in a district under partial State intervention, the commissioner may appoint a superintendent who shall serve for a period not to exceed two years.

(6) In addition to the highly skilled professionals appointed pursuant to paragraph (2) of this subsection to provide technical assistance to the district in implementing its improvement plan, the commissioner, in consultation with the local board of education, may appoint one or more highly skilled professionals in a district under partial State intervention to provide direct oversight in the district regarding the quality performance indicators with which the district has failed to comply. The highly skilled professional shall have authority in the areas of oversight that the commissioner designates. The highly skilled professional shall work collaboratively with the superintendent, the board of education and the employees of the district working in the area of the oversight to address areas identified in the improvement plan. The cost for the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the costs of these salaries and the school district being responsible for one-half of the costs.

(7) The commissioner may appoint up to three additional members to the board of education of a district under partial State intervention. If the

commissioner appoints three additional members pursuant to this paragraph, the commissioner shall appoint one of these additional members from a list of three candidates provided by the local governing body of the municipality in which the school district is located. The commissioner shall make every effort to appoint residents of the district. A board member appointed by the commissioner shall be a nonvoting member of the board and shall have all the other rights, powers and privileges of a member of the board. A board member appointed by the commissioner shall report to the commissioner on the activities of the board of education and shall provide assistance to the board of education on such matters as deemed appropriate by the commissioner, including, but not limited to, the applicable laws and regulations governing specific school board action. A member appointed by the commissioner shall serve for a term of two years. The commissioner shall obtain approval of the State board for any extension of the two-year term. Any vacancy in the membership appointed by the commissioner shall be filled in the same manner as the original appointment.

If a board of education is subject to additional appointments pursuant to section 67 of P.L.2002, c.43 (C.52:27BBB-63), then the provisions of this paragraph shall not be applicable during the period in which the board is subject to those appointments.

Six months following the district being placed under partial State intervention, the commissioner shall determine, pursuant to criteria promulgated by the State Board of Education, whether or not the board members he has appointed shall become voting members of the board of education. If the commissioner determines that the board members he has appointed shall become voting members, the school district shall have 30 days to appeal the commissioner's determination to the State Board of Education.

(8) Based on the district's success in implementing its improvement plan, the commissioner shall make a determination to withdraw from intervention in one or more of the areas that have been under State intervention, to leave one or more areas under State intervention or to recommend to the State Board of Education that the district be placed under full State intervention.

If the commissioner determines that the district has successfully implemented the improvement plan, the commissioner shall issue a letter of recognition to the district designating the district as a high performing district and the State shall withdraw from intervention in the district. The commissioner shall recommend that the State board certify the school district for a period of seven years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators.

d. (Deleted by amendment, P.L.2005, c.235.)

e. (1) If a school district satisfies less than 50 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity. Based on the findings and recommendations of that evaluation, the district, in cooperation with the department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in one or more of the key components of school district effectiveness, the commissioner shall require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the State board from directing the district to enter full State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to satisfy the quality performance indicators. Each highly skilled professional shall work collaboratively with the district to increase local capacity in the areas of need identified in the improvement plan. The cost for the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost of these salaries and the school district being responsible for one-half of the costs.

5. Section 15 of P.L.1975, c.212 (C.18A:7A-15) is amended to read as follows:

C.18A:7A-15 Hearing on State intervention, corrective action; full State intervention; withdrawal.

15. a. In addition to procedures established pursuant to subsection e. of section 14 of P.L.1975, c.212 (C.18A:7A-14), the commissioner may

order the local board to show cause why an administrative order placing the district under full State intervention should not be implemented. The plenary hearing before a judge of the Office of Administrative Law, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), upon said order to show cause, shall be conducted on an expedited basis and in the manner prescribed by subdivision B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes. In the proceeding the State shall have the burden of showing that the recommended administrative order is not arbitrary, unreasonable or capricious.

If, after a plenary hearing, the commissioner determines that it is necessary to take corrective action, the commissioner shall have the power to order necessary budgetary changes within the district or other measures the commissioner deems appropriate to establish a thorough and efficient system of education.

If the board fails to show cause why an administrative order placing the district under full State intervention should not be implemented, the commissioner shall recommend to the State board that it issue an order placing the district under full State intervention. Notwithstanding any other provision of law to the contrary and upon its determining that the school district is not providing a thorough and efficient system of education, the State board may place the district under full State intervention. Nothing herein shall limit the right of any party to appeal the State board's order to the Superior Court.

b. In districts under full State intervention the State board, upon the recommendation of the commissioner, may appoint a State district superintendent to serve for a period not to exceed three years.

c. In addition to the highly skilled professionals appointed pursuant to paragraph (2) of subsection e. of section 14 of P.L.1975, c.212 (C.18A:7A-14), to provide technical assistance to the district in implementing its improvement plan, the commissioner, in consultation with the local board of education, may appoint one or more highly skilled professionals in a district under full State intervention to provide direct oversight in the district regarding the quality performance indicators with which the district has failed to comply. The highly skilled professional shall have authority in the areas of oversight that the commissioner designates. The highly skilled professional shall work collaboratively with the superintendent, the board of education and the employees of the district working in the area of the oversight to address areas identified in the improvement plan. The cost for the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the costs of these salaries and the school district being responsible for one-half of the costs.

d. If the district has successfully implemented the improvement plan, the commissioner shall issue a letter of recognition to the district designating the district as a high performing district and the State shall withdraw from intervention in the district in accordance with the provisions of section 16 of P.L.1987, c.399 (C.18A:7A-49). The commissioner shall recommend that the State board certify the school district for a period of seven years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators.

6. Section 5 of P.L.1987, c.398 (C.18A:7A-15.1) is amended to read as follows:

C.18A:7A-15.1 Authority of State board.

5. Pursuant to section 15 of P.L.1975, c.212 (C.18A:7A-15), the State board, upon the recommendation of the commissioner, shall have authority to:

- a. approve the appointment by the commissioner of up to three additional members to the school board;
- b. create a school district under full State intervention; and
- c. appoint, upon recommendation of the commissioner, a State district superintendent of schools to direct the operations of the district in accordance with the improvement plan established pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14).

7. Section 3 of P.L.1987, c.400 (C.18A:7A-31.2) is amended to read as follows:

C.18A:7A-31.2 Report on order to establish school district under full State intervention.

3. Whenever the State Board of Education issues an administrative order establishing a school district under full State intervention pursuant to section 15 of P.L.1975, c.212 (C.18A:7A-15), the commissioner shall immediately inform the Joint Committee on the Public Schools of that administrative order, and shall advise the committee as to the causes of the district's failure to achieve the requisite compliance with the quality performance indicators.

8. Section 4 of P.L.1987, c.400 (C.18A:7A-31.3) is amended to read as follows:

C.18A:7A-31.3 Improvement plan; report on progress; monitoring.

4. a. Within six months following the establishment of a school district under full State intervention, the commissioner shall present to the Joint Committee on the Public Schools the improvement plan developed by the district.

b. On an annual basis the commissioner shall provide a report to the committee on the progress made in the implementation of the improvement plan and the prospects for the State's withdrawal from intervention.

c. The Joint Committee on the Public Schools, in cooperation with the commissioner, may develop a plan for monitoring the administration of a school district under full State intervention and the implementation of the improvement plan. The plan developed by the committee shall include provisions for independent documentation and assessment.

9. Section 1 of P.L.1987, c.399 (C.18A:7A-34) is amended to read as follows:

C.18A:7A-34 Creation of school district under full State intervention.

1. Whenever the Commissioner of Education shall determine after the issuance of an administrative order that a local school district has failed to assure a thorough and efficient system of education, the State Board of Education may issue an administrative order as set forth in section 15 of P.L.1975, c.212 (C.18A:7A-15) which shall create a school district under full State intervention. The school district under full State intervention shall become effective immediately upon issuance of the administrative order by the State board.

10. Section 2 of P.L.1987, c.399 (C.18A:7A-35) is amended to read as follows:

C.18A:7A-35 State district superintendent.

2. a. The schools of a school district under full State intervention may be conducted by and under the supervision of a State district superintendent of schools appointed by the State board upon recommendation of the commissioner. The individual selected shall be qualified by training and experience for the particular district and shall work collaboratively with any highly skilled professionals appointed by the commissioner, in consultation with the local board of education.

The State board may, upon the recommendation of the commissioner, choose to retain the person who holds the position of superintendent of schools in the school district at the time the State board issues the administrative order pursuant to section 15 of P.L.1975, c.212 (C.18A:7A-15). If the State board chooses to retain the superintendent of schools, the person shall comply with the directives of the commissioner or his designee, including any highly skilled professional appointed by the commissioner.

b. If the State board appoints a State district superintendent the appointment shall be for an original term not to exceed three years. Notwithstanding any other provision of law, no person so appointed shall

acquire tenure nor shall the commissioner, with approval of the State board, be precluded from terminating the superintendent's services pursuant to the terms of the superintendent's individual contract of employment. For the purpose of the New Jersey Tort Claims Act, N.J.S.59:1-1 et seq., the State district superintendent shall be considered a State officer.

c. The salary of the State district superintendent shall be fixed by the commissioner and adjusted from time to time as the commissioner deems appropriate. The cost for said salary and for the salaries of all persons appointed pursuant to this amendatory and supplementary act, except the highly skilled professionals, shall be an expense of the local school district.

d. The State district superintendent shall perform such duties and possess such powers as deemed appropriate by the commissioner.

e. Except as otherwise provided in this amendatory and supplementary act, the State district superintendent shall have the power to perform all acts and do all things that the commissioner deems necessary for the proper conduct, maintenance and supervision of the schools in the district.

f. The State district superintendent may, if deemed appropriate by the commissioner, make, amend and repeal district rules, policies and guidelines, not inconsistent with law for the proper conduct, maintenance and supervision of the schools in the district.

g. The State district superintendent shall provide in each school a mechanism for parent, teacher and community involvement. In addition, the State district superintendent shall provide for at least one public meeting in both the fall and the spring semesters to advise parents and members of the community on the activities within the district and to provide an opportunity for those parents, teachers and community members who wish to be heard. The meetings shall be at such times and places as to ensure maximum public participation.

h. The State district superintendent, or such other person as the commissioner shall designate, shall ensure that the district is in compliance with all federal and State laws, rules and regulations relating to equal employment opportunities, affirmative action and minority business opportunities.

11. Section 4 of P.L.1987, c.399 (C.18A:7A-37) is amended to read as follows:

C.18A:7A-37 Corporate entity.

4. A school district placed under full or partial State intervention shall remain a corporate entity.

12. Section 5 of P.L.1987, c.399 (C.18A:7A-38) is amended to read as follows:

C.18A:7A-38 Powers of superintendent.

5. Except as otherwise provided in this amendatory and supplementary act, the State district superintendent in a school district under full State intervention or any other person designated by the commissioner may be given the power to:

- a. Enforce the rules of the State board; and
- b. Perform all acts and do all things, consistent with law and the rules of the State board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

13. Section 6 of P.L.1987, c.399 (C.18A:7A-39) is amended to read as follows:

C.18A:7A-39 Authority of superintendent, person designated by commissioner.

6. a. The State district superintendent or any other person designated by the commissioner may in a school district under full State intervention:

(1) Sue in the district's corporate name and likewise submit to arbitration and determination disputes and controversies in the manner provided by law;

(2) Cause a report of the condition of the public schools and the public school property and an itemized account of the condition of the finances of the district to be printed and published as soon as practicable after the close of each school year; and

(3) Cause an exact census to be taken annually of all children residing in the district between the ages of five and 18 years, including such other information as he or she may deem necessary or proper and appoint, for the purpose of taking that census, as many suitable persons as may be necessary to act as enumerators and fix their compensation, which compensation shall be paid as a current expense.

b. A school district under full State intervention may be sued under its corporate name.

c. School districts under full State intervention may join with local boards of education for the purpose of affording the districts those benefits which may accrue pursuant to P.L.1983, c.108 (C.18A:18B-1 et seq.).

d. A school district under full State intervention shall be subject to all provisions of chapter 19 of Title 18A of the New Jersey Statutes except that all warrants for claims or expenditures approvable by a district board of education or any action required of a district board of education pursuant to chapter 19 may be authorized by the State district superintendent or any other person designated by the commissioner.

e. Authority for the implementation of any provision of chapter 20 of Title 18A of the New Jersey Statutes relative to the acquisition and disposition of property which requires action by a district board of education may, in a school district under full State intervention, be exercised by the State district superintendent or any other person designated by the commissioner.

f. The authority vested in boards of education by chapter 21 of Title 18A of the New Jersey Statutes may in a school district under full State intervention be vested in the State district superintendent or any other person designated by the commissioner.

g. School districts under full State intervention shall be subject to all requirements set forth in chapter 18A of Title 18A of the New Jersey Statutes except that such determination as may be required of a district board of education by the provisions of said law may be rendered by the State district superintendent or any other person designated by the commissioner.

14. Section 7 of P.L.1987, c.399 (C.18A:7A-40) is amended as to read follows:

C.18A:7A-40 Collective bargaining agreements.

7. a. When a district under full State intervention is established, pursuant to section 1 of P.L.1987, c.399 (C.18A:7A-34), or when the State withdraws from intervention, pursuant to section 16 of P.L.1987, c.399 (C.18A:7A-49), collective bargaining agreements entered into by the school district shall remain in force, except where otherwise expressly provided in P.L.1987, c.399 (C.18A:7A-34 et seq.).

b. Except where otherwise expressly provided in P.L.1987, c.399 (C.18A:7A-34 et seq.), all teaching staff members and other employees of a district under full State intervention shall retain and continue to acquire all rights and privileges acquired pursuant to Title 18A of the New Jersey Statutes. After the State withdraws from intervention, the board shall preserve and recognize all rights and privileges acquired prior to and during the State intervention in the district.

15. Section 8 of P.L.1987, c.399 (C.18A:7A-41) is amended to read as follows:

C.18A:7A-41 Internal audit team.

8. There may be established within a school district under full State intervention an internal audit team which shall monitor the business functions of the district and report its findings to the commissioner and any

district personnel deemed appropriate by the commissioner. The cost of providing this internal audit function shall be borne by the State.

16. Section 9 of P.L.1987, c.399 (C.18A:7A-42) is amended to read as follows:

C.18A:7A-42 Officers, employees consultants.

9. a. In a school district under full State intervention, all officers, employees and consultants, professional and nonprofessional, certified and noncertified, shall be employed or retained, transferred and removed in accordance with the improvement plan which has been approved by the commissioner. In accordance with that plan:

(1) The State district superintendent or any other person designated by the commissioner may appoint, transfer and remove clerks, pursuant to the provisions of Title 11A (Civil Service) of the New Jersey Statutes and the provisions of N.J.S.18A:17-1 et seq.

(2) The State district superintendent or any other person designated by the commissioner, subject to the approval of the commissioner, shall appoint and set the salaries of such State assistant superintendents as the superintendent shall deem necessary and assign to them their duties and responsibilities. No State assistant superintendent shall acquire tenure, notwithstanding any other provision of law.

(3) The State district superintendent of schools or any other person designated by the commissioner shall, subject to the approval of the commissioner or his designee, make all personnel determinations relative to employment, transfer and removal of all officers and employees, professional and nonprofessional, except that the services of the district auditor or auditors and attorney or attorneys shall be immediately terminated by creation of a school district under full State intervention.

b. The State district superintendent or any other person designated by the commissioner may delegate to subordinate officers or employees in the district any of his powers and duties as he may deem desirable to be exercised under his supervision and direction.

17. Section 10 of P.L.1987, c.399 (C.18A:7A-43) is amended to read as follows:

C.18A:7A-43 Tenure rights.

10. Except as otherwise provided in this amendatory and supplementary act, any person serving under tenure or permanent civil service status shall retain all tenure rights and may continue to serve in the district pursuant to the provisions of this section. However, they shall perform only such duties as

prescribed in the improvement plan which has been approved by the commissioner and those duties for which they may be appropriately certified.

18. Section 11 of P.L.1987, c.399 (C.18A:7A-44) is amended to read as follows:

C.18A:7A-44 Abolition of administrative positions; reorganization.

11. a. Notwithstanding any other provision of law or contract, the positions of the district's chief school administrator and those executive administrators responsible for curriculum, business and finance, and personnel may be abolished upon creation of the school district under full State intervention. The affected individuals shall be given 60 days' notice of termination or 60 days' pay. The notice or payment shall be in lieu of any other claim or recourse against the employing board or the school district based on law or contract. Any individual whose position is abolished by operation of this subsection shall be entitled to assert a claim to any position or to placement upon a preferred eligibility list for any position to which the individual may be entitled by virtue of tenure or seniority within the district. No individual whose position is abolished by operation of this subsection shall retain any right to tenure or seniority in the positions abolished herein.

b. Within 180 days of the establishment of the school district under full State intervention, the State district superintendent or any other person designated by the commissioner may prepare a reorganization of the district's central administrative and supervisory staff and may evaluate all individuals employed in central administrative and supervisory staff positions. The State district superintendent or any other person designated by the commissioner may implement the reorganization on the July 1 next following its preparation, unless otherwise directed by the commissioner. The State district superintendent or any other person designated by the commissioner shall retain the authority to prepare a reorganization and to evaluate all employed individuals after the expiration of the 180-day period.

c. Notwithstanding any other provision of law or contract, the positions of the central administrative and supervisory staff, instructional and noninstructional, other than those positions abolished pursuant to subsection a. of this section, may be abolished upon the reorganization of the staff of the school district under full State intervention. The State district superintendent or any other person designated by the commissioner may hire an individual whose position is so abolished, based upon the evaluation of the individual and the staffing needs of the reorganized district staff. These individuals shall be hired with tenure if they had tenure in their prior position. If they did not have tenure in their prior position, they may obtain tenure pursuant to the provisions of N.J.S.18A:28-6. Individuals hired as

State assistant superintendents shall not be hired with tenure and shall not acquire tenure. Employees or officers not hired for the reorganized staff shall be given 60 days' notice of termination or 60 days' pay. The notice or payment shall be in lieu of any other claim or recourse against the employing board or the school district based on law or contract. Notwithstanding this limitation, nothing herein shall preclude an individual from asserting upon separation from service any legal contractual right to health care coverage, annuities, accrued vacation days, accrued sick leave, insurance and approved tuition costs. Any employee whose position is abolished by operation of this subsection shall be entitled to assert a claim to any position or to placement upon a preferred eligibility list for any position to which the employee may be entitled by virtue of tenure or seniority within the district. No employee whose position is abolished by operation of this subsection shall retain any right to tenure or seniority in the positions abolished herein.

19. Section 12 of P.L.1987, c.399 (C.18A:7A-45) is amended to read as follows:

C.18A:7A-45 Evaluations of principals, vice-principals.

12. a. The Commissioner of Education shall adopt criteria for the evaluation of building principals and vice-principals in a school district under full State intervention.

b. Upon appointment, the State district superintendent or other person designated by the commissioner may establish an assessment unit to conduct on-site evaluations of each building principal and vice-principal in accordance with the criteria established by the commissioner and render evaluation reports to the State district superintendent or any other person designated by the commissioner. No less than three evaluations shall be performed for each building principal and vice-principal within 18 months following the establishment of the school district under full State intervention. All personnel records for building principals and vice-principals prepared before the establishment of the district under full State intervention shall be sealed upon issuance of the State Board of Education order establishing the school district under full State intervention.

c. Notwithstanding any other provision of law or contract, the State district superintendent or any other person designated by the commissioner, after completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal or vice-principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal or vice-principal performance in districts under full State intervention established by the commissioner pursuant to subsection a. of this section. Nothing herein shall preclude the dismissal of a tenured

building principal or vice-principal prior to the completion of an assessment cycle of not less than 12 months if the basis for the dismissal is incapacity or unbecoming conduct. All dismissals of tenured building principals or vice-principals shall be conducted in accordance with the procedures set forth in sections 10, 11, 13, 14, 16 and 17 of chapter 6 of Title 18A of the New Jersey Statutes, except that the State district superintendent or any other person designated by the commissioner shall act as the board of education in all respects.

d. The commissioner and the Office of Administrative Law are empowered and directed to take any necessary action to expedite hearings for dismissal of tenured principals or vice-principals, including relaxation of any time requirements established by law or practice. In no event shall a hearing commence later than 45 days after certification of charges. Hearings shall be completed within 45 days of commencement. In no event shall a final decision be issued later than 120 days following the certification of charges.

e. Evaluations of building principals or vice-principals conducted by district personnel prior to the establishment of the school district under full State intervention shall not be admissible in a tenure hearing for any building principal or vice-principal except in the following circumstances:

(1) Evaluations of building principals or vice-principals performed by members of the central administrative and supervisory staff who are hired to fill one of the positions in the reorganized central office of the district under full State intervention shall be admissible;

(2) Evaluations of building principals or vice-principals made by individuals who were no longer employed by the school district as of the date it became a school district under full State intervention shall be admissible only if the evaluation was performed more than five years preceding the date of the establishment of the district under full State intervention.

20. Section 13 of P.L.1987, c.399 (C.18A:7A-46) is amended to read as follows:

C.18A:7A-46 Procedure for creation, conduct.

13. a. School districts under full State intervention shall be created only as provided pursuant to section 15 of P.L.1975, c.212 (C.18A:7A-15).

b. School districts under full State intervention may be conducted by and under the supervision of a State district superintendent appointed by the State Board of Education upon recommendation of the commissioner.

21. Section 1 of P.L.1991, c.139 (C.18A:7A-46.1) is amended to read as follows:

C.18A:7A-46.1 Capital Project Control Board.

1. a. In any school district under full State intervention created pursuant to the provisions of P.L.1975, c.212 (C.18A:7A-1 et seq.) there may be established a Capital Project Control Board, hereinafter the board, to be responsible for the review of any capital project proposed by the State district superintendent or a person designated by the commissioner, provided that the State district superintendent or person designated by the commissioner proposes that the capital project be financed in whole or in part by school bonds or notes, or through a lease purchase agreement pursuant to subsection f. of N.J.S.18A:20-4.2. The board shall also be responsible for the certification to the State district superintendent of schools or person designated by the Commissioner of Education and the commissioner of the necessity for the capital project and the certification of the appropriation to be made by the governing body of the municipality.

b. The board shall consist of five voting members. One member shall be appointed by the Commissioner of Education and two members shall be appointed by the chief executive officer with the consent of a majority of the full membership of the local governing body of the municipality or municipalities in which the school district is located. If the school district is comprised of two municipalities, each municipality shall be entitled to one member, appointed by the executive officer with the consent of the governing body. If the school district is comprised of more than two municipalities, each of the two municipalities with the largest population according to the most recent federal decennial census shall be entitled to one member, appointed by the executive officer with the consent of the governing body. However, if a local governing body fails to agree upon the selection of either board member appointed by an executive officer, then the Commissioner of Education shall make the appointment. One member shall be appointed by the Director of the Division of Local Government Services in the Department of Community Affairs who shall have experience in the area of local finance and capital projects. The fifth member shall be the State district superintendent of schools or any other person designated by the commissioner who shall serve ex-officio and shall act as chairperson of the board. The board members, except for the State district superintendent or the person designated by the commissioner, shall each serve for a term of one year commencing on July 1 of each year and expiring on June 30 of the following year. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided by the original appointment. Members of the board may be employees of the

State or any subdivision thereof. All members of the board shall serve without compensation.

c. The board shall meet from time to time upon the request of the State district superintendent or person designated by the commissioner. All meetings of the board shall be conducted pursuant to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). The State district superintendent, or the person designated by the commissioner, shall be charged with the responsibility of preparing a transcript of the proceedings and all votes shall be recorded in writing.

22. Section 2 of P.L.1991, c.139 (C.18A:7A-46.2) is amended to read as follows:

C.18A:7A-46.2 Board to hear recommendations concerning proposed capital projects.

2. In the event that a capital projects review board is established pursuant to section 1 of P.L.1991, c.139 (C.18A:7A-46.1) the board shall hear the recommendation of the State district superintendent or the person designated by the commissioner concerning any proposed capital project, which is to be financed in whole or in part by school bonds or notes, or through a lease purchase agreement pursuant to subsection f. of N.J.S.18A:20-4.2, and shall undertake all actions necessary to review the proposed capital project to determine whether the project will assist the school district under full State intervention in providing a thorough and efficient system of education in that district. In making this determination it may take into consideration factors such as the conditions in the school district, any applicable educational goals, the objectives and standards established by the State, the need for the capital project, the reasonableness of the amount to be expended for the capital project, the estimated time for the undertaking and completion of the capital project, and any other factors which the board may deem necessary including the relationship of the capital project to the long-term capital budget or plan of the school district and the fiscal implications thereof.

Following its review and within 60 days of the date on which the State district superintendent or the person designated by the commissioner submits the recommendation to the board, the board shall adopt a resolution as to whether the school district under full State intervention should undertake the capital project and providing its reasons therefor. The board shall adopt a resolution indicating the necessity for the capital project and shall also fix and determine by resolution the amount necessary to be raised locally for the capital project. If the board fails to act within 60 days of the submission date, the State district superintendent or the person designated by the commissioner shall submit the recommendation to the commissioner

who shall approve or disapprove the capital project. If the board makes a decision which is contrary to the recommendation of the superintendent or the person designated by the commissioner, the superintendent or the person designated by the commissioner may, within 30 days from the date of the board's action, submit the matter to the commissioner for final decision. If the commissioner determines that a capital project should be undertaken, the commissioner shall so notify the board and shall indicate the amount necessary to be raised locally for the capital project. Upon notification, the board shall adopt a resolution indicating the necessity for the capital project and shall also fix and determine by resolution the amount necessary for the capital project as indicated by the commissioner. Certified copies of any resolution requesting the authorization and issuance of bonds and notes or the authorization of a lease purchase agreement shall be delivered to the State district superintendent or the person designated by the Commissioner of Education, the Commissioner of Education, the Director of the Division of Local Government Services in the Department of Community Affairs and the governing body of the municipality or municipalities in which the school district is located. The board shall not approve or recommend any capital project which is inconsistent with the provisions of N.J.S.18A:21-1.

23. Section 3 of P.L.1991, c.139 (C.18A:7A-46.3) is amended to read as follows:

C.18A:7A-46.3 Capital projects financed by issuance of bonds, notes.

3. Notwithstanding the provisions of any law to the contrary, the cost of any capital project authorized pursuant to this act which is to be funded by bonds or notes and certified by the board to the State district superintendent or the person designated by the commissioner, the Commissioner of Education, the Director of the Division of Local Government Services in the Department of Community Affairs and the governing body of the municipality or municipalities in which the school district is located shall be financed by the issuance of school bonds or notes pursuant to the provisions of chapter 24 of Title 18A of the New Jersey Statutes and the "Local Bond Law" (N.J.S.40A:2-1 et seq.) and the notes, school bonds or other obligations shall be authorized, issued, sold and delivered in the manner prescribed by the "Local Bond Law" (N.J.S.40A:2-1 et seq.).

24. Section 4 of P.L.1991, c.139 (C.18A:7A-46.4) is amended to read as follows:

C.18A:7A-46.4 Issuance of authorization of notes, bonds.

4. Any authorization of notes or bonds effective prior to the date of the appointment of the State district superintendent or the person designated by

the commissioner shall be issued in the manner prescribed by the "Local Bond Law," (N.J.S.40A:2-1 et seq.).

25. Section 6 of P.L.1991, c.139 (C.18A:7A-46.6) is amended to read as follows:

C.18A:7A-46.6 Debt service part of municipal budget.

6. The debt service on bonds, notes and other obligations authorized pursuant to P.L.1991, c.139 (C.18A:7A-46.1 et seq.) shall be appropriated and made part of the municipal budget and raised through the annual municipal tax levy. However, all debt service payments shall be included in the budget of the school district under full State intervention as the sum necessary for interest and debt redemption charges and shall be eligible for State education aid in the year in which the appropriation and expenditure are made.

26. Section 14 of P.L.1987, c.399 (C.18A:7A-47) is amended to read as follows:

C.18A:7A-47 Board of Education.

14. a. The State board shall retain the board of education in place at the time that the State board issues the administrative order creating the school district under full State intervention. With the State board's approval the commissioner may appoint up to three additional nonvoting members to the board of education. If the commissioner appoints three additional members pursuant to this subsection, the commissioner shall appoint one of these additional members from a list of three candidates provided by the local governing body of the municipality in which the school district is located. The commissioner shall make every effort to appoint residents of the district. The board of education shall have only those rights, powers and privileges of an advisory board. The members appointed by the commissioner shall serve for a term of two years. The commissioner shall obtain approval of the State board for any extension of the two-year term. Any vacancy in the membership appointed by the commissioner shall be filled in the same manner as the original appointment.

Six months following the district being placed under full State intervention, the commissioner shall determine, pursuant to criteria promulgated by the State Board of Education, whether or not the board members he has appointed shall become voting members of the advisory board of education. If the commissioner determines that the board members he has appointed shall become voting members, the school district shall have 30 days to appeal the commissioner's determination to the State Board of Education.

b. The State district superintendent or the person designated by the commissioner may meet with the board as frequently as necessary for the effective operation of the school district. The meetings of the board shall be convened and scheduled at the direction of the State district superintendent or the person designated by the commissioner, and the State district superintendent or the person designated by the commissioner shall determine the agenda. At the meetings, the State district superintendent or the person designated by the commissioner shall report to the board on all actions taken and on pending actions in a timely fashion, and provide an opportunity for a full discussion by the board and by the public of those actions. Meetings shall be conducted pursuant to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). On a regular basis, but no less than twice each year, the board of education shall report in writing directly to the State district superintendent or the person designated by the commissioner concerning its assessment of the progress of the district. Copies of the report shall be forwarded to the commissioner and the State board. The State district superintendent or the person designated by the commissioner shall make such clerical and other resources available as are necessary for the effective operation of the board of education.

c. The commissioner, in consultation with the New Jersey School Boards Association, shall provide the members of the board of education with appropriate in-service training in school matters.

27. Section 16 of P.L.1987, c.399 (C.18A:7A-49) is amended to read as follows:

C.18A:7A-49 Reports of progress under full State intervention.

16. a. A school district under full State intervention shall make an annual report of its progress in complying with the quality performance indicators adopted pursuant to section 10 of P.L.1975, c.212 (C.18A:7A-10). The commissioner shall formally report to the State board and to the Governor and the Legislature on the district's progress.

b. Based upon the annual report of progress, but not sooner than three years after the establishment of the school district under full State intervention, the commissioner may recommend that the State board place the school district under partial State intervention or elsewhere on the performance continuum. If the State board so determines, the school district shall be placed under partial State intervention or designated as a high performing or moderate performing district effective on the July 1 next ensuing.

c. In the event that the State board, upon the recommendation of the commissioner, has appointed a State district superintendent in a district

under full State intervention and if the district is placed under partial State intervention or is designated as a high performing or moderate performing district, then the board of education shall be permitted to extend the contract of the superintendent who holds the position at the time that the district is placed under partial State intervention or is designated a high performing or moderate performing district, provide 18-months' notice to the superintendent to modify the contract, or allow the contract in effect to expire with the appropriate statutory notice pursuant to subsection b. of section 4 of P.L.1991, c.267 (C.18A:17-20.1).

d. Not more than one year following the placement of the district under partial State intervention or designation as a high performing or moderate performing district, the board shall call a special election for purposes of placing the question of classification status before the voters of the district, which election shall be conducted in accordance with the provisions of Title 19 of the Revised Statutes concerning school elections.

e. If the voters of the district shall elect to become a type I district, it shall be governed by the provisions of chapter 9 of Title 18A of the New Jersey Statutes relating to type I districts after January 31 next ensuing, unless the district is established in a city of the first class, in which case it shall be governed after June 30 next ensuing. The members of the district board of education at the time of said election shall continue in office until expiration of their respective terms and the qualification in office of their successors.

f. If the voters of the district shall so select that the district shall become a type II district, it shall be governed by the provisions of chapter 9 of Title 18A relating to type II districts and the members of the board of education at the time of said election shall remain and continue in office until the expiration of their respective terms and the qualification of their respective successors.

g. If the commissioner cannot recommend that the school district under full State intervention be placed under partial State intervention within three years, then the commissioner shall provide a comprehensive report to the State board and to the Governor and the Legislature, including a detailed analysis of the causes for the failure of the district to comply with the quality performance indicators and an assessment of the amount of time necessary for the continuation of the school district under full State intervention. On the basis of that report the State board shall determine whether to continue the school district under full State intervention or return the district to partial State intervention.

28. Section 17 of P.L.1987, c.399 (C.18A:7A-50) is amended to read as follows:

C.18A:7A-50 Budget development, presentation.

17. The State district superintendent or the person designated by the commissioner in a school district under full State intervention shall develop a budget on or before March 22 and shall present this budget to the board of education to elicit the board's comments and recommendations. This budget shall conform in all respects with the requirements of chapter 22 of Title 18A of the New Jersey Statutes and shall be subject to the limitations on spending by local school districts otherwise required by P.L.1996, c.138 (C.18A:7F-1 et al.).

29. Section 18 of P.L.1987, c.399 (C.18A:7A-51) is amended to read as follows:

C.18A:7A-51 Public hearing.

18. Upon the preparation of its budget, the State district superintendent or the person designated by the commissioner shall fix a date, place and time for the holding of a public hearing upon the budget and the amounts of money necessary to be appropriated for the use of the public schools for the ensuing school year, and the various items and purposes for which the same are to be appropriated, which hearing shall be held between March 22 and March 29. Notice of the hearing, contents of the notice and the format and purpose of the hearing shall be as provided in N.J.S.18A:22-11, N.J.S.18A:22-12 and N.J.S.18A:22-13.

30. Section 19 of P.L.1987, c.399 (C.18A:7A-52) is amended to read as follows:

C.18A:7A-52 Determination of amount of appropriation for following school year.

19. a. After the public hearing provided for by section 18 of P.L.1987, c.399 (C.18A:7A-51) but not later than April 8, the State district superintendent or the person designated by the commissioner shall fix and determine the amount of money necessary to be appropriated for the ensuing school year and shall certify the amounts to be raised by special district tax for school purposes as well as the sum necessary for interest and debt redemption, if any, to the county board of taxation and the amount or amounts so certified shall be included in the taxes assessed, levied and collected in the municipality or municipalities comprising the district. The State district superintendent or the person designated by the commissioner shall follow the procedures established pursuant to section 5 of P.L.1996, c.138 (C.18A:7F-5).

b. (Deleted by amendment, P.L.1996, c.138).

c. (Deleted by amendment, P.L.1996, c.138).

31. Section 3 of P.L.2000, c.72 (C.18A:7G-3) is amended to read as follows:

C.18A:7G-3 Definitions relative to construction, financing of public school facilities.

3. As used in sections 1 through 30 and 57 through 71 of this act, unless the context clearly requires a different meaning:

"Abbott district" means an Abbott district as defined in section 3 of P.L.1996, c.138 (C.18A:7F-3);

"Area cost allowance" means \$138 per square foot for the school year 2000-2001 and shall be inflated by an appropriate cost index for the 2001-2002 school year. For the 2002-2003 school year and subsequent school years, the area cost allowance shall be as established in the biennial Report on the Cost of Providing a Thorough and Efficient Education and inflated by an appropriate cost index for the second year to which the report applies. The area cost allowance used in determining preliminary eligible costs of school facilities projects shall be that of the year of application for approval of the project;

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

"Community provider" means a private entity which has contracted to provide early childhood education programs for an ECPA district and which (a) is licensed by the Department of Human Services to provide day care services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); and (b) is a tax exempt nonprofit organization;

"Community early childhood education facilities project" means a school facilities project consisting of facilities in which early childhood education programs are provided to 3 or 4-year old children under contract with the ECPA district but which are owned and operated by a community provider;

"Commissioner" means the Commissioner of Education;

"Core curriculum content standards" means the standards established pursuant to the provisions of subsection a. of section 4 of P.L.1996, c.138 (C.18A:7F-4);

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to regulations promulgated by the authority pursuant to section 26 of this act;

"Debt service" means and includes payments of principal and interest upon school bonds issued to finance the acquisition of school sites and the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or

repair of school facilities, including furnishings, equipment, architect fees and the costs of issuance of such obligations and shall include payments of principal and interest upon school bonds heretofore issued to fund or refund such obligations, and upon municipal bonds and other obligations which the commissioner approves as having been issued for such purposes. Debt service pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.), P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177 (C.18A:58-33.2 et seq.) is excluded;

"Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of this act;

"District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.);

"District aid percentage" means the number expressed as a percentage derived from dividing the district's core curriculum standards aid calculated pursuant to section 15 of P.L.1996, c.138 (C.18A:7F-15) as of the date of the commissioner's determination of preliminary eligible costs by the district's T & E budget calculated pursuant to subsection d. of section 13 of P.L.1996, c.138 (C.18A:7F-13) as of the date of the commissioner's determination of preliminary eligible costs;

"ECPA district" means a district that qualifies for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16);

"Excess costs" means the additional costs, if any, which shall be borne by the district, of a school facilities project which result from design factors that are not required to meet the facilities efficiency standards and not approved pursuant to paragraph (1) of subsection g. of section 5 of this act or are not authorized as community design features included in final eligible costs pursuant to subsection c. of section 6 of this act;

"Facilities efficiency standards" means the standards developed by the commissioner pursuant to subsection h. of section 4 of this act;

"Final eligible costs" means for school facilities projects to be constructed by the authority, the final eligible costs of the school facilities project as determined by the commissioner, in consultation with the authority, pursuant to section 5 of this act; for demonstration projects, the final eligible costs of the project as determined by the commissioner and reviewed by the authority which may include the cost of community design features determined by the commissioner to be an integral part of the school

facility and which do not exceed the facilities efficiency standards, and which were reviewed by the authority and approved by the State Treasurer pursuant to section 6 of this act; and for districts whose district aid percentage is less than 55% and which elect not to have the authority construct a school facilities project, final eligible costs as determined pursuant to paragraph (1) of subsection h. of section 5 of this act;

"FTE" means a full-time equivalent student which shall be calculated as follows: in districts that qualify for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16), each student in grades kindergarten through 12 shall be counted at 100% of the actual count of students, and each preschool student approved by the commissioner to be served in the district shall be counted at 50% or 100% of the actual count of preschool students for an approved half-day or full-day program, respectively; in districts that do not qualify for early childhood program aid pursuant to section 16 of P.L.1996, c.138 (C.18A:7F-16), each student in grades 1 through 12 shall be counted at 100% of the actual count of students, in the case of districts which operate a half-day kindergarten program each kindergarten student shall be counted at 50% of the actual count of kindergarten students, in the case of districts which operate a full-day kindergarten program or which currently operate a half-day kindergarten program but propose to build facilities to house a full-day kindergarten program each kindergarten student shall be counted at 100% of the actual count of kindergarten students, and preschool students shall not be counted. In addition, each preschool handicapped child who is entitled to receive a full-time program pursuant to N.J.S.18A:46-6 shall be counted at 100% of the actual count of these students in the district;

"Functional capacity" means the number of students that can be housed in a building in order to have sufficient space for it to be educationally adequate for the delivery of programs and services necessary for student achievement of the core curriculum content standards. Functional capacity is determined by dividing the existing gross square footage of a school building by the minimum area allowance per FTE student pursuant to subsection b. of section 8 of this act for the grade level students contained therein. The difference between the projected enrollment determined pursuant to subsection a. of section 8 of this act and the functional capacity is the unhoused students that are the basis upon which the additional costs of space to provide educationally adequate facilities for the entire projected enrollment are determined. The existing gross square footage for the purposes of defining functional capacity is exclusive of existing spaces that are not contained in the facilities efficiency standards but which are used to deliver programs and services aligned to the core curriculum content standards, used to provide support services directly to students, or other

existing spaces that the district can demonstrate would be structurally or fiscally impractical to convert to other uses contained in the facilities efficiency standards;

"Lease purchase payment" means and includes payment of principal and interest for lease purchase agreements in excess of five years approved pursuant to subsection f. of N.J.S.18A:20-4.2 prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) to finance the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and issuance costs. Approved lease purchase agreements in excess of five years shall be accorded the same accounting treatment as school bonds;

"Local share" means, in the case of a school facilities project to be constructed by the authority, the total costs less the State share as determined pursuant to section 5 of this act; in the case of a demonstration project, the total costs less the State share as determined pursuant to sections 5 and 6 of this act; and in the case of a school facilities project not to be constructed by the authority, but which shall be financed pursuant to section 15 of this act, the total costs less the State share as determined pursuant to that section;

"Local unit" means a county, municipality, board of education or any other political subdivision or instrumentality authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law;

"Local unit obligations" means bonds, notes, refunding bonds, refunding notes, lease obligations and all other obligations of a local unit which are issued or entered into for the purpose of paying for all or a portion of the costs of a school facilities project, including moneys payable to the authority;

"Long-range facilities plan" means the plan required to be submitted to the commissioner by a district pursuant to section 4 of this act;

"Maintenance" means expenditures which are approved for repairs and replacements for the purpose of keeping a school facility open and safe for use or in its original condition, including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition. Maintenance shall not include contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, and the cleaning of, or repairs and replacements to, movable furnishings or equipment, or other expenditures which are not required to maintain the original condition over the school facility's useful life. Approved maintenance expenditures shall be as determined by the

commissioner pursuant to regulations to be adopted by the commissioner pursuant to section 26 of this act;

"Other allowable costs" means the costs of site development, acquisition of land or other real property interests necessary to effectuate the school facilities project, fees for the services of design professionals, including architects, engineers, construction managers and other design professionals, legal fees, financing costs and the administrative costs of the authority or the district incurred in connection with the school facilities project;

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in section 7 of this act which shall be deemed to include the costs of construction and other allowable costs;

"Redevelopment entity" means a redevelopment entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.);

"Report on the Cost of Providing a Thorough and Efficient Education" or "Report" means the report issued by the commissioner pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4);

"School bonds" means, in the case of a school facilities project which is to be constructed by the authority, a redevelopment entity, or a district under section 15 of this act, bonds, notes or other obligations issued by a district to finance the local share; and, in the case of a school facilities project which is not to be constructed by the authority or a redevelopment entity, or financed under section 15 of this act, bonds, notes or other obligations issued by a district to finance the total costs;

"School enrollment" means the number of FTE students other than evening school students, including post-graduate students and post-secondary vocational students, who, on the last school day prior to October 16 of the current school year, are recorded in the registers of the school;

"School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration;

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management,

legal services, financing costs and administrative costs and expenses incurred in connection with the project;

"Special education services pupil" means a pupil receiving specific services pursuant to chapter 46 of Title 18A of the New Jersey Statutes;

"State aid" means State municipal aid and State school aid;

"State debt service aid" means for school bonds issued for school facilities projects approved by the commissioner after the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) of districts which elect not to have the authority or a redevelopment entity construct the project or which elect not to finance the project under section 15 of this act, the amount of State aid determined pursuant to section 9 of this act; and for school bonds or certificates of participation issued for school facilities projects approved by the commissioner prior to the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.) the amount of State aid determined pursuant to section 10 of this act;

"State municipal aid" means business personal property tax replacement revenues, State urban aid and State revenue sharing, as these terms are defined in section 2 of P.L.1976, c.38 (C.40A:3-3), or other similar forms of State aid payable to the local unit and to the extent permitted by federal law, federal moneys appropriated or apportioned to the municipality or county by the State;

"State school aid" means the funds made available to school districts pursuant to sections 15 and 17 of P.L.1996, c.138 (C.18A:7F-15 and 17);

"State share" means the State's proportionate share of the final eligible costs of a school facilities project to be constructed by the authority as determined pursuant to section 5 of this act; in the case of a demonstration project, the State's proportionate share of the final eligible costs of the project as determined pursuant to sections 5 and 6 of this act; and in the case of a school facilities project to be financed pursuant to section 15 of this act, the State share as determined pursuant to that section;

"Total costs" means, in the case of a school facilities project which is to be constructed by the authority or a redevelopment entity or financed pursuant to section 15 of this act, the final eligible costs plus excess costs if any; and in the case of a school facilities project which is not to be constructed by the authority or a redevelopment entity or financed pursuant to section 15 of this act, the total cost of the project as determined by the district.

32. Section 5 of P.L.2000, c.72 (C.18A:7G-5) is amended to read as follows:

C.18A:7G-5 Financing, construction of school facilities in certain districts by authority.

5. a. The authority shall construct and finance the school facilities projects of Abbott districts, districts in level II monitoring pursuant to

section 14 of P.L.1975, c.212 (C.18A:7A-14) as of the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), and districts with a district aid percentage equal to or greater than 55%.

b. Any district whose district aid percentage is less than 55% may elect to have the authority undertake the construction of a school facilities project in the district and the State share shall be determined pursuant to this section. In the event that the district elects not to have the authority undertake the construction of the project, State support for the project shall be determined pursuant to section 9 or section 15 of this act, as applicable.

c. Notwithstanding any provision of N.J.S.18A:18A-16 to the contrary, the procedures for obtaining approval of a school facilities project shall be as set forth in this act; provided that any district whose district aid percentage is less than 55%, which elects not to have the authority or a redevelopment entity undertake the construction of the project, shall also be required to comply with the provisions of N.J.S.18A:18A-16.

d. Any district seeking to initiate a school facilities project shall apply to the commissioner for approval of the project. The application shall, at a minimum, contain the following information: a description of the school facilities project; a schematic drawing of the project or, at the option of the district, preliminary plans and specifications; a delineation and description of each of the functional components of the project; the number of unhoused students to be housed in the project; the area allowances per FTE student as calculated pursuant to section 8 of this act; and the estimated cost to complete the project as determined by the district.

e. The commissioner shall review each proposed school facilities project to determine whether it is consistent with the district's long-range facilities plan and whether it complies with the facilities efficiency standards and the area allowances per FTE student derived from those standards. The commissioner shall make a decision on a district's application within 90 days from the date he determines that the application is fully and accurately completed and that all information necessary for a decision has been filed by the district, or from the date of the last revision made by the district. If the commissioner is not able to make a decision within 90 days, he shall notify the district in writing explaining the reason for the delay and indicating the date on which a decision on the project will be made, provided that the date shall not be later than 60 days from the expiration of the original 90 days set forth in this subsection. If the decision is not made by the subsequent date indicated by the commissioner, then the project shall be deemed approved and the preliminary eligible costs for new construction shall be calculated by using the proposed square footage of the building as the approved area for unhoused students.

f. If the commissioner determines that the school facilities project complies with the facilities efficiency standards and the district's long-range facilities plan and does not exceed the area allowance per FTE student derived from those standards, the commissioner shall calculate the preliminary eligible costs of the project pursuant to the formulas set forth in section 7 of this act; except that in the case of a county special services school district or a county vocational school district, the commissioner shall calculate the preliminary eligible costs to equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to section 14 of P.L.1971, c.271 (C.18A:46-42) or N.J.S.18A:54-31 as appropriate.

g. If the commissioner determines that the school facilities project is inconsistent with the facilities efficiency standards or exceeds the area allowances per FTE student derived from those standards, the commissioner shall notify the district.

(1) The commissioner shall approve area allowances in excess of the area allowances per FTE student derived from the facilities efficiency standards if the board of education or State district superintendent, as appropriate, demonstrates that school facilities needs related to required programs cannot be addressed within the facilities efficiency standards and that all other proposed spaces are consistent with those standards. The commissioner shall approve area allowances in excess of the area allowances per FTE student derived from the facilities efficiency standards if the additional area allowances are necessary to accommodate centralized facilities to be shared among two or more school buildings within the district and the centralized facilities represent a more cost effective alternative.

(2) The commissioner may waive a facilities efficiency standard if the board of education or State district superintendent, as appropriate, demonstrates to the commissioner's satisfaction that the waiver will not adversely affect the educational adequacy of the school facility, including the ability to deliver the programs and services necessary to enable all students to achieve the core curriculum content standards.

(3) To house the district's central administration, a district may request an adjustment to the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total district school enrollment if the proposed administrative offices will be housed in a school facility and the district demonstrates either that the existing central administrative offices are obsolete or that it is more practical to convert those offices to instructional space. To the extent that existing administrative space will continue to be used for administrative purposes, the space shall be included in the formulas set forth in section 7 of this act.

If the commissioner approves excess facilities efficiency standards or additional area allowances pursuant to paragraph (1), (2), or (3) of this subsection, the commissioner shall calculate the preliminary eligible costs based upon the additional area allowances or excess facilities efficiency standards pursuant to the formulas set forth in section 7 of this act. In the event that the commissioner does not approve the excess facilities efficiency standards or additional area allowances, the district may either: modify its submission so that the school facilities project meets the facilities efficiency standards; or pay for the excess costs.

(4) The commissioner shall approve spaces in excess of, or inconsistent with, the facilities efficiency standards, hereinafter referred to as nonconforming spaces, upon a determination by the district that the spaces are necessary to comply with State or federal law concerning individuals with disabilities. A district may apply for additional State aid for nonconforming spaces that will permit pupils with disabilities to be educated to the greatest extent possible in the same buildings or classes with their nondisabled peers. The nonconforming spaces may: (a) allow for the return of pupils with disabilities from private facilities; (b) permit the retention of pupils with disabilities who would otherwise be placed in private facilities; (c) provide space for regional programs in a host school building that houses both disabled and nondisabled pupils; and (d) provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission, or other agency authorized by law to provide regional educational services in a school building that houses both disabled and nondisabled pupils. A district's State support ratio shall be adjusted to equal the lesser of the sum of its district aid percentage as defined in section 3 of this act plus 0.25, or 100% for any nonconforming spaces approved by the commissioner pursuant to this paragraph.

h. Upon approval of a school facilities project and determination of the preliminary eligible costs:

(1) In the case of a district whose district aid percentage is less than 55% and which has elected not to have the authority undertake the construction of the school facilities project, the commissioner shall notify the district whether the school facilities project is approved and, if so approved, the preliminary eligible costs and the excess costs, if any. Following the determination of preliminary eligible costs and the notification of project approval, the district may appeal to the commissioner for an increase in those costs if the detailed plans and specifications completed by a design professional for the school facilities project indicate that the cost of constructing that portion of the project which is consistent with the facilities efficiency standards and does not exceed the area allowances per

FTE student exceeds the preliminary eligible costs as determined by the commissioner for the project by 10% or more. The district shall file its appeal within 30 days of the preparation of the plans and specifications. If the district chooses not to file an appeal, then the final eligible costs shall equal the preliminary eligible costs.

The appeal shall outline the reasons why the preliminary eligible costs calculated for the project are inadequate and estimate the amount of the adjustment which needs to be made to the preliminary eligible costs. The commissioner shall forward the appeal information to the authority for its review and recommendation. If the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards, the authority shall recommend to the commissioner that the preliminary eligible costs be accepted as the final eligible costs. If the authority determines the additional costs are not within the control of the district or are the result of design factors required to meet the facilities efficiency standards, the authority shall recommend to the commissioner a final eligible cost based on its experience for districts with similar characteristics, provided that, notwithstanding anything to the contrary, the commissioner shall not approve an adjustment to the preliminary eligible costs which exceeds 10% of the preliminary eligible costs. The commissioner shall make a determination on the appeal within 30 days of its receipt. If the commissioner does not approve an adjustment to the school facilities project's preliminary eligible costs, the commissioner shall issue his findings in writing on the reasons for the denial and on why the preliminary eligible costs as originally calculated are sufficient.

(2) In all other cases, the commissioner shall promptly prepare and submit to the authority a preliminary project report which shall consist, at a minimum, of the following information: a complete description of the school facilities project; the actual location of the project; the total square footage of the project together with a breakdown of total square footage by functional component; the preliminary eligible costs of the project; the project's priority ranking determined pursuant to subsection m. of this section; any other factors to be considered by the authority in undertaking the project; and the name and address of the person from the district to contact in regard to the project.

i. Upon receipt by the authority of the preliminary project report, the authority, upon consultation with the district, shall prepare detailed plans and specifications and schedules which contain the authority's estimated cost and schedule to complete the school facilities project. The authority shall transmit to the commissioner the authority's recommendations in regard to the project which shall, at a minimum, contain the detailed plans

and specifications; whether the school facilities project can be completed within the preliminary eligible costs; and any other factors which the authority determines should be considered by the commissioner.

(1) In the event that the authority determines that the school facilities project can be completed within the preliminary eligible costs: the final eligible costs shall be deemed to equal the preliminary eligible costs; the commissioner shall be deemed to have given final approval to the project; and the preliminary project report shall be deemed to be the final project report delivered to the authority pursuant to subsection j. of this section.

(2) In the event that the authority determines that the school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of the authority's recommendations to the commissioner, the authority shall, in consultation with the district and the commissioner, determine whether changes can be made in the project which will result in a reduction in costs while at the same time meeting the facilities efficiency standards approved by the commissioner.

(a) If the authority determines that changes in the school facilities project are possible so that the project can be accomplished within the scope of the preliminary eligible costs while still meeting the facilities efficiency standards, the authority shall so advise the commissioner, whereupon the commissioner shall: calculate the final eligible costs to equal the preliminary eligible costs; give final approval to the project with the changes noted; and issue a final project report to the authority pursuant to subsection j. of this section.

(b) If the authority determines that it is not possible to make changes in the school facilities project so that it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the district or the additional costs are required to meet the facilities efficiency standards, the authority shall recommend to the commissioner that the preliminary eligible costs be increased accordingly, whereupon the commissioner shall: calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the authority; give final approval to the project; and issue a final project report to the authority pursuant to subsection j. of this section.

(c) If the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards or approved pursuant to paragraph (1) of subsection g. of this section, the authority shall recommend to the commissioner that the preliminary eligible costs be accepted, whereupon the commissioner shall: calculate the final eligible costs to equal the preliminary eligible costs and specify the excess costs which are to be borne by the district; give final approval to the school facilities project; and issue a final

project report to the authority pursuant to subsection j. of this section; provided that the commissioner may approve final eligible costs which are in excess of the preliminary eligible costs if, in his judgment, the action is necessary to meet the educational needs of the district.

(d) For a school facilities project constructed by the authority, the authority shall be responsible for any costs of construction, but only from the proceeds of bonds issued by the authority pursuant to this act, which exceed the amount originally projected by the authority and approved for financing by the authority, provided that the excess is the result of an underestimate of labor or materials costs by the authority. After receipt by the authority of the final project report, the district shall be responsible only for the costs associated with changes, if any, made at the request of the district to the scope of the school facilities project.

j. The authority shall not commence the acquisition or construction of a school facilities project unless the commissioner transmits to the authority a final project report and the district complies with the approval requirements for the local share, if any, pursuant to section 11 of this act. The final project report shall contain all of the information contained in the preliminary project report and, in addition, shall contain: the final eligible costs; the excess costs, if any; the total costs which equals the final eligible costs plus excess costs, if any; the State share; and the local share.

k. For the Abbott districts, the State share shall be 100% of the final eligible costs. For all other districts, the State share shall be an amount equal to 115% of the district aid percentage; except that the State share shall not be less than 40% of the final eligible costs.

If any district which is included in district factor group A or B, other than an Abbott district, is having difficulty financing the local share of a school facilities project, the district may apply to the commissioner to receive 100% State support for the project and the commissioner may request the approval of the Legislature to increase the State share of the project to 100%.

l. The local share for school facilities projects constructed by the authority or a redevelopment entity shall equal the final eligible costs plus any excess costs less the State share.

m. The commissioner shall establish, in consultation with the Abbott districts, a priority ranking of all school facilities projects in the Abbott districts based upon his determination of critical need, and shall establish priority categories for all school facilities projects in non-Abbott districts. The commissioner shall rank projects from Tier I to Tier IV in terms of critical need according to the following prioritization:

Tier I: health and safety, including electrical system upgrades; required early childhood education programs; unhoused students/class size reduction

as required to meet the standards of the "Comprehensive Educational Improvement and Financing Act of 1996," P.L.1996, c.138 (C.18A:7F-1 et seq.);

Tier II: educational adequacy - specialized instructional spaces, media centers, cafeteriums, and other non-general classroom spaces contained in the facilities efficiency standards; special education spaces to achieve the least restrictive environment;

Tier III: technology projects; regionalization or consolidation projects;

Tier IV: other local objectives.

n. The provisions of the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., shall be applicable to any school facilities project constructed by a district but shall not be applicable to projects constructed by the authority or a redevelopment entity pursuant to the provisions of this act.

o. In the event that a district whose district aid percentage is less than 55% elects not to have the authority undertake construction of a school facilities project, any proceeds of school bonds issued by the district for the purpose of funding the project which remain unspent upon completion of the project shall be used by the district to reduce the outstanding principal amount of the school bonds.

p. Upon completion by the authority of a school facilities project, if the cost of construction and completion of the project is less than the total costs, the district shall be entitled to receive a portion of the local share based on a pro rata share of the difference based on the ratio of the State share to the local share.

q. The authority shall determine the cause of any costs of construction which exceed the amount originally projected by the authority and approved for financing by the authority.

r. In the event that a district has engaged architectural services to prepare the documents required for initial proposal of a school facilities project, the district shall, if permitted by the terms of the district's contract for architectural services, and at the option of the authority assign the contract for architectural services to the authority if the authority determines that the assignment would be in the best interest of the school facilities project.

s. Notwithstanding anything to the contrary contained in P.L.2000, c.72 (C.18A:7G-1 et al.), an ECPA district, at its option, may provide in its long-range facilities plan submitted pursuant to section 4 of this act, for one or more community early childhood education facilities projects. If the district has requested designation of a demonstration project pursuant to section 6 of this act and is eligible to submit a plan for a community early childhood education facilities project pursuant to this section, the district

shall be permitted to include the community early childhood education facilities project as part of the demonstration project.

(1) An ECPA district seeking to initiate a community early childhood education facilities project shall apply to the commissioner for approval of the project. The application shall, at a minimum, contain the following information: the name of the community provider; evidence that the community provider is licensed by the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) and is a tax exempt nonprofit organization; evidence that the community provider is or shall provide early childhood education programs for the district; a description of the community early childhood education facilities project; a schematic drawing of the project, or at the option of the district, preliminary plans and specifications; a delineation and description of each of the functional components of the project; identification of those portions of the proposed project which shall be devoted in whole or in part to the provision of early childhood education programs to 3 or 4-year old children from the ECPA district; the estimated cost to complete the project as determined by the district in consultation with the community provider; and whether the facility provides services other than early childhood education programs for 3 and 4-year old children, pursuant to a contract with the ECPA district.

(2) The commissioner shall review the proposed early childhood education facilities project to determine whether it is consistent with the district's long-range facilities plan, whether it will provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operational plan to meet the standards for early childhood education programs established by the department and whether there is a need for increased capacity or to rehabilitate existing space to meet these standards. Only those facilities which are used for 3 or 4-year old children pursuant to a contract with the ECPA district shall be eligible for approval, provided that facilities which are jointly used by 3 or 4-year old children from the ECPA district and from other districts shall also be eligible for approval.

(3) If the commissioner approves the project, the commissioner shall determine, in consultation with the authority, the cost to complete the approved project, which shall be the reasonable, estimated cost of the renovation or new construction necessary to provide a facility which is structurally adequate and safe and capable of providing a program which will enable preschool children being served pursuant to the ECPA district's approved early childhood education operation plan to meet the standards for early childhood education programs established by the department. For projects initiated by an Abbott district, the State support shall be 100% of

such reasonable, estimated cost. For projects initiated by an ECPA district that is not an Abbott district, the State support shall be an amount equal to 115% of the district aid percentage of that ECPA district, of such reasonable, estimated cost, except that the State support shall not be less than 40% of such reasonable, estimated cost. The commissioner shall issue a final project report to the authority which shall contain a complete description of the project, the actual location of the project, the total square footage of the project together with a breakdown of total square footage by functional component; any other factors to be considered by the authority in undertaking the project; the names and addresses of the people to contact from the district and the community provider; the amount of State support for the project; and the amount of local support required from the community provider to pay for costs, if any, of the project which have not been approved by the commissioner for State support.

(4) Upon submission to the authority of a final project report, the authority shall undertake the financing, acquisition, construction and all other appropriate actions necessary to complete the community early childhood education facilities project, provided, that if there is local support required for the project, such actions shall not commence until the authority receives the local support from the community provider. The authority may, in its discretion, and upon consultation with the commissioner, authorize a community provider to undertake the acquisition, construction and all other appropriate action necessary to complete the project, in which case the authority shall not provide State support until the community provider provides the local support, if any.

(5) In order to implement the arrangements established for community early childhood education facilities projects, the authority shall enter into an agreement with the district, the commissioner and the community provider containing the terms and conditions determined by the parties to be necessary to effectuate the project.

(6) The authority shall require as a condition of providing State support for any community early childhood education facilities project that the State support must be repaid by the community provider in the event that (a) the commissioner determines that the project is no longer being used for the purposes for which it was intended; or (b) the project is sold, leased or otherwise conveyed to an individual or organization that does not have tax exempt nonprofit or government status.

33. Section 14 of P.L.2000, c.72 (C.18A:7G-14) is amended to read as follows:

C.18A:7G-14 Powers of authority concerning financing.

14. Notwithstanding any other provisions of law to the contrary:

a. The authority shall have the power, pursuant to the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.), to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by moneys received pursuant to sections 17, 18 and 19 of this act for the purposes of: financing all or a portion of the costs of school facilities projects and any costs related to the issuance thereof, including, but not limited to, the administrative, insurance, operating and other expenses of the authority to undertake the financing, design, construction and maintenance of school facilities projects; lending moneys to local units to pay the costs of all or a portion of school facilities projects and any costs related to the issuance thereof; funding the grants to be made pursuant to section 15 of this act; and financing the acquisition of school facilities projects to permit the refinancing of debt by the district pursuant to section 16 of this act. The aggregate principal amount of the bonds, notes or other obligations issued by the facilities authority shall not exceed: \$100,000,000 for the State share of costs for county vocational school district school facilities projects; \$6,000,000,000 for the State share of costs for Abbott district school facilities projects; and \$2,500,000,000 for the State share of costs for school facilities projects in all other districts. This limitation shall not include any bonds, notes or other obligations issued for refunding purposes.

The authority may establish reserve funds to further secure bonds and refunding bonds issued pursuant to this section and may issue bonds to pay for the administrative, insurance and operating costs of the authority in carrying out the provisions of this act. In addition to its bonds and refunding bonds, the authority shall have the power to issue subordinated indebtedness, which shall be subordinate in lien to the lien of any or all of its bonds or refunding bonds as the authority may determine.

b. The authority shall issue the bonds or refunding bonds in such manner as it shall determine in accordance with the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.); provided that notwithstanding any other law to the contrary, no resolution adopted by the authority authorizing the issuance of bonds or refunding bonds pursuant to this section shall be adopted or otherwise made effective without the approval in writing of the State Treasurer; and refunding bonds issued to refund bonds issued pursuant to this section shall be issued on such terms and conditions as may be determined by the authority and the State Treasurer. The authority may, in any resolution authorizing the issuance of bonds or refunding bonds issued pursuant to this section, pledge the contract with the State Treasurer provided for pursuant to section 18 of this act, or any part thereof, or may pledge all or any part of the repayments of loans made to local units

pursuant to section 19 of this act for the payment or redemption of the bonds or refunding bonds, and covenant as to the use and disposition of money available to the authority for payment of the bonds and refunding bonds. All costs associated with the issuance of bonds and refunding bonds by the authority for the purposes set forth in this act may be paid by the authority from amounts it receives from the proceeds of the bonds or refunding bonds, and from amounts it receives pursuant to sections 17, 18, and 19 of this act. The costs may include, but shall not be limited to, any costs relating to the issuance of the bonds or refunding bonds, administrative costs of the authority attributable to the making and administering of loans and grants to fund school facilities projects, and costs attributable to the agreements entered into pursuant to subsection d. of this section.

c. Each issue of bonds or refunding bonds of the authority shall be special obligations of the authority payable out of particular revenues, receipts or funds, subject only to any agreements with the holders of bonds or refunding bonds, and may be secured by other sources of revenue, including, but not limited to, one or more of the following:

(1) Pledge of the revenues and other receipts to be derived from the payment of local unit obligations and any other payment made to the authority pursuant to agreements with any local unit, or a pledge or assignment of any local unit obligations, and the rights and interest of the authority 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 units, or a pledge or assignment of those leases or other contractual arrangements and the rights and interests of the authority therein;

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

(4) Pledge of the receipts to be derived from payments of State aid to the authority pursuant to section 21 of this act;

(5) Pledge of the contract or contracts with the State Treasurer pursuant to section 18 of this act;

(6) Pledge of any sums remitted to the local unit by donation from any person or entity, public or private, subject to the approval of the State Treasurer;

(7) A mortgage on all or any part of the property, real or personal, comprising a school facilities project then owned or thereafter to be acquired, or a pledge or assignment of mortgages made to the authority by any person or entity, public or private, including one or more local units and rights and interests of the authority therein; and

(8) The receipt of any grants, reimbursements or other payments from the federal government.

d. The resolution authorizing the issuance of bonds or refunding bonds pursuant to this section may also provide for the authority to enter into any revolving credit agreement, agreement establishing a line of credit or letter of credit, reimbursement agreement, interest rate exchange agreement, currency exchange agreement, interest rate floor or cap, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contracts, surety bonds, commitments to purchase or sell bonds, purchase or sale agreements, or commitments or other contracts or agreements and other security agreements approved by the authority in connection with the issuance of the bonds or refunding bonds pursuant to this section. In addition, the authority may, in anticipation of the issuance of the bonds or the receipt of appropriations, grants, reimbursements or other funds, including, without limitation, grants from the federal government for school facilities projects, 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.

e. The authority is authorized to engage, subject to the approval of the State Treasurer and in such manner as the State Treasurer shall determine, the services of financial advisors and experts, placement agents, underwriters, appraisers, and other advisors, consultants and agents as may be necessary to effectuate the financing of school facilities projects.

f. Bonds and refunding bonds issued by the authority pursuant to this section shall be special and limited obligations of the authority payable from, and secured by, funds and moneys determined by the authority in accordance with this section. Notwithstanding any other provision of law or agreement to the contrary, any bonds and refunding bonds issued by the authority pursuant to this section shall not be secured by the same property as bonds and refunding bonds issued by the authority to finance projects other than school facilities projects. Neither the members of the authority nor any other person executing the bonds or refunding bonds shall be personally liable with respect to payment of interest and principal on these bonds or refunding bonds. Bonds or refunding bonds issued pursuant to this section shall not be a debt or liability of the State or any agency or instrumentality thereof, except as otherwise provided by this subsection, either legal, moral or otherwise, and nothing contained in this act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the State or any political subdivision thereof, and

all bonds and refunding bonds issued by the authority shall contain a statement to that effect on their face.

g. The State hereby pledges and covenants with the holders of any bonds or refunding bonds issued pursuant to this act that it will not limit or alter the rights or powers vested in the authority by this act, nor limit or alter the rights or powers of the State Treasurer in any manner which would jeopardize the interest of the holders or any trustee of the holders, or inhibit or prevent performance or fulfillment by the authority or the State Treasurer with respect to the terms of any agreement made with the holders of the bonds or refunding bonds or agreements made pursuant to subsection d. of this section; except that the failure of the Legislature to appropriate moneys for any purpose of this act shall not be deemed a violation of this section.

h. The authority may charge to and collect from local units, districts, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing, planning, design, construction management, acquisition, construction, completion and placing into service and maintenance of school facilities projects. Notwithstanding any provision of this act to the contrary, no district in Level II monitoring pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14) as of the effective date of P.L.2000, c.72 (C.18A:7G-1 et al.), or a district whose district aid percentage is greater than or equal to 55% but less than 100% shall be responsible for the payment of any fees and charges related to the authority's operating expenses.

34. Section 2 of P.L.1979, c.294 (C.18A:22-8.1) is amended to read as follows:

C.18A:22-8.1 Transfer of funds, conditions.

2. Except as otherwise provided pursuant to this section, whenever a school district desires to transfer amounts among line items and program categories, the transfers shall be by resolution of the board of education approved by a two-thirds affirmative vote of the authorized membership of the board; however, a board may, by resolution, designate the chief school administrator to approve such transfers as are necessary between meetings of the board. Transfers approved by the chief school administrator shall be reported to the board, ratified and duly recorded in the minutes at a subsequent meeting of the board, but not less than monthly. Transfers of surplus amounts or any other unbudgeted or underbudgeted revenue to line items and program categories shall require the approval of the Commissioner of Education and shall only be approved between April 1 and June

30 for line items and program categories necessary to achieve the thoroughness standards established pursuant to subsection a. of section 4 of P.L.1996, c.138 (C18A:7F-4); except that upon a two-thirds affirmative vote of the authorized membership of a board of education, the board may petition the commissioner for authority to transfer such revenue prior to April 1 due to an emergent circumstance and the commissioner may authorize the transfer if he determines that the transfer is necessary to meet such emergency. Transfers from any general fund appropriation account that, on a cumulative basis, exceed 10% of the amount of the account included in the school district's budget as certified for taxes shall require the approval of the commissioner. In a school district wherein the Commissioner of Education has directed an in-depth evaluation pursuant to subsection e. of section 14 of P.L.1975, c.212 (C.18A:7A-14), the board of education shall obtain the written approval of the county superintendent of schools prior to implementing any board authorized transfer of funds.

35. Section 67 of P.L.2002, c.43 (C.52:27BBB-63) is amended to read as follows:

C.52:27BBB-63 Membership of board of education in qualified municipality increased; appointments; terms.

67. a. The membership of the board of education serving in a school district which is contiguous with a qualified municipality and which is subject to level II monitoring or level III monitoring pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14) prior to the effective date of P.L.2005, c.235 shall be increased as set forth in this section in order to ensure the State's and the municipality's ability to participate in the activities of the board. The membership of the board of education serving in a school district which is contiguous with a qualified municipality so designated after the effective date of P.L.2005, c.235 and which is directed to enter partial State intervention pursuant to section 14 of P.L.1975, c.212 (C.18A:7A-14) shall be increased as set forth in this section in order to ensure the State's and the municipality's ability to participate in the activities of the board. Board members appointed by the Governor or mayor shall be voting members of the board and shall have all the rights, powers and privileges of a member of the board. Members appointed by the Governor or mayor shall serve at the pleasure of the Governor or mayor, as appropriate. Any vacancy in the membership appointed by the Governor or mayor shall be filled in the same manner as the original appointment, but for the unexpired term only. The first members appointed by the Governor shall serve for a term commencing upon appointment and qualification and ending three years from the date that the number of members of the board

returns to the number on the board prior to the designation of the qualified municipality. Members appointed thereafter shall serve for a term of three years as provided in this section.

In order to ensure substantial local representation on any such board, in no case shall the number of the positions appointed by the mayor and elected by the voters, combined, constitute less than a majority of the total positions on the board. This section shall not apply to State-operated school districts established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.) prior to the effective date of P.L.2005, c.235 or a district under full State intervention established pursuant to P.L.1987, c.399 (C.18A:7A-34 et seq.) after the effective date of P.L.2005, c.235.

b. The membership of a type I board of education in a qualified municipality consisting of five members shall be temporarily increased to include two additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years, as set forth in subsection a. of this section. The first two positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled by mayoral appointments so that the total membership of the board returns to five members. The Governor shall continue to make appointments to fill the positions held by the gubernatorial appointees, when their terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term, or for any other reason, in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

c. The membership of a type I board of education in a qualified municipality consisting of seven members shall be temporarily increased to include three additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years, as set forth in subsection a. of this section. The first three positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled by mayoral appointments so that the total membership of the board returns to seven members. The Governor shall continue to make appointments to fill the positions held by gubernatorial appointees, when their terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth

year after the designation of the qualified municipality, vacancies resulting from the expiration of a term, or for any other reason, in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

d. The membership of a type I board of education in a qualified municipality consisting of nine members shall be temporarily increased to include three additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years as set forth in subsection a. of this section. The first three positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled by mayoral appointments so that the total membership of the board returns to nine members. The Governor shall continue to make appointments to fill the positions held by gubernatorial appointees, when their terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term, or for any other reason, in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

e. The membership of a type II board of education in a qualified municipality consisting of three members shall be temporarily increased to include one additional member to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years as set forth in subsection a. of this section. The first position on the board, the term of which expires after the designation of a qualified municipality, shall be abolished upon expiration of its term and shall not be filled in the same manner as provided before the designation of the qualified municipality so that the total membership of the board returns to three members. The Governor shall continue to make appointments to fill the position held by a gubernatorial appointee when the term expires or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, a vacancy resulting from the expiration of the term in the position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

The second position on the board, the term of which expires after the designation of a qualified municipality, shall be abolished upon expiration of its term and shall not be filled in the same manner as provided before the

designation of the qualified municipality. Instead, the vacancy shall be filled by a mayoral appointment as described in subsection a. of this section so that the total membership of the board remains at three. Mayoral appointees shall serve for a term of three years. The mayor shall continue to make appointments to fill the position held by a mayoral appointee when the term expires or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, a vacancy resulting from the expiration of the term in the position on the board filled by mayoral appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

f. The membership of a type II board of education in a qualified municipality consisting of five members shall be temporarily increased to include two additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years as set forth in subsection a. of this section. The first two positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled in the same manner as provided before the designation of the qualified municipality so that the total membership of the board returns to five members. The Governor shall continue to make appointments to fill the positions held by gubernatorial appointees when the terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

The third position on the board, the term of which expires after the designation of a qualified municipality, shall be abolished upon expiration of its term and shall not be filled in the same manner as provided before the designation of the qualified municipality. Instead, the vacancy shall be filled by a mayoral appointment as described in subsection a. of this section so that the total membership of the board remains at five. Mayoral appointees shall serve for a term of three years. The mayor shall continue to make appointments to fill the position held by a mayoral appointee when the term expires or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, a vacancy resulting from the expiration of the term in the position on the board filled by mayoral

appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

g. The membership of a type II board of education in a qualified municipality consisting of seven members shall be temporarily increased to include three additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years as set forth in subsection a. of this section. The first three positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled in the same manner as provided before the designation of the qualified municipality so that the total membership of the board returns to seven members. The Governor shall continue to make appointments to fill the positions held by gubernatorial appointees when the terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

The fourth and fifth positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled in the same manner as provided before the designation of the qualified municipality. Instead, the vacancies shall be filled by mayoral appointments as described in subsection a. of this section so that the total membership of the board remains at seven. Mayoral appointees shall serve for a term of three years. The mayor shall continue to make appointments to fill the positions held by mayoral appointees when the terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term in any position on the board filled by mayoral appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

h. The membership of a type II board of education in a qualified municipality consisting of nine members shall be temporarily increased to include three additional members to be appointed by the Governor upon receipt of notification by the Commissioner of Education pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4) for a term of three years as set forth in subsection a. of this section. The first three positions on the board, the terms of which expire after the designation of a qualified municipality,

shall be abolished upon expiration of their terms and shall not be filled in the same manner as provided before the designation of the qualified municipality so that the total membership of the board returns to nine members. The Governor shall continue to make appointments to fill the positions held by gubernatorial appointees when the terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term in any position on the board filled by gubernatorial appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

The fourth, fifth and sixth positions on the board, the terms of which expire after the designation of a qualified municipality, shall be abolished upon expiration of their terms and shall not be filled in the same manner as provided before the designation of the qualified municipality. Instead, the vacancies shall be filled by mayoral appointment as described in subsection a. of this section so that the total membership of the board remains at nine. Mayoral appointees shall serve for a term of three years. The mayor shall continue to make appointments to fill the positions held by mayoral appointees when the terms expire or when a vacancy occurs, until after the tenth year following the designation of the qualified municipality. Beginning in the first year following the tenth year after the designation of the qualified municipality, vacancies resulting from the expiration of a term in any position on the board filled by mayoral appointment shall be filled in the same manner as provided before the designation of the qualified municipality.

i. At all times the board of education and its membership shall comply with the requirements of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.) and the "School Ethics Act," P.L.1991, c.393 (C.18A:12-21 et seq.), and meet the requirements and qualifications for board membership established pursuant to chapter 12 of Title 18A of the New Jersey Statutes.

C.18A:7A-15.2 Designation of person to exercise powers of superintendent.

36. If the State board, upon the recommendation of the commissioner, decides not to appoint a State district superintendent in a school district under full State intervention, then the commissioner shall designate a person who may exercise the powers and authorities set forth in chapter 7A of Title 18A of the New Jersey Statutes in accordance with the improvement plan.

C.18A:7A-53 Evaluation of Level I district, Level II or III districts, methodology.

37. a. A district which has been certified as a Level I district by the State Board of Education as of the effective date of this act, shall, in accordance with a schedule established by the commissioner, be evaluated by the commissioner in the five key components of school district effectiveness as set forth in section 10 of P.L.1975, c.212 (C.18A:7A-10). Based on a district's compliance with the quality performance indicators, the commissioner shall assess district effectiveness and place the district on the performance continuum.

b. A State-operated district or a district which has been certified as a Level II or a Level III district by the State Board of Education as of the effective date of this act, shall be evaluated by a team of highly skilled professionals in the five key components of school district effectiveness as set forth in section 10 of P.L.1975, c.212 (C.18A:7A-10). The evaluation shall be completed within 45 days of the date on which rules promulgated by the State Board of Education pursuant to section 39 of this act become effective. The commissioner shall establish a process for the receipt of comments from the public during the evaluation. The commissioner shall provide a report of the evaluation to the district within 15 days of the completion of the evaluation. The report shall contain the commissioner's determination of the district's placement on the performance continuum. The district shall have 30 days from the date of receipt of the report to appeal the placement decision to the commissioner. The commissioner shall make a recommendation to the State Board of Education if the recommendation is to place the district under partial or full State intervention. The commissioner and State board shall take whatever action is appropriate based on the district's placement on the performance continuum.

c. If a State-operated school district evaluated pursuant to subsection b. of this section successfully meets the quality performance indicators for the governance component of school district effectiveness, then three years following the State's withdrawal from intervention, the board of education shall call a special election for purposes of placing the question of classification status before the voters of the district, which election shall be conducted in accordance with the provisions of Title 19 of the Revised Statutes concerning school elections.

If the voters of the district elect to become a type I district, it shall be governed by the provisions of chapter 9 of Title 18A of the New Jersey Statutes relating to type I districts after January 31 next ensuing, unless the district is established in a city of the first class, in which case it shall be governed after June 30 next ensuing. The members of the district board of education at the time of said election shall continue in office until expiration of their respective terms and the qualification in office of their successors.

If the voters of the district elect to become a type II district, it shall be governed by the provisions of chapter 9 of Title 18A relating to type II districts and the members of the board of education at the time of said election shall remain and continue in office until the expiration of their respective terms and the qualification of their respective successors.

d. The board of education of a State-operated school district that successfully meets the quality performance indicators for the governance component of school district effectiveness shall be permitted to extend the contract of the superintendent who holds the position at the time of the evaluation conducted pursuant to subsection b. of this section, provide 18-months' notice to the superintendent to modify the contract, or allow the contract in effect to expire with the appropriate statutory notice pursuant to subsection b. of section 4 of P.L.1991, c.267 (C.18A:17-20.1).

38. Within one year of the effective date of P.L.2005, c.235 (C.18A:7A-15.2 et al.), the Commissioner of Education shall submit a report to the Joint Committee on the Public Schools concerning the Department of Education's progress in implementing the New Jersey Quality Single Accountability Continuum and the capacity of the Department of Education to provide the necessary technical assistance and support to school districts in implementing required improvement plans. The report shall outline the needs of the department for any additional resources that may be required based on the department's experience in implementing the accountability system.

39. The State Board of Education shall promulgate rules pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the provisions of this act.

Repealer.

40. The following sections are hereby repealed:

Section 1 of P.L.1991, c.3 (C.18A:7A-14.1);

P.L.1997, c.432 (C.18A:7A-14.3 et seq.);

Section 2 of P.L.1987, c.400 (C.18A:7A-31.1);

Section 5 of P.L.1987, c.400 (C.18A:7A-31.4);

Section 15 of P.L.1987, c.399 (C.18A:7A-48).

41. This act shall take effect immediately.

Approved September 26, 2005.

CHAPTER 236

AN ACT concerning clinical laboratories and supplementing P.L.1997, c.166 (C.45:9-42.26 et seq.).

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

C.45:9-42.34a Calculation of glomerular filtration rate when testing to diagnose kidney disease.

1. The director of a clinical laboratory licensed in this State pursuant to P.L.1975, c.166 (C.45:9-42.26 et seq.) shall provide that when the laboratory tests a specimen to determine a patient's serum creatinine level, as ordered or prescribed by a health care professional authorized to make such an order or prescription, the laboratory shall calculate the patient's glomerular filtration rate using such information as is provided by the health care professional or patient, as applicable. The laboratory shall include the patient's glomerular filtration rate with its report to the health care professional.

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

Approved September 26, 2005.

CHAPTER 237

AN ACT concerning funding for federally qualified health centers and amending P.L.1992, c.160.

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

1. 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 pursuant to section 8 of P.L.1996, c.28 (C.26:2H-18.59f), 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.); (2) provide funding for federally qualified health centers pursuant to section 12 of P.L.1992, c.160 (C.26:2H-18.62); and (3) provide for the payment in State fiscal year 2002 of appropriate Medicaid expenses, subject to the approval of the Director of the Division of Budget and Accounting.

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, federally qualified health centers 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 2002, 2003 and 2004 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.

2. Section 12 of P.L.1992, c.160 (C.26:2H-18.62) is amended to read as follows:

C.26:2H-18.62 Monies designated for Health Care Subsidy Fund; allocation of monies.

12. a. (Deleted by amendment, P.L.2005, c.237).

b. (Deleted by amendment, P.L.2005, c.237).

c. (1) Notwithstanding any law to the contrary, each general hospital and each specialty heart hospital shall pay .53% of its total operating revenue to the department for deposit in the Health Care Subsidy Fund, except that the amount to be paid by a hospital in a given year shall be prorated by the department so as not to exceed the \$40 million limit set forth in this subsection. The hospital shall make monthly payments to the department beginning July 1, 1993, except that the total amount paid into the Health Care Subsidy Fund plus interest shall not exceed \$40 million per year. The commissioner shall determine the manner in which the payments shall be made.

For the purposes of this subsection, "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 and shall include revenue from any ambulatory care facility that is licensed to a general hospital as an off-site ambulatory care service facility.

(2) The commissioner shall allocate the monies paid by hospitals pursuant to paragraph (1) of this subsection as follows:

(a) In State fiscal years 2006 and 2007, \$35 million of those monies shall be allocated to the support of federally qualified health centers in this State, and the remainder shall be allocated to the support of (i) the infant mortality reduction program in the Department of Health and Senior Services, (ii) the primary care physician and dentist loan redemption program established in the Higher Education Student Assistance Authority by article 3 of P.L.1999, c.46 (C.18A:71C-32 et seq.), and (iii) the development and use of health information electronic data interchange technology pursuant to P.L.1999, c.154 (C.17B:30-23 et al.); and

(b) In State fiscal year 2008 and thereafter, the entire amount of those monies shall be allocated to the support of federally qualified health centers in this State.

Monies allocated to the support of federally qualified health centers in the State under this paragraph shall be used for the purpose of compensating them for health care services provided to uninsured patients.

d. The monies paid by the hospitals and allocated under subsection c. of this section for the support of federally qualified health centers shall be credited to the federally qualified health centers account.

3. This act shall take effect on July 1, 2005; except that the Commissioner of Health and Senior Services may take such anticipatory administra-

tive action in advance as shall be necessary for the implementation of the act.

Approved September 26, 2005.

CHAPTER 238

AN ACT concerning liability for the discharge of hazardous substances, and amending P.L.1976, c.141.

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

1. Section 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 \$1,200 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) Except as provided in section 2 of P.L.2005, c.43 (C.58:10-11g12), 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, or emanating from 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.

(5) A person, including an owner or operator of a major facility, who owns real property acquired prior to 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:

(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;

(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 (5), the

person must have undertaken, at the time of acquisition, all appropriate inquiry on the previous ownership and uses of the property based upon generally accepted good and customary standards.

Nothing in this paragraph (5) shall be construed to alter liability of any person who acquired real property on or after September 14, 1993.

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, or within 30 days after the expiration of the period or periods allowed for the right of redemption pursuant to tax foreclosure law, 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.).

2. This act shall take effect 120 days after enactment.

Approved October 31, 2005.

CHAPTER 239

AN ACT to deter unemployment tax avoidance and amending R.S.43:21-7, 43:21-11, 43:21-14 and 43:21-16.

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

1. R.S.43:21-7 is amended to read as follows:

Contributions.

43:21-7. Contributions. Employers other than governmental entities, whose benefit financing provisions are set forth in section 4 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in section 3 of P.L.1971, c.346

(C.43:21-7.2), shall pay to the controller for the unemployment compensation fund, contributions as set forth in subsections (a), (b) and (c) hereof, and the provisions of subsections (d) and (e) shall be applicable to all employers, consistent with the provisions of the "unemployment compensation law" and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

(a) Payment.

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter (R.S.43:21-1 et seq.), with respect to having individuals in his employ during that calendar year, at the rates and on the basis hereinafter set forth. Such contributions shall become due and be paid by each employer to the controller for the fund, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$0.005 or more, in which case it shall be increased to \$0.01.

(b) Rate of contributions. Each employer shall pay the following contributions:

(1) For the calendar year 1947, and each calendar year thereafter, 2 7/10% of wages paid by him during each such calendar year, except as otherwise prescribed by subsection (c) of this section.

(2) The "wages" of any individual, with respect to any one employer, as the term is used in this subsection (b) and in subsections (c), (d) and (e) of this section 7, shall include the first \$4,800.00 paid during calendar year 1975, for services performed either within or without this State; provided that no contribution shall be required by this State with respect to services performed in another state if such other state imposes contribution liability with respect thereto. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessors, 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 and Workforce Development 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 $2\frac{8}{10}\%$, 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 $2\frac{8}{10}\%$, unless as of the preceding January 31 such employer shall have paid contributions with respect to wages paid in each of the three calendar years immediately preceding such year, in which case such employer's rate for the 12 months commencing July 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be:

(1) $2\frac{5}{10}\%$, if such excess equals or exceeds 4%, but less than 5%, of his average annual payroll (as defined in paragraph (2), subsection (a) of R.S.43:21-19);

(2) $2\frac{2}{10}\%$, if such excess equals or exceeds 5%, but is less than 6%, of his average annual payroll;

(3) $1\frac{9}{10}\%$, if such excess equals or exceeds 6%, but is less than 7%, of his average annual payroll;

(4) $1\frac{6}{10}\%$, if such excess equals or exceeds 7%, but is less than 8%, of his average annual payroll;

(5) $1\frac{3}{10}\%$, if such excess equals or exceeds 8%, but is less than 9%, of his average annual payroll;

(6) 1%, if such excess equals or exceeds 9%, but is less than 10%, of his average annual payroll;

(7) $\frac{7}{10}$ of 1%, if such excess equals or exceeds 10%, but is less than 11%, of his average annual payroll;

(8) $\frac{4}{10}$ of 1%, if such excess equals or exceeds 11% of his average annual payroll.

(B) If the total of an employer's contributions, paid on his own behalf, for all past periods for the purposes of this paragraph (4), is less than the total benefits charged against his account during the same period, his rate shall be:

(1) 4%, if such excess is less than 10% of his average annual payroll;

(2) $4\frac{3}{10}\%$, if such excess equals or exceeds 10%, but is less than 20%, of his average annual payroll;

(3) $4\frac{6}{10}\%$, if such excess equals or exceeds 20% of his average annual payroll.

(C) Specially assigned rates.

(i) 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:

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

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.

(ii) If, following the purchase of a corporation with little or no activity, known as a corporate shell, the resulting employing unit operates a new or different business activity, the employing unit shall be assigned a new employer rate.

(iii) Entities operating under common ownership, management or control, when the operation of the entities is not identifiable, distinguishable and severable, shall be considered a single employer for the purposes of this chapter (R.S. 43:21-1 et seq.).

(D) The contribution rates prescribed by subparagraphs (A) and (B) of this paragraph (4) shall be increased or decreased in accordance with the provisions of paragraph (5) of this subsection (c) for experience rating periods through June 30, 1986.

(5)(A) Unemployment Trust Fund Reserve Ratio. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 4% but is less than 7% of the total taxable wages reported to the controller

as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{3}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection. If on March 31 of any calendar year the balance of the unemployment trust fund exceeds $2\frac{1}{2}\%$ but is less than 4% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection.

If on March 31 of any calendar year the balance of the unemployment trust fund is less than $2\frac{1}{2}\%$ of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer (1) eligible for a contribution rate calculation based upon benefit experience, shall be increased by (i) $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and (ii) an additional amount equal to 20% of the total rate established herein, provided, however, that the final contribution rate for each employer shall be computed to the nearest multiple of $\frac{1}{10}\%$ if not already a multiple thereof; (2) not eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (4) of this subsection. For the period commencing July 1, 1984 and ending June 30, 1986, the contribution rate for each employer liable to pay contributions under R.S.43:21-7 shall be increased by a factor of 10% computed to the nearest multiple of $\frac{1}{10}\%$ 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 $12\frac{1}{2}\%$ of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by $\frac{3}{10}$ 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 $\frac{4}{10}$ of 1%. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds $12\frac{1}{2}\%$ of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer 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) (Deleted by amendment, P.L.1997, c.263).

(ii) (Deleted by amendment, P.L.2001, c.152).

(iii) (Deleted by amendment, P.L.2003, c.107).

(iv) (Deleted by amendment, P.L.2004, c.45).

(v) With respect to the experience rating year beginning on July 1, 2003, 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 Ratio¹

Employer Reserve Ratio ²	2.50% and Over A	2.00% to 2.49% B	1.50% to 1.99% C	1.00% to 1.49% D	0.99% 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

¹Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

²Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(vi) With respect to experience rating years beginning on or after July 1, 2004, 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 Ratio¹

Employer Reserve Ratio ²	1.40% and Over A	1.00% to 1.39% B	0.75% to 0.99% C	0.50% to 0.74% D	0.49% 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

¹Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

²Employer 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.

(iii) With respect to experience rating years beginning on or after July 1, 2004, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 0.50%, 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 and on or after January 1, 2002 until June 30, 2006, 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, 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%;
- From January 1, 2002 until March 31, 2002, a factor of 36%;
- From April 1, 2002 until June 30, 2002, a factor of 85%;
- From July 1, 2002 until June 30, 2003, a factor of 15%;
- From July 1, 2003 until June 30, 2004, a factor of 15%; and
- From July 1, 2004 until June 30, 2005, a factor of 7%; and
- From July 1, 2005 until June 30, 2006, a factor of 16%.

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 and Workforce Development 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 and Workforce Development 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%.

(J) On or after July 1, 2001, 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 0.0175%, except that, during any experience rating year starting on or after July 1, 2001, in which the fund reserve ratio is equal to or greater than 3.5%, there shall be no decrease pursuant to this subparagraph (J) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under. The amount of the reduction in the employer contributions stipulated by this subparagraph (J) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraphs (G) and (H) 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 (J) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(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, except that, following a transfer as described under R.S.43:21-7(c)(7)(D), neither the predecessor nor successor in interest shall be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year. 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, liable for 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. The successor in interest may, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate, to the satisfaction of the controller, that the employment experience of the predecessor is not indicative of the future employment experience of the successor.

(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) If an employer who transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience of the successor in interest. The transfer of the employment experience is mandatory and not subject to appeal or protest.

(E) The transfer of part of an employer's employment experience to a successor in interest shall become effective as of the first day of the calendar quarter following the acquisition by the successor in interest. As of the effective date, the successor in interest shall have its employer rate recalculated by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it shall be assigned the new employer rate until the effective date of the transfer of employment experience.

(F) Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(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.43:21-25 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 provi-

sion 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, 2001, 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 January 1, 2002 until June 30, 2004, contribute to the unemployment compensation fund 0.1825% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or a 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 0.0825% 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 July 1, 2004, contribute to the unemployment compensation fund 0.3825% 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 0.0825% 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" (C.43:21-33) 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 $\frac{1}{2}$ 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) $\frac{2}{10}$ of 1% if such excess over \$500.00 exceeds 1% but is less than $1\frac{1}{4}\%$ of his average annual payroll as defined in this chapter (R.S.43:21-1 et seq.);

(ii) $\frac{15}{100}$ of 1% if such excess over \$500.00 equals or exceeds $1\frac{1}{4}\%$ but is less than $1\frac{1}{2}\%$ of his average annual payroll;

(iii) $\frac{1}{10}$ of 1% if such excess over \$500.00 equals or exceeds $1\frac{1}{2}\%$ of his average annual payroll.

(3) If the minimum requirements in (1) above have been fulfilled and the contributions credited exceed the benefits charged but by not more than \$500.00 plus 1% of his average annual payroll, or if the benefits charged exceed the contributions credited but by not more than \$500.00, the preliminary rate shall be $\frac{1}{4}$ 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) $\frac{35}{100}$ of 1% if such excess over \$500.00 is less than $\frac{1}{4}$ of 1% of his average annual payroll;

(ii) $\frac{45}{100}$ of 1% if such excess over \$500.00 equals or exceeds $\frac{1}{4}$ of 1% but is less than $\frac{1}{2}$ of 1% of his average annual payroll;

(iii) $\frac{55}{100}$ of 1% if such excess over \$500.00 equals or exceeds $\frac{1}{2}$ of 1% but is less than $\frac{3}{4}$ of 1% of his average annual payroll;

(iv) $\frac{65}{100}$ of 1% if such excess over \$500.00 equals or exceeds $\frac{3}{4}$ of 1% but is less than 1% of his average annual payroll;

(v) $\frac{75}{100}$ 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 $\frac{1}{10}$ of 1% of wages or increased by more than $\frac{2}{10}$ of 1% of wages from the preliminary rate determined for the preceding year in accordance with (1), (2), (3) or (4), whichever shall have been applicable.

(E)(1) Prior to July 1 of each calendar year the controller shall determine the amount of the State disability benefits fund as of December 31 of the preceding calendar year, increased by the contributions paid thereto during January of the current calendar year with respect to employment occurring in the preceding calendar year. If such amount exceeds the net amount withdrawn from the unemployment trust fund pursuant to section 23 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the amount at the end of such preceding calendar year of the unemployment disability account (as defined in section 22 of said law (C.43:21-46), such excess shall be expressed as a percentage of the wages on which contributions were paid to the State disability benefits fund on or before January 31 with respect to employment in the preceding calendar year.

(2) The controller shall then make a final determination of the rates of contribution for the 12 months commencing July 1 of such year for employers whose preliminary rates are determined as provided in (D) hereof, as follows:

(i) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds $1\frac{1}{4}\%$, the final employer rates shall be the preliminary rates determined as provided in (D) hereof, except that if the employer's preliminary rate is determined as provided in (D)(2) or (D)(3) hereof, the final employer rate shall be the preliminary employer rate decreased by such percentage of excess taken to the nearest $\frac{5}{100}$ of 1%, but in no case shall such final rate be less than $\frac{1}{10}$ of 1%.

(ii) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds $\frac{3}{4}$ of 1% and is less than $1\frac{1}{4}$ of 1%, the final employer rates shall be the preliminary employer rates.

(iii) If the percentage determined in accordance with paragraph (E)(1) of this subsection is less than $\frac{3}{4}$ of 1%, but in excess of $\frac{1}{4}$ of 1%, the final employer rates shall be the preliminary employer rates determined as provided in (D) hereof increased by the difference between $\frac{3}{4}$ of 1% and such percentage taken to the nearest $\frac{5}{100}$ of 1%; provided, however, that no such final rate shall be more than $\frac{1}{4}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, more than $\frac{1}{2}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, nor more than $\frac{3}{4}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof.

(iv) If the amount of the State disability benefits fund determined as provided in paragraph (E)(1) of this subsection is equal to or less than $\frac{1}{4}$ of 1%, then the final rate shall be $\frac{2}{5}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, $\frac{7}{10}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, and 1.1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof. Notwithstanding any other provision of law or any determination made by the controller with respect to any 12-month period commencing on July 1, 1970, the final rates for all employers for the period beginning January 1, 1971, shall be as set forth herein.

2. R.S.43:21-11 is amended to read as follows:

Administration.

43:21-11. (a) Duties and powers of the Department of Labor and Workforce Development. The department shall have power and authority to adopt, amend, or rescind such rules and regulations, require such reports, make such investigations, and take such other action as it deems necessary or suitable or to administer this chapter; provided that the Commissioner of Labor and Workforce Development may delegate such power and authority, subject to his ultimate supervision and control. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the department shall prescribe. The department shall determine its own organization and methods of procedure, in accordance with the provisions of this chapter. Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(b) Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the department. General rules shall become effective 10 days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the department and shall become effective in the manner and at the time prescribed by the department.

(c) Publication. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general rules, its annual reports to the Governor, and any other material the

department deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel. Subject to other provisions of this chapter, the department is authorized to appoint (subject to the provisions of Title 11, Civil Service), fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under R.S. 43:21-1 et seq. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission, in accordance with the provisions of Title 11, Civil Service, except that any attorney, now or hereafter in office or position of legal assistant for the department, shall be placed in the exempt class of the civil service and thereafter shall not be subject to removal except for cause and then only in accordance with the provisions of Title 11, Civil Service; provided, however, that nothing herein shall be construed to apply to any attorney designated as special counsel in accordance with the provisions of sections 43:21-6, subsection (h), and 43:21-17. The division shall not employ or pay any person who is an officer or committee member of any political party organization. The commissioner may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks hereunder.

(e) Employment Security Council. There shall be within the department an Employment Security Council, as established and constituted under the Department of Labor and Industry Act of 1948 (P.L. 1948, c. 446; C. 34:1A-1 et seq.).

(f) Employment stabilization. The department, with the advice and aid of the Employment Security Council, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers throughout the State in every other way that may be feasible, and to these ends to carry on and publish the records of investigations and research studies.

(g) Records and reports. Each employing unit shall keep true and accurate employment records, containing such information as may be prescribed. Such records shall be open to inspection and be subject to being copied by the director of the division and the controller or their authorized representatives at any reasonable time. The department may require from

any employing unit any sworn or unsworn reports, with respect to persons employed by it, which are deemed necessary for the effective administration of this chapter. Under such rules and regulations as may be adopted by the department, reports relative to wages and separation from employment may be required from any employer or employing unit at the time such employer or employing unit suspends business operations in this State, or from any employer or employing unit which fails to cooperate in submitting promptly the wage and employment data which may be required under paragraph (2) of subsection (b) of section 43:21-6 of this Title. If the nature of such suspension is temporary or in the nature of a transfer, then the employer or employing unit may be excused from furnishing such a termination report upon assurances that proper arrangements have been made to supply any information which may be required under paragraph (2) of subsection (b) of section 43:21-6 of this Title. The department may require from any employer or employing unit reports relative to wages and separation in such manner and at such time as may be necessary for the effective administration of this chapter.

All records, reports and other information obtained from employers and employees under this chapter, except to the extent necessary for the proper administration of this chapter, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, and shall not be subject to subpoena or admissible in evidence in any civil action or proceeding other than one arising under this chapter, but any claimant at a hearing before an appeal tribunal, the division or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any officer or employee of the department who violates any provision of this section shall be liable to a fine of \$200.00, to be recovered in a civil action in the name of the division, said fine when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund.

(h) Oaths and witnesses. In the discharge of the duties imposed by this chapter, the controller, the appeal tribunal and any duly authorized representative or member of the division, the director or any deputy director thereof or member of the board of review shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Witnesses subpoenaed pursuant to this section shall in the discretion of the department be allowed fees at a rate to be fixed by it. Such fees shall be deemed a part of the expense of administering this chapter.

(i) Subpenas. In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department or its duly authorized representative, or the board of review, shall have jurisdiction to issue to such person an order requiring such person to appear before the board of review or a member thereof, the department or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the division or of the board of review shall be punished by a fine of not more than \$200.00 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the department or the board of review or in obedience to the subpoena of a member of the department or the board of review or a member thereof, or any duly authorized representative thereof in any cause or proceeding before the department, the board of review or a member thereof, 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 no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(k) State-Federal cooperation. In the administration of this chapter the department shall cooperate to the fullest extent, consistent with the provisions of this chapter, with the United States Department of Labor to secure to this State and its citizens all advantages available under the provisions of the Social Security Act (42 U.S.C. s. 301 et seq.), as amended, the Federal Unemployment Tax Act (26 U.S.C. s. 3301 et seq.), as amended, and the Wagner-Peyser Act (29 U.S.C. s. 49 et seq.), as amended; shall make such reports, in such form and containing such information as the United States Secretary of Labor may from time to time require; and shall comply with

such provisions as the United States Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States Secretary of Labor governing the expenditure of such sums as may be allotted and paid to this State under any of such federal acts.

Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The department is authorized to make such investigations and exercise such of the other powers provided herein with respect to the administration of this chapter and to transmit such information and make available such services and facilities to the agency charged with the administration of any State or federal unemployment insurance or public employment service law as it deems necessary or appropriate to facilitate the administration of such law and to accept and utilize information, services and facilities made available to this State by such agency.

The department shall adopt regulations prescribed by the United States Secretary of Labor to address state unemployment tax avoidance and to insure that the transfer or acquisition of a business is not done for the specific purpose of avoiding higher contribution rates.

(l) The controller shall establish procedures to identify employers who engage in the transfer or acquisition of a business, trade or organization for the purposes of achieving an unemployment tax rate unrelated to employment experience.

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 periodic 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 \$10.00 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 \$10.00 a day or 25% 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 \$10.00 a day for each day of delinquency in filing or \$50.00, 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 and Workforce Development 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 and Workforce Development 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 and Workforce Development 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 and Workforce Development 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 and Workforce Development 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 judg-

ment 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 and Workforce Development 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 and Workforce Development, 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 and Workforce Development. 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.

(h) All disputes under R.S.43:21-1 et seq. unless specifically indicated otherwise, shall be resolved in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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 and Workforce Development 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 and Workforce Development 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.

(3) Any employing unit, officer or agent of the employing unit, or any other person, determined by the controller to have knowingly violated, or attempted to violate, or advised another person to violate the transfer of employment experience provisions found at R.S. 43:21-7 (c)(7), or who otherwise knowingly attempts to obtain a lower rate of contributions by failing to disclose material information, or by making a false statement, or by a misrepresentation of fact, shall be subject to a fine of \$5,000 or 25% of the contributions under-reported or attempted to be under-reported, whichever is greater, to be recovered as provided in subsection (e) of R.S. 43:21-14, and when recovered to be paid to the unemployment compensation auxiliary fund for the use of said fund. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(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 and Workforce Development 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 and Workforce Development 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) (1) 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 and Workforce Development 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.).

(2) Any employing unit, officer or agent of the employing unit, or any other person, who knowingly violates, or attempts to violate, or advise another person to violate the transfer of employment experience provisions found at R.S.43:21-7 (c)(7) shall be, upon conviction before any Superior Court or municipal court, guilty of a crime of the fourth degree. For the purposes of this subsection, "knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(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 and Workforce Development 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 and Workforce Development 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 December 15, 2005.

CHAPTER 240

AN ACT concerning the State Athletic Control Board and amending P.L.1985, c.83 and P.L.1974, c.55.

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

1. Section 3 of P.L.1985, c.83 (C.5:2A-3) is amended to read as follows:

C.5:2A-3 State Athletic Control Board.

3. a. There is created and established within the Department of Law and Public Safety a State Athletic Control Board. The board shall consist of three public members appointed by the Governor with the advice and con-

sent of the Senate for terms of three years, except that of the three members first appointed, one shall be appointed for a term of one year, one for a term of two years and one for a term of three years. One of the members shall be designated by the Governor as chairman of the board at the time of the member's appointment, and shall serve as chairman during the member's entire term of office and until a successor is duly appointed and qualified. The initial chairman shall be the member appointed to a term of three years. No more than two of the members shall be of the same political party. Members shall serve until their successors are appointed and have been qualified. The terms of their successors shall be calculated from the expiration of the incumbents' terms. Any vacancy in the membership of the board other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

b. Each member of the board may be removed from office by the Governor for cause. Each member of the board before entering upon his duties shall take and subscribe an oath to perform the duties of his office faithfully, impartially and justly to the best of the member's ability. A record of these oaths shall be filed in the offices of the Secretary of State and the Attorney General.

c. The members of the board shall receive an annual salary of \$10,000.00 and shall be reimbursed for actual expenses incurred in the performance of their responsibilities. The members of the board shall not be eligible for membership in any State-administered retirement system.

d. The powers of the board shall be vested in the members thereof in office from time to time, and two members of the board shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of at least two members of the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all powers and perform all duties of the board.

2. Section 2 of P.L.1974, c.55 (C.52:14-15.108) is amended to read as follows:

C.52:14-15.108 Salary ranges for departmental officers, directors.

2. The salary ranges for the following positions shall be as established by the Department of Personnel with the approval of the Director, Division of Budget and Accounting. The salary rate for any such position shall be the salary step in such range next above the salary currently being paid; provided, however, that any sums appropriated for salaries may be made available for salary adjustments therein arising from various exigencies of the State service and for normal merit salary increments as the Commissioner

of Personnel, the State Treasurer and the Director of the Division of Budget and Accounting shall determine; and provided, further, that nothing in this act shall reduce the salary rate for any such position below that which is being paid on the effective date of this act:

Personnel Department

Chief Examiner and Secretary

Community Affairs Department

Assistant Commissioner of Community Affairs

Director, Division of State and Regional Planning

Director, Division of Local Government Services

Director, Division of Housing and Urban Renewal

Director, Office of Aging Programs

Director, Office on Women

Environmental Protection Department

Director, Division of Water Resources

Director, Division of Parks and Forestry

Director of Fish, Game and Shell Fisheries

Director, Division of Marine Services

Director, Division of Environmental Quality

Health and Senior Services Department

Director, Division, of Narcotic and Drug Abuse Control

Corrections Department

Chairman, State Parole Board

Associate Member, State Parole Board

Public Defender

Labor and Workforce Development Department

Director, Workplace Standards

Law and Public Safety Department

Colonel and Superintendent, State Police

State Medical Examiner

Director, Division of Alcoholic Beverage Control

State Superintendent of Weights and Measures

Public Utilities Department

Director, Office of Cable Television

Executive Director, Public Broadcasting

State Department

Transportation Department

Assistant Commissioner for Highways

Assistant Commissioner for Public Transportation

Chief Administrator, New Jersey Motor Vehicle Commission

Treasury Department

Director, Division of Budget and Accounting

Director, Division of Taxation
Director, Division of Purchase and Property
Director, Division of Pensions and Benefits
Director, Division of State Lottery.

3. This act shall take effect immediately.

Approved December 15, 2005.

CHAPTER 241

AN ACT concerning the Pinelands Development Credit Bank, and amending
P.L.1997, c.282.

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

1. Section 18 of P.L.1997, c.282 (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, 2015 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, 2015 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. This act shall take effect immediately.

Approved December 15, 2005.

CHAPTER 242

AN ACT appropriating \$537,965 from the Jobs, Education and Competitiveness Fund created under 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 Fund" created pursuant to section 14 of the "Jobs, Education and Competitiveness Bond Act of 1988," P.L.1988, c.78, the sum of \$537,965 for the purpose of constructing, 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 institution of higher education which shall provide funds to projects which have been approved by the Commission on Higher Education as provided below:

<u>Project</u>	<u>Institution Funds</u>	<u>P.L.1988, c.78 Bond Funds</u>
Construction of Higher Education Buildings at the State Colleges		
Renovation of Hutchinson and Vaughn Eames Halls at Kean University	\$268,983	\$537,965
TOTAL		<u>\$537,965</u>

2. This act shall take effect immediately.

Approved December 15, 2005.

CHAPTER 243

AN ACT concerning alcoholic beverages and supplementing Title 33 of the Revised Statutes.

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

C.33:1-93.12 Short title.

1. Sections 1 through 9 of this act shall be known and may be cited as the "Malt Alcoholic Beverage Practices Act."

C.33:1-93.13 Findings, declarations relative to malt alcoholic beverages.

2. The Legislature finds and declares that:

a. The distribution and sale of malt alcoholic beverages in this State vitally affects the general economy and revenues of the State, as well as the public interest and public welfare.

b. It is appropriate to recognize the guiding characteristics regarding the distribution of malt alcoholic beverages to foster responsible industry practices involving the moderate and responsible use of these beverages, to provide a framework for the malt alcohol beverage industry that recognizes and encourages the beneficial aspects of competition, to provide trade stability, to maintain the three-tier distribution system, to protect the interests of the consumer regarding product quality and freshness and to achieve all facets of the legislatively declared public policy of this State as set forth in section 4 of P.L.1985, c.258 (C.33:1-3.1).

c. It is therefore fitting and proper to regulate the business relationship between brewers and wholesalers of malt alcoholic beverages and set forth their respective responsibilities to further the public policy of this State and protect beer wholesalers from unreasonable demands and requirements by brewers, while devoting sufficient efforts and resources to the distribution and sale of malt alcoholic beverages.

d. The Legislature also finds and declares that nothing in sections 1 through 9 of this act shall be construed in any manner whatsoever to apply to wholesalers of wines and spirits and that sections 1 through 9 of the act shall be strictly limited to the responsibilities of brewers and wholesalers. But section 10 of this act shall apply to wholesalers of beer, wine and spirits alike.

C.33:1-93.14 Definitions relative to malt alcoholic beverages.

3. As used in sections 1 through 9 of this act:

"Base product" is a malt alcoholic beverage product distributed by a wholesaler.

"Brand extension" means any malt alcoholic beverage product offered for sale in the State, other than on a test market basis in a defined market area, that uses as part of its brand name, logo, packaging or trade dress, including but not limited to, the name of the brewer if the brewer's name is a part of the product name, or that is sold or marketed to the beer trade or to

the consumer substantially in association with, a brand name, logo, packaging or trade dress, including, but not limited to, the name of the brewer if the brewer's name is a part of the product name, of a malt alcoholic beverage product then distributed by a wholesaler.

"Brewer" means any person, whether located within or outside the State who:

a. brews, manufactures, imports, markets or supplies malt alcoholic beverages and sells malt alcoholic beverages to a plenary wholesale licensee or a limited wholesale licensee for the purpose of resale;

b. is an agent or broker of such a person who solicits orders for or arranges sales of such person's malt alcoholic beverages to a plenary wholesale licensee or a limited wholesale licensee for the purpose of resale; or

c. is a successor brewer.

"Fair market value" of an asset means the price at which the asset would change hands between a willing seller and a willing buyer when neither is acting under compulsion and when both have knowledge of the relevant facts.

"Good cause" means and is limited to a failure to substantially comply with reasonable terms contained in a contract or agreement between a brewer and wholesaler that contains the same terms as the brewer's contract with similarly situated United States, not including United States territories or possessions, distributors.

"Person" means a natural person, corporation, partnership, trust, or other entity and, in case of an entity, it shall include any other entity, except a natural person, which has a majority interest in such entity or effectively controls such entity.

"Sale or transfer" means any disposition of a contract, agreement or relationship between a brewer and a wholesaler or of any rights to acquire and distribute products of a brewer, or any interest therein, with or without consideration, including, but not limited to, bequest, inheritance, gift, exchange, lease or license.

"Successor brewer" means any person, not under common control with the predecessor brewer, who by any means, including, without limitation, by way of purchase, assignment, transfer, lease, license, appointment, contract, agreement, joint venture, merger, or other disposition of all or part of the business, assets, including trademarks, brands, distribution rights and other intangible assets, or ownership interests of a brewer, acquires the business or malt alcoholic beverage brands of another brewer, or otherwise succeeds to a brewer's interest with respect to any malt alcoholic beverage brands.

"Wholesaler" means a plenary wholesale licensee or a limited wholesale licensee who purchases malt alcoholic beverages from a brewer for the

purpose of resale to Class C licensees or State Beverage Distributor Licensees.

C.33:1-93.15 Contract, agreement between brewer and wholesaler.

4. a. Every brewer shall contract and agree in writing with a wholesaler for all supply, distribution and sale of the products of the brewer in this State, and each contract shall provide and specify the rights and duties of the brewer and the wholesaler with regard to such supply, distribution and sale. The terms and provisions of such contracts shall be reasonable, reflect the parties' mutuality of purpose and community of interest in the responsible sale and marketing of their products, and shall comply with and conform to State law and the terms of this act. The provisions of this act may not be waived or modified by written or oral agreement, estoppel or otherwise, and any provision of a contract or ancillary agreement that directly or indirectly requires or amounts to a waiver of any provision of this act, or that would relieve any person of any obligation or liability under this act, or that imposes unreasonable standards of performance on a wholesaler, shall be a violation of this act and shall be null, void and of no effect.

b. This act shall apply to all contracts, agreements and relationships among any brewers and wholesalers, including contracts, agreements or relationships entered into, renewed, extended or modified after the effective date of this act. Contracts, agreements and relationships existing prior to the effective date of this act that are continuing in nature, have an indefinite term or have no specific duration shall be deemed for purposes of this act to have been renewed 60 days after the effective date of this act.

c. The terms or provisions of a contract or agreement between a brewer and wholesaler shall not permit a brewer, and it shall be a violation of this act for a brewer:

(1) to terminate, cancel or refuse to renew a contract, agreement or relationship with a wholesaler, or to fail or refuse to grant to a wholesaler the right to purchase and resell any brand extension under the same form of agreement as the base product, in part or in whole, except where the brewer establishes that it has acted for good cause and in good faith;

(2) to terminate, cancel or refuse to renew a contract, agreement or relationship with a wholesaler, in part or in whole, because the wholesaler refuses or fails to accept an unreasonable amendment to the contract, agreement or relationship;

(3) to terminate, cancel or refuse to renew a contract, agreement or relationship with a wholesaler, in part or in whole, without first giving the wholesaler written notice setting forth all of the alleged deficiencies on the part of the wholesaler and giving the wholesaler a reasonable opportunity of not more than 120 days to cure the alleged deficiencies; provided, how-

ever, that such period for cure may be increased or reduced to a commercially reasonable period by an order of a court in this State in a proceeding in which each party shall bear its own costs and expenses;

(4) to require the brewer's consent to the acquisition, sale or transfer of distribution rights for products other than those of the brewer or of assets unrelated to the distribution of the brewer's products;

(5) to unreasonably withhold consent to a proposed sale or transfer of any ownership interests in the wholesaler to the spouse, children or heirs of existing holders of such ownership interests or to employees of the wholesaler, or to trusts for the benefit of such persons, except upon a statement of reasonable grounds, provided such transfer does not result in a sale or transfer of effective control, including but not limited to a change in the persons holding the majority voting power, of the wholesaler; or to take more than 30 days to approve or disapprove the proposed sale or transfer after the brewer has received written notice of the proposal from the wholesaler and received all reasonably requested information from the wholesaler to enable the brewer to pass upon the proposed sale or transfer.

(6) to unreasonably withhold consent to a proposed sale or transfer, in part or in whole, of any ownership interests in the wholesaler or the distribution rights for the brewer's products, assets of the wholesaler related to the distribution of the brewer's products, or of ownership interests in the wholesaler to other parties, except upon a statement of reasonable grounds that are based upon reasonable, previously announced, in an agreement with its wholesalers or otherwise, standards of the brewer, relating to the qualifications of such transferee relating to the character, financial ability or business experience of the proposed transferee, or relating to the resulting market combinations or territory to be serviced by the transferee; or to take more than 30 days to approve or disapprove the proposed sale or transfer after the brewer has received written notice of the proposal from the wholesaler and received all reasonably requested information from the wholesaler to enable the brewer to pass upon the proposed sale or transfer, provided that such period may be extended by agreement of the parties; provided, however, that at any time within such 30-day period prior to the date on which the brewer approves or disapproves such a proposed sale or transfer, the brewer shall have the right and option to purchase, and in the event of a brewer's disapproval relating to the resulting market combinations or territory to be serviced by the transferee, the wholesaler shall have the right and option to require the brewer to purchase at the price and on the terms and conditions set forth in the agreement between the wholesaler and the proposed transferee, all of the distribution rights, assets or ownership interest that are the subject of the proposed sale or transfer, at the price and on the terms and

conditions set forth in the agreement between the wholesaler and the proposed transferee, subject to the following:

(a) if the proposed transferee is the spouse, children or heirs of existing holders of ownership interests in the wholesaler, then the brewer shall not have the right and option to purchase such ownership interest;

(b) if the proposed transferee is an existing holder of ownership interests in the wholesaler, or is the manager or the successor manager of the wholesaler, then if the brewer exercises its option to purchase under this section, the wholesaler may, instead of selling or transferring to the brewer, rescind the proposed sale or transfer by notice to the brewer; and

(c) the brewer shall complete such purchase within 60 days of its exercise of its right to do so.

(7) to allow more than one wholesaler to sell any of the brewer's product lines or brands within the same territory or area at the same time. This paragraph shall not apply to contracts or agreements entered into prior to the effective date of this act, or future renewals of such contracts or agreements, to the extent that, as permitted under the existing contract or agreement and the future renewals allow, as of the effective date of this act, different wholesalers to sell certain but not all of the brewer's brands or brand extensions within the same territory or area at the same time;

(8) to unreasonably fail to consent to the wholesaler's designation of an individual as the wholesaler's manager or successor-manager in accordance with previously announced non-discriminatory and reasonable qualifications and standards;

(9) to withdraw approval of an individual as the wholesaler's manager or successor-manager unless in good faith and with just cause based upon deficiencies in the performance of the manager or successor-manager, which in the case of the manager shall be material deficiencies;

(10) to prohibit, directly or indirectly, the right of free association among wholesalers for any lawful purpose; or

(11) to fail to act, during the term of the contract, agreement or relationship between them in a manner consistent with the covenant of good faith and fair dealing implicit in State contract law.

A wholesaler also shall act in a manner consistent with the covenant of good faith and fair dealing implied in State contract law.

d. It shall not be a violation of this act for a successor brewer to:

(1) terminate, in whole or in part, its contract, agreement or relationship with a wholesaler, or the contract, agreement or relationship with a wholesaler of the brewer it succeeded, for the purpose of transferring the distribution rights in the wholesaler's territory for the malt alcoholic beverage brands to which the successor brewer succeeded, to a wholesaler or wholesalers that then distributes other products of the successor brewer in such territory,

provided that the successor brewer or the second wholesaler or wholesalers first pays to the first wholesaler the fair market value of the first wholesaler's business with respect to the terminated brand or brands; provided, however, that such termination shall not be permitted, and may be enjoined, where it may cause irreparable injury to the first wholesaler and the standards for injunctive relief are otherwise met; and provided further that a rebuttable presumption of such irreparable injury shall be inferred when the terminated brand or brands represent 20% or more of the first wholesaler's gross sales; or

(2) to assume and continue the contract, agreement or relationship of the brewer it succeeded with a wholesaler in the wholesaler's territory for the malt alcoholic beverage brands to which it succeeded, notwithstanding that the successor brewer distributes other products in such territory through another wholesaler.

e. Whether the terms of a contract, agreement or relationship conform with the provisions of this section shall be determined by a court of this State in the context of a specific case or controversy among wholesalers and brewers only, and not by generally applicable rule, regulation or otherwise. In any such determination proper consideration should be given to relevant precedents provided under the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), and the fact that a term of a contract, agreement or relationship may be a term of the kind described in section 9 of this act shall not be considered in making such determination.

C.33:1-93.16 Termination of contract, agreement by brewer, conditions.

5. Notwithstanding the provisions of paragraphs (1) through (3) of subsection c. of section 4 of this act, a brewer may immediately terminate a contract or agreement with a wholesaler, to the extent provided in reasonable terms of the contract or agreement that contains the same terms as the brewer's contract with similarly situated United States, not including United States territories or possessions, distributors, if any of the following occur:

a. The assignment or attempted assignment by the wholesaler for the benefit of creditors, the institution of proceedings in bankruptcy by or against the wholesaler, the dissolution or liquidation of the wholesaler, the insolvency of the wholesaler or the wholesaler's failure to pay for malt alcoholic beverages in accordance with the agreed terms;

b. Failure of any owner to sell his ownership interest in a wholesaler within 120 days after the:

(1) owner has been convicted of a felony or crime of the third degree or higher which, in the reasonable judgment of the brewer, may adversely affect the goodwill or interests of the wholesaler or the brewer and the brewer notifies the wholesaler that it requires such sale; or

(2) brewer learns of such conviction and notifies the wholesaler that it requires such sale because, in the reasonable judgment of the brewer, it may adversely affect the goodwill or interests of the wholesaler or the brewer and the brewer notifies the wholesaler that it requires such sale;

c. Fraudulent conduct of the wholesaler, in any of its dealings with the brewer or the brewer's products, that is known to, or should have been known to the senior management or the owners of the wholesaler;

d. Revocation or suspension for more than 31 days of the wholesaler's federal basic permit or of any state or local license required of a wholesaler for the normal operation of its business;

e. Intentional sale, directly or indirectly, of malt alcoholic beverages by a wholesaler outside the sales territory prescribed by the brewer; or

f. Without brewer consent, the wholesaler engages in changes in ownership, the establishment of trusts or other ownership interests, enters into buy-sell agreements, or grants an option to purchase an ownership interest; this provision will not apply if the wholesaler establishes that the brewer's failure to consent, after having received notice as provided in paragraph (5) or (6) of subsection c. of section 4 of this act, was in violation of this act.

C.33:1-93.17 Representation of brewer by wholesaler, standards.

6. During the term of a contract or agreement between a brewer and a wholesaler subject to this act, the wholesaler shall, in accordance with the reasonable standards of such contract or agreement, as reasonably relied upon by the wholesaler, enforced without discriminatory intent and in good faith, and uniformly applicable to similarly situated distributors, maintain physical facilities, equipment and personnel so that the product and brand of the brewer are properly represented in the territory of the wholesaler, the reputation and trade name of the brewer are reasonably protected, and the public is served.

C.33:1-93.18 Actions against brewer, remedies.

7. a. Any brewer or wholesaler may bring an action against a brewer for violation of this act, or against a successor brewer in connection with a termination pursuant to paragraph (1) of subsection d. of section 4 of this act, in the Superior Court of the State of New Jersey. Any brewer who violates any provision of this act, and any successor brewer who terminates a contract, agreement or relationship with a wholesaler pursuant to paragraph (1) of subsection d. of section 4 of this act, shall pay the injured wholesaler all reasonable damages sustained by it as a result of the brewer's violations. Injunctive and other equitable relief also shall be available in appropriate circumstances under the applicable standards for such relief under State law. Injunctive equitable relief shall be granted against an actual or threatened

unlawful failure or refusal to grant a wholesaler the right to purchase and resell a brand extension. The wholesaler or brewer who sues alleging a violation of this act shall, if successful, also be entitled to the costs of the action including, but not limited to, reasonable attorney's fees.

b. Without limiting the provisions of subsection a. of this section, if a brewer violates paragraph (1), (2) or (3) of subsection c. of section 4 of this act, the injured wholesaler's reasonable damages shall include the fair market value of the wholesaler's business with respect to the terminated brand or brands.

c. If a brewer terminates or fails to renew, in whole or in part, a contract, agreement or relationship with a wholesaler for good cause and in good faith, other than terminations or failures to renew properly based upon grounds for immediate termination under section 5 of this act, the brewer shall pay to the wholesaler reasonable compensation, which may be established by a reasonable liquidated damages provision in a written contract or written agreement between the brewer and the wholesaler. Payment for inventory and other tangible assets owned and used by the wholesaler in its operation as a wholesaler for the brewer's products as provided for under the standards of a written contract or written agreement, as well as a payment determined by multiplying by two the wholesaler's pre-tax net income attributable to the sale of the brewer's brand or brands for the wholesaler's most recently completed fiscal year preceding the year in which the termination occurs, is deemed to be a reasonable liquidated damages provision under this act for such a termination of the right to distribute brands representing more than 20% of the wholesaler's revenues. This payment shall not be deemed reasonable compensation in any other circumstance or to represent a basis for calculating fair market value. In particular and without limitation, in the case of brands representing 20% or less of a wholesaler's revenues, which may not require significant incremental expenses for delivery, sales and service, making a net income standard inappropriate, such payment shall not be deemed to be a reasonable liquidated damages provision under this act.

d. In the event of a termination under section 5 of this act, payment for inventory in the manner prescribed under the reasonable standards of a contract or agreement is reasonable compensation under this act.

e. Nothing in this act shall be deemed to give a right of action for violation of this act to any third party to the relationship between a brewer and a wholesaler, except for a brewer adversely affected by another brewer's violation of this act with respect to a common wholesaler.

C.33:1-93.19 Nonseverability of act, application or not of Franchise Practices Act.

8. If any material provision within any section of this act is held invalid, the remainder of this act and the act as a whole shall be held invalid; pro-

vided that if the application of any material provision within any section of this act to any person or circumstance is held invalid, then the remainder of this act and the act as a whole shall be held invalid as to such person or circumstance. The "Franchise Practices Act," P.L.1971, c. 356 (C.56:10-1 et seq.) shall not apply to those agreements subject to this act; provided, however, that as the material provisions of this act are not severable, this section shall not be severable from the provisions of sections 3, 4 and 7 of this act, and in the event that any provision thereof is held invalid, then the "Franchise Practices Act" shall be fully applicable to the extent it would otherwise apply as if this act had not been enacted, and if the application of any provision thereof to any person or circumstance is held invalid, then the "Franchise Practices Act" shall be fully applicable to such person or circumstance to the extent it would otherwise apply as if this act had not been enacted with respect to such person or circumstance.

C.33:1-93.20 Justification for input by brewer into operations of wholesaler; conditions, terms.

9. The Legislature finds that where a brewer's products represent more than 20% of a wholesaler's gross sales and the brewer and wholesaler have a community of interest in the marketing of the brewer's products, there is a justification for certain input by the brewer into the operations of the wholesaler, but that such input from numerous brewers representing smaller percentages of a wholesaler's gross sales might subject wholesalers to inconsistent obligations, create uncertainty as to those obligations, and interfere unreasonably with the wholesaler's ability to operate its business. Accordingly, consistent with the legislatively declared public policy of this State in section 4 of P.L.1985, c.258 (C.33:1-3.1), the use of the following terms in any agreement or contract, including agreements or contracts existing on the effective date of this act, between manufacturers of malt alcoholic beverages and wholesalers, shall not be construed to grant such manufacturer or wholesaler an interest in another manufacturer or wholesaler under the relevant provisions of Title 33 of the Revised Statutes or any rule or regulation promulgated thereunder provided that the brewer's products represent more than 20% of the wholesaler's gross sales and the brewer and wholesaler have a community of interest in the marketing of the brewer's products:

a. Terms providing brewers the ability to give reasonable consent to wholesaler ownership and management changes, including successor management;

b. Terms setting forth quality, operational, marketing and sales standards designed to properly represent the products, brands, reputation and trade name of the brewer, in the territory and at retail, including terms under

which a wholesaler commits to provide certain efforts and resources toward a brewer's products;

c. Terms concerning ordering and inventory methods with respect to the brewer's products; and

d. Terms requiring wholesalers to provide financial information to a brewer related to sales and operations of the brewer's products, and reasonable aggregated financial information related to the sales and operations of all other malt alcoholic beverage products distributed by the wholesaler.

C.33:1-43.2 Services, items, equipment, availability to retailers, conditions.

10. a. Manufacturers, importing entities or wholesalers, as these terms are defined in R.S.33:1-1, or third parties at the direction of manufacturers, importing entities or wholesalers, may sell, lease or provide services, items or equipment to retailers that are intended to enhance or protect the quality, display, availability or marketing of their products to consumers, including:

(1) Cleaning and needed repairs of dispensing systems for alcoholic beverage products, including draught systems for malt alcoholic beverages, powered decanter systems for wine and pouring systems, and decanter racks or blending machines for distilled spirits.

(2) Certain equipment, such as tap handles, filters, faucets, tavern heads, regulators, and similar ancillary equipment, that protects the quality or taste of the alcoholic beverage products produced or supplied by the appropriate licensee, subject to the provisions of R.S.33:1-43.1. Substantial equipment such as complete draught or refrigeration systems, or coolant shall only be sold at no less than fair market value; however nothing in this subsection shall be construed to prevent a licensee from renting or providing such substantial equipment to a retailer on a short-term temporary basis for special events.

(3) Delivery of alcoholic beverages into a retail account at the number of locations as mutually agreed upon by the wholesaler and the retailer.

(4) Occasional, unscheduled placing, and stocking of alcoholic beverages sold by the wholesaler within a retail accounts' premises, to ensure the alcoholic beverages will be available for consumers to purchase, as mutually agreed upon by the wholesaler and retailer, and regular rotation of alcoholic beverages sold by the wholesaler as necessary to ensure the freshness of those products with a limited shelf life.

(5) Shelf management, marketing and pricing recommendations, and implementation of shelf management decisions and resets of a manufacturer's supplier's, wholesaler's, or third party's own products as mutually agreed upon by the wholesaler and the retailer.

(6) Building product displays, including price signs denoting prices established by the retailer, sweepstakes prizes for customers as part of a

display and advertising items such as point of sale advertising and consumer novelties, as mutually agreed upon by the wholesaler and retailer.

b. A licensee may provide reasonable entertainment to another licensee, such as engaging in sporting activities, taking a licensee to an entertainment or sports event, or providing meals and beverages to the licensee. The licensee shall not condition the provision of such services, equipment, consumer sweepstakes prizes or entertainment on an agreement to sell the alcoholic beverage products of a manufacturer, supplier or wholesaler. A retailer shall not request the provision of such services, equipment, consumer sweepstakes prizes or entertainment as a condition for selling the alcoholic beverage products of a manufacturer, supplier or wholesaler.

11. This act shall take effect on the first day of the third month after enactment.

Approved December 15, 2005.

CHAPTER 244

AN ACT concerning the licensure of polysomnographers, supplementing Title 45 of the Revised Statutes and amending various parts of the statutory law.

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

C.45:14G-1 Short title.

1. This act shall be known and may be cited as the "Polysomnography Practice Act."

C.45:14G-2 Findings, declarations relative to practice of polysomnography.

2. The Legislature finds and declares that the public interest requires the regulation of the practice of polysomnographers and the establishment of clear licensure standards for practitioners of polysomnography; and that the health and welfare of the citizens of this State will be protected by identifying to the public those individuals who are qualified and legally authorized to practice polysomnography.

C.45:14G-3 Definitions relative to practice of polysomnography.

3. As used in this act:
"Board" means the State Board of Polysomnography established pursuant to section 4 of this act.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Direct supervision" means continuous on-site presence of a supervising licensed polysomnographic technologist or supervising licensed physician available to render immediate physical assistance as required.

"Licensed physician" means a physician licensed by the State Board of Medical Examiners.

"Polysomnography" means the allied health specialty involving the treatment, management, diagnostic testing, research, control, education and care of patients with sleep and wake disorders under a qualified medical director and includes, but is not limited to, the process of analysis, monitoring and recording of physiologic data during sleep and wakefulness to assess, diagnose and assist in the treatment and research of disorders, syndromes and dysfunctions that either are sleep related, manifest during sleep or disrupt normal sleep and wake cycles and activities. Polysomnography shall also include the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including CPAP and bi-level modalities, cardiopulmonary resuscitation, maintenance of nasal and oral airways that do not extend in the trachea, transcription and implementation of the written or verbal orders of a physician pertaining to the practice of polysomnography. Polysomnography shall not include a home-based unattended self-administered diagnostic test, provided that any test results shall only be read and analyzed by a licensed polysomnographic technologist or polysomnographic technician or a licensed physician. Polysomnography services shall be provided only when ordered by a physician who has medical responsibility for the patient.

"Polysomnographic technician" means a person who holds a temporary license issued by the board who practices polysomnography under the supervision of a licensed polysomnographic technologist or a licensed physician in a State licensed or nationally accredited sleep center or laboratory.

"Polysomnographic technologist" means a person licensed by the board to practice polysomnography under the direction of a licensed physician.

"Polysomnographic trainee" means a person who holds a provisional license issued by the board and who performs polysomnography under the direct supervision of a licensed polysomnographic technologist or a licensed physician in a State licensed or nationally accredited sleep center or laboratory.

"Qualified medical director" means the medical director of any in-patient or out-patient polysomnography service, department or home care agency. The qualified medical director shall be a licensed physician who has special interest and knowledge in the diagnosis and treatment of sleep and wake

disorders and shall be qualified by special training and experience in the management of sleep and wake disorders.

"Supervision" means that polysomnography shall not be performed unless a licensed polysomnographic technologist or licensed physician is constantly accessible, either on-site or through voice communication.

C.45:14G-4 State Board of Polysomnography.

4. a. There is created within the Division of Consumer Affairs in the Department of Law and Public Safety the State Board of Polysomnography. The board shall consist of 11 members who are residents of the State, six of whom shall be licensed polysomnographic technologists who have been actively engaged in the practice of polysomnography in this State for at least five years immediately preceding their appointment, one of whom shall be a qualified medical director, one of whom shall be a physician licensed in this State pursuant to chapter 9 of Title 45 of the Revised Statutes and who is a Diplomate of the American Board of Sleep Medicine or is board certified in sleep medicine, two of whom shall be public members and one of whom shall be a State executive department member appointed pursuant to the provisions of P.L.1971, c.60 (C.45:1-2.1 et seq.). At the time of their appointment the six polysomnographic technologists initially appointed shall have been actively working as polysomnographic technologists and shall have been certified by the Board of Registered Polysomnographic Technologists for at least five years, but need not be licensed in this State.

b. The Governor shall appoint each member, other than the State executive department member, with the advice and consent of the Senate. The Governor shall appoint each member for a term of three years, except that of the polysomnographic practitioner members first appointed, two shall serve for terms of three years, two shall serve for terms of two years and two shall serve for a term of one year. Each member shall hold office until his successor has been appointed and qualified. Any vacancy in the membership of the board shall be filled for the unexpired term only in the manner provided for the original appointment.

C.45:14G-5 Compensation of board members.

5. Members of the board shall be compensated and reimbursed for expenses and provided with office and meeting facilities pursuant to section 2 of P.L.1977, c.285 (C.45:1-2.5).

C.45:14G-6 Election of chairman, vice-chairman; meetings.

6. The board shall annually elect from among its members a chairman and a vice-chairman. The board shall meet at least four times per year and may hold additional meetings as necessary to discharge its duties. The board shall organize itself following the appointment of at least that number of

members of the board constituting a quorum of the entire board, provided that at least a majority of the members appointed are polysomnographic technologists.

C.45:14G-7 Duties of board.

7. The board shall:
 - a. Establish criteria and standards for licensure at least commensurate with national accreditation standards adopted by the Association of Polysomnographic Technologists or the American Academy of Sleep Medicine or the Committee on Accreditation for Polysomnography;
 - b. Review the qualification of applicants for licensure;
 - c. Insure proper conduct and standards of practice;
 - d. Issue and renew licenses pursuant to this act;
 - e. Establish standards for continuing education;
 - f. Suspend, revoke or decline to renew licenses of polysomnographic technologists, technicians and trainees pursuant to the provisions of P.L.1978, c.73 (C.45:1-14 et seq.);
 - g. Maintain a record of every polysomnographic technologist, technician and trainee licensed in this State;
 - h. Promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the provisions of this act, except that the initial rules and regulations may be promulgated by the director; and
 - i. Establish fees for applications for licensure, examinations, initial licensure, renewals, late renewals, temporary licenses, provisional licenses and for duplication of lost licenses, pursuant to section 2 of P.L.1974, c.46 (C.45:1-3.2).

C.45:14G-8 Executive Director.

8. The Executive Director of the board 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.

C.45:14G-9 Licensure required for practice of polysomnography.

9. a. No person shall practice or present himself as able to practice polysomnography in this State unless the person possesses a valid license to practice polysomnography in accordance with the provisions of this act.
 - b. Nothing in this act shall be construed to:
 - (1) prohibit a person enrolled in a board approved Commission on Accreditation of Allied Health Education Programs polysomnography training program from performing those duties essential for completion of

clinical service, provided the duties are performed under the direct supervision and direction of a physician or licensed polysomnographic technologist; or

(2) limit, preclude or otherwise interfere with the practices of other persons and health care providers licensed by appropriate agencies of this State, provided that those duties are consistent with the accepted standards of the person's profession and that the person does not present himself as a licensed polysomnographic technologist, licensed polysomnographic technician or licensed polysomnographic trainee which otherwise would require licensure by the board.

c. Nothing in this act shall confer to a person licensed to practice polysomnography pursuant to this act the authority to practice as another health care professional as defined in section 1 of P.L. 2002, c. 104 (C. 45:1-28).

C.45:14G-10 Issuance of license; qualifications, procedure, fee.

10. a. The board shall issue a license as a polysomnographic technologist to any applicant who the board determines to be qualified to perform the duties of a polysomnographic technologist. In making a determination, the board shall review evidence that the applicant has successfully completed the board's requirements for education; training; and experience, with documented proficiencies, determined using standards established by the board at least commensurate with national Association of Polysomnographic Technologists or American Academy of Sleep Medicine standards; and has successfully completed the certification examination administered by the Board of Registered Polysomnographic Technologists or its successor, or any other examination testing polysomnography approved by the board. The fee prescribed by the board shall accompany the application.

b. The board shall issue a temporary license as a polysomnographic technician to any applicant who the board determines to be qualified to perform the duties of a polysomnographic technician. In making a determination, the board shall review evidence that the applicant has successfully completed the board's requirements for education; training; and experience, determined using standards established by the board at least commensurate with national Association of Polysomnographic Technologists or American Academy of Sleep Medicine standards and documentation of successful completion of Association of Polysomnographic Technologists or American Academy of Sleep Medicine technical competencies. The fee prescribed by the board shall accompany the application.

c. The board shall issue a provisional license as a polysomnographic trainee to any applicant who the board determines to be qualified to perform the duties of a polysomnographic trainee. In making a determination, the board shall review evidence that the applicant has successfully completed

the board's requirements for education; training; and experience, with documented proficiencies, determined using standards established by the board at least commensurate with national Association of Polysomnographic Technologists or American Academy of Sleep Medicine standards; and documentation that the applicant's performance of polysomnography will be directly supervised by a licensed polysomnographic technologist or a licensed physician. The fee prescribed by the board shall accompany the application.

C.45:14G-11 Validity of license, term, renewal.

11. a. A license as a polysomnographic technologist shall be issued for a period of two years, and may be renewed for additional two-year periods upon submission by the holder of a renewal application on a form prescribed by the board, completion by the holder of any requirements for renewal established by the board, and payment of the renewal fee prescribed by the board.

b. A temporary license as a polysomnographic technician shall be issued for a period of one year and may be renewed for an additional one-year period to permit a polysomnographic technician to take the examination required for licensure as a polysomnographic technologist a maximum of three times. Renewal of a temporary license shall be issued upon submission by the holder of a renewal application on a form prescribed by the board, completion by the holder of any requirements for renewal established by the board, and payment of the renewal fee prescribed by the board.

c. A provisional license as a polysomnographic trainee shall be issued for a period of not more than one year.

d. A temporary or provisional license may be put on inactive status at the discretion of the board upon the written request of the holder for reasons of hardship, such as health or other good cause.

e. If a renewal fee is not paid by the expiration date, the license shall automatically expire, but may be renewed within two years of its expiration date on payment to the board of a sum determined by it for each year or part thereof during which the license was expired and an additional restoration fee.

C.45:14G-12 Issuance of license to out-of-State licensee.

12. Upon receipt of a fee and a written application on forms provided by it, the board shall issue a license without examination to a polysomnographic technologist who holds a valid license issued by another state or possession of the United States or the District of Columbia that has education and experience requirements substantially equivalent to the requirements of this act, so long as the applicant has successfully completed the certification examination administered by the Board of Registered

Polysomnographic Technologists, or its successor, or any other examination testing polysomnography approved by the board pursuant to section 10 of this act.

C.45:14G-13 Issuance of license as polysomnographic technologist.

13. a. The board shall issue a license as a polysomnographic technologist to an applicant, who at the time of the effective date of this act, has passed the certification examination administered by the Board of Registered Polysomnographic Technologists and holds a valid credential.

b. (1) The board shall issue a temporary license to continue practice as a polysomnographic technician for a period of two years from the effective date of section 9 of this act to any applicant who has not passed the certification examination required by subsection a. of this section at the time of the effective date of section 9 of this act, provided that the applicant, through written evidence, verified by oath, demonstrates that he:

(a) is presently functioning in the capacity of a polysomnographic technician as defined by this act and has successfully completed a polysomnographic program of not less than one year associated with a state licensed program or a program accredited by the Commission on Accreditation of Allied Health Education Programs or other nationally recognized accrediting organization; or

(b) has successfully completed a minimum of 720 hours of experience as a polysomnographic trainee or has a minimum of one year of experience as a polysomnographic technician with documented proficiency in polysomnography as determined using standardized Association of Polysomnographic Technologists or American Academy of Sleep Medicine National Competencies.

(2) An applicant who receives a temporary license pursuant to this subsection shall be required to pass the licensure examination administered by the Board of Registered Polysomnographic Technologists, or its successor, and attain the RPSGT credential during his temporary licensure period in order to be issued a license as a polysomnographic technologist.

c. An applicant for licensure under this section shall apply within six months of the effective date of section 9 of this act.

14. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read as follows:

C.45:1-2.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New

Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the Orthotics and Prosthetics Board of Examiners, the New Jersey Cemetery Board, the State Board of Polysomnography and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

15. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read as follows:

C.45:1-3.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the New Jersey Cemetery Board, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Orthotics and Prosthetics Board of Examiners and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

16. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read as follows:

C.45:1-15 Application of act.

2. The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hair-styling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Acupuncture Advisory Committee, the Alcohol and Drug Counselor Committee, the Athletic Training Advisory Committee, the Certified Psychoanalysts Advisory Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Interior Design Examination and Evaluation Committee, the Hearing Aid Dispensers Examining Committee, the Landscape Architect Examination and Evaluation Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, the Perfusionists Advisory Committee, the Physician Assistant Advisory Committee, the Audiology and Speech-Language Pathology Advisory Committee and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

17. Section 1 of P.L.2002, c.104 (C.45:1-28) is amended to read as follows:

C.45:1-28 Definitions relative to criminal history background checks for health care professionals.

1. As used in this act:

"Applicant" means an applicant for the licensure or other authorization to engage in a health care profession.

"Board" means a professional and occupational licensing board within the Division of Consumer Affairs in 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.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Health care professional" means a health care professional who is licensed or otherwise authorized, pursuant to Title 45 or Title 52 of the Revised Statutes, to practice a health care profession that is regulated by one of the following boards or by the Director of the Division of Consumer Affairs: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council, the Certified Psychoanalysts Advisory Committee or the State Board of Polysomnography.

Health care professional shall not include a nurse aide or personal care assistant who is required to undergo a criminal history record background check pursuant to section 2 of P.L.1997, c.100 (C.26:2H-83) or a homemaker-home health aide who is required to undergo a criminal history record background check pursuant to section 7 of P.L.1997, c.100 (C.45:11-24.3).

"Licensee" means an individual who has been issued a license or other authorization to practice a health care profession.

18. This act shall take effect immediately, except that section 9 shall take effect 360 days following the appointment and qualification of the board members, and provided that the director and board may take such anticipatory action as may be necessary to effectuate that provision of the act.

Approved December 21, 2005.

CHAPTER 245

AN ACT concerning the limitation of actions under environmental laws, and amending P.L.2001, c.154.

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

1. Section 5 of P.L.2001, c.154 (C.58:10B-17.1) is amended to read as follows:

C.58:10B-17.1 Commencement of civil actions under environmental laws, limitations; definitions.

5. a. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action concerning the remediation of a contaminated site or the closure of a sanitary landfill facility commenced by the State pursuant to the State's environmental laws shall be commenced within three years next after the cause of action shall have accrued.

(2) For purposes of determining whether a civil action subject to the limitations periods specified in paragraph (1) of this subsection has been commenced within time, no cause of action shall be deemed to have accrued prior to January 1, 2002 or until the contaminated site is remediated or the sanitary landfill has been properly closed, whichever is later.

b. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action concerning the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, commenced by the State pursuant to the State's environmental laws, shall be commenced within five years and six months next after the cause of action shall have accrued.

(2) For purposes of determining whether a civil action subject to the limitations periods specified in paragraph (1) of this subsection has been commenced within time, no cause of action shall be deemed to have accrued prior to January 1, 2002 or until the completion of the remedial investigation of the contaminated site or the sanitary landfill facility, whichever is later.

c. As used in this section:

"State's environmental laws" means 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 "Brownfield and Contaminated Site Remediation

Act," P.L.1997, c.278 (C.58:10B-1.1 et al.), 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; and

"State" means the State, its political subdivisions, any office, department, division, bureau, board, commission or agency of the State or one of its political subdivisions, and any public authority or public agency, including, but not limited to, the New Jersey Transit Corporation and the University of Medicine and Dentistry of New Jersey.

2. This act shall take effect immediately.

Approved December 21, 2005.

CHAPTER 246

AN ACT authorizing the State to sell and convey certain real property located in Sea Isle City, Cape May County.

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

1. a. (1) Notwithstanding the provisions of any other law to the contrary, the Department of Environmental Protection is authorized, as provided herein, to sell and convey, as surplus real property, at one or more private sales all or a part of the State's interest in the real property, including any improvements thereon, located in the City of Sea Isle City, Cape May County, as described in paragraph (2) of this subsection if that sale or conveyance is necessary to clear title.

(2) The portions of real property and improvements thereon to be sold and conveyed pursuant to paragraph (1) of this subsection are within that tract or parcel of land situate in the City of Sea Isle City, Cape May County, bounded and described as follows:

Beginning at a point in the high water line of the Southeasterly shore of the State Inland Waterway where the same is intersected by the northeasterly

line of 51st Street; said beginning point being 2289.32 feet northwest of the northwest line of Central Avenue, when measured along said line of 51st Street, and extending thence (1) Northeastwardly and Eastwardly by a curve to the right, having a radius of 655.0 feet through an arc of 90 degrees, 1028.82 feet to a point in the high water line of the waterway called Rio Grande; said point being 95 feet northeast of 49th Street and 1634.32 feet northwest of Central Avenue when measured at right angles thereto respectively; thence (2) Southeastwardly, along said waterway, on a line parallel with and 95 feet northeast of 49th Street, 100 feet to a point; thence (3) Northeastwardly, parallel with Central Avenue and at right angles to said 49th Street, 450.0 feet to the northeast line of the waterway called Rio delle Stelle; which point is 95 feet southwest of the southwest line of Neptune Place; thence (4) Northwestwardly, parallel with said 49th Street, 175.0 feet more or less, to a point in the high water line of the Waterway called Rio del Isole, which point is 100 feet southeast of the southeast line of Venician Road, when measured at right angles thereto; thence (5) Southwestwardly, along said waterway and parallel with said Venician Road, 300 feet; thence (6) Westwardly and Northwestwardly along the high water line of the Waterway called Porto delle Salute, following a line concentric with the existing bulkhead and 25 feet channelwards therefrom, 500 feet, more or less to a point in the high water line of State Inland Waterway, opposite the division line between Lots Nos. 93 and 94 in Block No. 44-E; thence (7) Southwestwardly along the original high water line of the Inland Waterway 620 feet, more or less, to the intersection with the southwest line of 49th Street, if extended to the said Waterway; thence (8) Southwestwardly, along the high water line on the southeasterly shore of the State Inland Waterway, 500 feet more or less, to the place of beginning.

b. The Commissioner of the Department of Environmental Protection, in consultation with the Attorney General, shall be responsible for the expeditious execution of the sale and conveyance of the property pursuant to this act.

c. Property conveyed pursuant to this act shall be conveyed for such consideration as determined by the Commissioner of the Department of Environmental Protection in consultation with the State Treasurer and the Attorney General. Proceeds from the sale of property pursuant to this act shall be deposited into the State General Fund.

d. Property conveyed pursuant to this act shall be conveyed in an "as is" condition with no liability or responsibility assumed or expenditure made by the State prior to, or as a condition of, the execution of the sale or conveyance, notwithstanding any other provision of law to the contrary.

e. Notwithstanding the provision of any law, rule, or regulation to the contrary, the sale and conveyance described in this act shall not require the

approval of the Department of the Treasury or the State House Commission, nor shall the sale and conveyance require any further approval of the Legislature.

2. This act shall take effect immediately.

Approved December 21, 2005.

CHAPTER 247

AN ACT reducing the penalty for early retirement imposed on certain city pension fund members and amending P.L.1967, c.222.

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

1. Section 1 of P.L.1967, c.222 (C.43:13-22.54a) is amended to read as follows:

C.43:13-22.54a Retirement for service prior to age 60; survivors' benefits.

1. (a) A member who resigns after having completed 25 years of service for which credit has been established in the pension fund and before reaching age 60 may elect to receive, in lieu of the payment provided in section 4 of P.L.1964, c.275 (C.43:13-22.53), or the benefit provided by subsection (b) of this section, a pension in the amount of 55% of final salary, plus 1% for each year of service in excess of 20 years; provided, however, that such pension shall be reduced by 1/12 of 1% for each month that the member lacks of being age 60; but if the member waits until age 60 to start collecting benefits, there shall be no reduction in benefits, and in no event shall the amount of any pension payable pursuant to the provisions of this subsection be less than \$3,600 per annum.

Upon and after the death of such pensioner, the benefits provided by section 7 of P.L.1964, c.275 (C.43:13-22.56) shall be payable to any eligible survivors.

(b) A member who, after having completed 10 years of service for which credit has been established in the pension fund, becomes separated voluntarily or involuntarily from the service before reaching age 60 may elect to receive, in lieu of the benefit provided by subsection (a) of this section, a deferred pension beginning at age 60, in an amount equal to the proportional relation which the years of the member's service credited in the fund bear to the total number of years of service that the member could have achieved by continuing in service to age 60, multiplied by 1/2 of the member's final salary calculated as of the time that the member elected the deferred pension; but

in no event shall the amount of any deferred pension payable pursuant to the provisions of this subsection be less than \$3,600 per annum.

Upon and after the death of such pensioner, the benefits provided by section 7 of P.L.1964, c.275 (C.43:13-22.56) shall be payable to any eligible survivors.

2. This act shall take effect immediately.

Approved December 21, 2005.

CHAPTER 248

AN ACT concerning certain high deductible health plans and amending and supplementing various parts of the statutory law.

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

1. Section 1 of P.L.1995, c.316 (C.17:48E-35.10) is amended to read as follows:

C.17:48E-35.10 Health service corporation contracts, child screening, blood lead, hearing loss; immunizations.

1. No health service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health service corporation shall notify its subscribers, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such

notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for benefits provided pursuant to this section; however, with respect to a contract that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits provided pursuant to this section which represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 3 of P.L.2005, c.248 (C.17:48E-35.28). This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

C.17:48E-35.27 Health service corporation, high deductible, coverage for preventive care.

2. No health service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), 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 P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in connection with any medically necessary benefits provided in-network that represent preventive care as permitted by that federal law.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for benefits provided pursuant to this section. This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

C.17:48E-35.28 Health service corporation, high deductible, deductible inapplicable, certain circumstances.

3. Notwithstanding the provisions of section 1 of P.L.1995, c.316 (C.17:48E-35.10) regarding deductibles for a high deductible health plan, a contract offered by a health service corporation providing hospital or medical expense benefits for groups with greater than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), and that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), shall not apply a deductible for any benefits for which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.).

This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

4. Section 2 of P.L.1995, c.316 (C.17:48-6m) is amended to read as follows:

C.17:48-6m Hospital service corporation contracts, child screening, blood lead, hearing loss; immunizations.

2. No hospital service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A hospital service corporation shall notify its subscribers, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such

notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for benefits provided pursuant to this section; however, with respect to a contract that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits provided pursuant to this section which represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 6 of P.L.2005, c.248 (C.17:48-6dd). This section shall apply to all hospital service corporation contracts in which the health service corporation has reserved the right to change the premium.

C.17:48-6cc Hospital service corporation, high deductible, coverage for preventive care.

5. No hospital service corporation contract providing hospital or medical expense benefits for groups with greater than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), 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 P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the contract provides benefits to any named subscriber or other person covered thereunder for expenses incurred in connection with any medically necessary benefits provided in-network that represent preventive care as permitted by that federal law.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for benefits provided pursuant to this section. This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48-6dd Hospital service corporation, high deductible, deductible inapplicable, certain circumstances.

6. Notwithstanding the provisions of section 2 of P.L.1995, c.316 (C.17:48-6m) regarding deductibles for a high deductible health plan, a contract offered by a hospital service corporation providing hospital or medical expense benefits for groups with greater than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), and that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), shall not apply a deductible for any benefits for which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.).

This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

7. Section 3 of P.L.1995, c.316 (C.17B:27-46.11) is amended to read as follows:

C.17B:27-46.11 Group health insurance policy, child screening, blood lead, hearing loss; immunizations.

3. No group health insurance policy providing hospital or medical expense benefits for groups with more than 50 persons shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the policy provides benefits to any named insured or other person covered thereunder for expenses incurred in the following:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health insurer shall notify its policyholders, in writing, of any change in coverage with respect to childhood immunizations and any related changes in premium. Such notification

shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the policy, except that a deductible shall not be applied for benefits provided pursuant to this section; however, with respect to a policy that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits provided pursuant to this section that represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 9 of P.L.2005, c.248 (C.17B:27-46.1dd). This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

C.17B:27-46.1cc Group health insurance policy, high deductible, coverage for preventive care.

8. No group health insurance policy providing hospital or medical expense benefits for groups with more than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), 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 P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the policy provides benefits to any named insured or other person covered thereunder for expenses incurred in connection with any medically necessary benefits provided in-network which represent preventive care as permitted by that federal law.

The benefits provided pursuant to this section shall be provided to the same extent as for any other medical condition under the policy, except that a deductible shall not be applied for benefits provided pursuant to this section. This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

C.17B:27-46.1dd Group health insurance policy, high deductible, deductible inapplicable, certain circumstances.

9. Notwithstanding the provisions of section 3 of P.L.1995, c.316 (C.17B:27-46.1l) regarding deductibles for a high deductible health plan, a group health insurance policy providing hospital or medical expense benefits for groups with more than 50 persons, that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), and that is delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), shall not apply a deductible for any benefits for which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.).

This section shall apply to all group health insurance policies in which the health insurer has reserved the right to change the premium.

10. Section 4 of P.L.1995, c.316 (C.26:2J-4.10) is amended to read as follows:

C.26:2J-4.10 Health maintenance organization, child screening, blood lead, hearing loss; immunizations.

4. A certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued by the Commissioner of Health and Senior Services on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) unless the health maintenance organization offers health care services to any enrollee which include:

a. Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

b. All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A health maintenance organization shall notify its enrollees, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

c. Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for

this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The health care services provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for services provided pursuant to this section; however, with respect to a contract that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any services provided pursuant to this section that represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 12 of P.L.2005, c.248 (C.26:2J-4.29). This section shall apply to all contracts under which the health maintenance organization has reserved the right to change the schedule of charges for enrollee coverage.

C.26:2J-4.28 Health maintenance organization, high deductible, coverage for preventive care.

11. A certificate of authority to establish and operate a health maintenance organization, which organization offers a contract that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), shall not be issued or continued by the Commissioner of Health and Senior Services on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the health maintenance organization offers health care services to any enrollee which include services provided in-network which represent medically necessary preventive care as permitted by that federal law.

The services provided pursuant to this section shall be provided to the same extent as for any other medical condition under the contract, except that a deductible shall not be applied for services provided pursuant to this section. This section shall apply to all contracts under which the health maintenance organization has reserved the right to change the schedule of charges for enrollee coverage.

C.26:2J-4.29 Health maintenance organization, high deductible, deductible inapplicable, certain circumstances.

12. Notwithstanding the provisions of section 4 of P.L.1995, c.316 (C.26:2J-4.10) regarding deductibles for a high deductible health plan, a contract offered by a health maintenance organization, which certificate of authority to establish and operate is issued or continued by the Commissioner of Health and Senior Services on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), that qualifies as a high deductible health plan

for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), shall not apply a deductible for any benefits in which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.).

This section shall apply to all contracts under which the health maintenance organization has reserved the right to change the schedule of charges for enrollee coverage.

13. 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 (26 U.S.C. s.220), 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.2005, c.248 (C.17:48E-35.27 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.2005, c.248 (C.17:48E-35.27 et al.), the individual health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunizations as recommended by the Advisory Committee on Immunization Practices of the United States Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

(3) Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits

plan, except that a deductible shall not be applied for benefits provided pursuant to this subsection; however, with respect to a health benefits plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits provided pursuant to this subsection that represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 14 of P.L.2005, c.248 (C.17B:27A-7.11). This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

f. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

g. Effective immediately for an individual health benefits plan issued on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 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.2005, c.248 (C.17:48E-35.27 et al.), the health benefits plans required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that qualify as high deductible health plans for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), including any plan offered by a federally qualified health maintenance organization, shall contain benefits for expenses incurred in connection with any medically necessary benefits provided in-network which represent preventive care as permitted by that federal law.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits plan, except that a deductible shall not be applied for benefits provided pursuant to this subsection. This subsection shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

C.17B:27A-7.11 Individual health benefits plan, high deductible, deductible inapplicable, certain circumstances.

14. Notwithstanding the provisions of subsection e. of section 6 of P.L.1992, c.161 (C.17B:27A-7) regarding deductibles for a high deductible health plan, a health benefits plan offered pursuant to P.L.1992, c.161 (C.17B:27A-2 et seq.) on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C.s.223), shall not apply a deductible for any benefits for which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.). This section shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

15. Section 3 of P.L.1992, c.162 (C.17B:27A-19) is amended to read as follows:

C.17B:27A-19 Five health benefit plans offered to small employers; exceptions.

3. a. Except as provided in subsection f. of this section, every small employer carrier shall, as a condition of transacting business in this State, offer to every small employer the five health benefit plans as provided in this section. The board shall establish a standard policy form for each of the five plans, which except as otherwise provided in subsection j. of this section, shall be the only plans offered to small groups on or after January 1, 1994. One policy form shall contain the benefits provided for in sections 55, 57, and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3). In the case of indemnity carriers, one policy form shall be established which contains benefits and cost sharing levels which are equivalent to the health benefits plans of health maintenance organizations pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C. s.300e et seq.). The remaining policy forms shall contain basic hospital and medical-surgical benefits, including, but not limited to:

- (1) Basic inpatient and outpatient hospital care;
- (2) Basic and extended medical-surgical benefits;
- (3) Diagnostic tests, including X-rays;

- (4) Maternity benefits, including prenatal and postnatal care; and
- (5) Preventive medicine, including periodic physical examinations and inoculations.

At least three of the forms shall provide for major medical benefits in varying lifetime aggregates, one of which shall provide at least \$1,000,000 in lifetime aggregate benefits. The policy forms provided pursuant to this section shall contain benefits representing progressively greater actuarial values.

Notwithstanding the provisions of this subsection to the contrary, the board also may establish additional policy forms by which a small employer carrier, other than a health maintenance organization, may provide indemnity benefits for health maintenance organization enrollees by direct contract with the enrollees' small employer through a dual arrangement with the health maintenance organization. The dual arrangement shall be filed with the commissioner for approval. The additional policy forms shall be consistent with the general requirements of P.L.1992, c.162 (C.17B:27A-17 et seq.).

b. Initially, a carrier shall offer a plan within 90 days of the approval of such plan by the commissioner. Thereafter, the plans shall be available to all small employers on a continuing basis. Every small employer which elects to be covered under any health benefits plan who pays the premium therefor and who satisfies the participation requirements of the plan shall be issued a policy or contract by the carrier.

c. The carrier may establish a premium payment plan which provides installment payments and which may contain reasonable provisions to ensure payment security, provided that provisions to ensure payment security are uniformly applied.

d. In addition to the five standard policies described in subsection a. of this section, the board may develop up to five rider packages. Any such package which a carrier chooses to offer shall be issued to a small employer who pays the premium therefor, and shall be subject to the rating methodology set forth in section 9 of P.L.1992, c.162 (C.17B:27A-25).

e. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may approve a health benefits plan containing only medical-surgical benefits or major medical expense benefits, or a combination thereof, which is issued as a separate policy in conjunction with a contract of insurance for hospital expense benefits issued by a hospital service corporation, if the health benefits plan and hospital service corporation contract combined otherwise comply with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.). Deductibles and coinsurance limits for the contract combined may be allocated between the separate contracts at the discretion of the carrier and the hospital service corporation.

f. Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is a qualified health maintenance organization pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C.s.300e et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section.

Notwithstanding the provisions of this section to the contrary, a health maintenance organization which is approved pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) shall be permitted to offer health benefits plans formulated by the board and approved by the commissioner which are in accordance with the provisions of that law in lieu of the five plans required pursuant to this section, except that the plans shall provide the same level of benefits as required for a federally qualified health maintenance organization, including any requirements concerning copayments by enrollees.

g. A carrier shall not be required to own or control a health maintenance organization or otherwise affiliate with a health maintenance organization in order to comply with the provisions of this section, but the carrier shall be required to offer the five health benefits plans which are formulated by the board and approved by the commissioner, including one plan which contains benefits and cost sharing levels that are equivalent to those required for health maintenance organizations.

h. Notwithstanding the provisions of subsection a. of this section to the contrary, the board may modify the benefits provided for in sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3).

i. (1) In addition to the rider packages provided for in subsection d. of this section, every carrier may offer, in connection with the five health benefits plans required to be offered by this section, any number of riders which may revise the coverage offered by the five plans in any way, provided, however, that any form of such rider or amendment thereof which decreases benefits or decreases the actuarial value of one of the five plans shall be filed for informational purposes with the board and for approval by the commissioner before such rider may be sold. Any rider or amendment thereof which adds benefits or increases the actuarial value of one of the five plans shall be filed with the board for informational purposes before such rider may be sold.

The commissioner shall disapprove any rider filed pursuant to this subsection that is unjust, unfair, inequitable, unreasonably discriminatory, misleading, contrary to law or the public policy of this State. The commissioner shall not approve any rider which reduces benefits below those required by sections 55, 57 and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3) and required to be sold pursuant to this section.

The commissioner's determination shall be in writing and shall be appealable.

(2) The benefit riders provided for in paragraph (1) of this subsection shall be subject to the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25, and 17B:27A-27).

j. (1) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a health benefits plan issued by or through a carrier, association, or multiple employer arrangement prior to January 1, 1994 or, if the requirements of subparagraph (c) of paragraph (6) of this subsection are met, issued by or through an out-of-State trust prior to January 1, 1994, at the option of a small employer policy or contract holder, may be renewed or continued after February 28, 1994, or in the case of such a health benefits plan whose anniversary date occurred between March 1, 1994 and the effective date of P.L.1994, c.11 (C.17B:27A-19.1 et al.), may be reinstated within 60 days of that anniversary date and renewed or continued if, beginning on the first 12-month anniversary date occurring on or after the sixtieth day after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162 (C.17B:27A-25) and, regardless of the situs of delivery of the health benefits plan, the health benefits plan renewed, continued or reinstated pursuant to this subsection complies with the provisions of section 2, subsection b. of section 3, and sections 6, 7, 8, 9 and 11 of P.L.1992, c.162 (C.17B:27A-18, 17B:27A-19, 17B:27A-22, 17B:27A-23, 17B:27A-24, 17B:27A-25 and 17B:27A-27) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

Nothing in this subsection shall be construed to require an association, multiple employer arrangement or out-of-State trust to provide health benefits coverage to small employers that are not contemplated by the organizational documents, bylaws, or other regulations governing the purpose and operation of the association, multiple employer arrangement or out-of-State trust. Notwithstanding the foregoing provision to the contrary, an association, multiple employer arrangement or out-of-State trust that offers health benefits coverage to its members' employees and dependents:

(a) shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust;

(b) shall not use actual or expected health status in determining its membership; and

(c) shall make available to its small employer members at least one of the standard benefits plans, as determined by the commissioner, in addition to any health benefits plan permitted to be renewed or continued pursuant to this subsection.

(2) Notwithstanding the provisions of this subsection to the contrary, a carrier or out-of-State trust which writes the health benefits plans required pursuant to subsection a. of this section shall be required to offer those plans to any small employer, association or multiple employer arrangement.

(3) (a) A carrier, association, multiple employer arrangement or out-of-State trust may withdraw a health benefits plan marketed to small employers that was in effect on December 31, 1993 with the approval of the commissioner. The commissioner shall approve a request to withdraw a plan, consistent with regulations adopted by the commissioner, only on the grounds that retention of the plan would cause an unreasonable financial burden to the issuing carrier, taking into account the rating provisions of section 9 of P.L.1992, c.162 (C.17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(b) A carrier which has renewed, continued or reinstated a health benefits plan pursuant to this subsection that has not been newly issued to a new small employer group since January 1, 1994, may, upon approval of the commissioner, continue to establish its rates for that plan based on the loss experience of that plan if the carrier does not issue that health benefits plan to any new small employer groups.

(4) (Deleted by amendment, P.L.1995, c.340).

(5) A health benefits plan that otherwise conforms to the requirements of this subsection shall be deemed to be in compliance with this subsection, notwithstanding any change in the plan's deductible or copayment.

(6) (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, a health benefits plan renewed, continued or reinstated pursuant to this subsection shall be filed with the commissioner for informational purposes within 30 days after its renewal date. No later than 60 days after the board adopts regulations concerning the implementation of the rating factors permitted by section 9 of P.L.1992, c.162 (C.17B:27A-25) the filing shall be amended to show any modifications in the plan that are necessary to comply with the provisions of this subsection. The commissioner shall monitor compliance of any such plan with the requirements of this subsection, except that the board shall enforce the loss ratio requirements.

(b) A health benefits plan filed with the commissioner pursuant to subparagraph (a) of this paragraph may be amended as to its benefit structure if the amendment does not reduce the actuarial value and benefits coverage of the health benefits plan below that of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. The amendment shall be filed with the commissioner for approval pursuant to the terms of sections 4, 8, 12 and 25 of P.L.1995, c.73 (C.17:48-8.2, 17:48A-9.2, 17:48E-13.2 and 26:2J-43), N.J.S.17B:26-1 and N.J.S.17B:27-49, as applicable, and shall comply with the provisions of sections 2 and 9 of P.L.1992,

c.162 (C.17B:27A-18 and 17B:27A-25) and section 7 of P.L.1995, c.340 (C.17B:27A-19.3).

(c) A health benefits plan issued by a carrier through an out-of-State trust shall be permitted to be renewed or continued pursuant to paragraph (1) of this subsection upon approval by the commissioner and only if the benefits offered under the plan are at least equal to the actuarial value and benefits coverage of the lowest standard health benefits plan established by the board pursuant to subsection a. of this section. For the purposes of meeting the requirements of this subparagraph, carriers shall be required to file with the commissioner the health benefits plans issued through an out-of-State trust no later than 180 days after the date of enactment of P.L.1995, c.340. A health benefits plan issued by a carrier through an out-of-State trust that is not filed with the commissioner pursuant to this subparagraph, shall not be permitted to be continued or renewed after the 180-day period.

(7) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, an association, multiple employer arrangement or out-of-State trust may offer a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to small employer groups that are otherwise eligible pursuant to paragraph (1) of subsection j. of this section during the period for which such health benefits plan is otherwise authorized to be renewed, continued or reinstated.

(8) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) to the contrary, a carrier, association, multiple employer arrangement or out-of-State trust may offer coverage under a health benefits plan authorized to be renewed, continued or reinstated pursuant to this subsection to new employees of small employer groups covered by the health benefits plan in accordance with the provisions of paragraph (1) of this subsection.

(9) Notwithstanding the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.) or P.L.1992, c.161 (C.17B:27A-2 et seq.) to the contrary, any individual, who is eligible for small employer coverage under a policy issued, renewed, continued or reinstated pursuant to this subsection, but who would be subject to a preexisting condition exclusion under the small employer health benefits plan, or who is a member of a small employer group who has been denied coverage under the small employer group health benefits plan for health reasons, may elect to purchase or continue coverage under an individual health benefits plan until such time as the group health benefits plan covering the small employer group of which the individual is a member complies with the provisions of P.L.1992, c.162 (C.17B:27A-17 et seq.).

(10) In a case in which an association made available a health benefits plan on or before March 1, 1994 and subsequently changed the issuing carrier between March 1, 1994 and the effective date of P.L.1995, c.340, the

new issuing carrier shall be deemed to have been eligible to continue and renew the plan pursuant to paragraph (1) of this subsection.

(11) In a case in which an association, multiple employer arrangement or out-of-State trust made available a health benefits plan on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

(12) In a case in which a small employer purchased a health benefits plan directly from a carrier on or before March 1, 1994 and subsequently changes the issuing carrier for that plan after the effective date of P.L.1995, c.340, the new issuing carrier shall file the health benefits plan with the commissioner for approval in order to be deemed eligible to continue and renew that plan pursuant to paragraph (1) of this subsection.

Notwithstanding the provisions of subparagraph (b) of paragraph (6) of this subsection to the contrary, a small employer who changes its health benefits plan's issuing carrier pursuant to the provisions of this paragraph, shall not, upon changing carriers, modify the benefit structure of that health benefits plan within six months of the date the issuing carrier was changed.

k. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 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.2005, c.248 (C.17:48E-35.27 et al.), the health benefits plans required pursuant to this section, including any plans offered by a State approved or federally qualified health maintenance organization, shall contain benefits for expenses incurred in the following:

(1) Screening by blood lead measurement for lead poisoning for children, including confirmatory blood lead testing as specified by the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1); and medical evaluation and any necessary medical follow-up and treatment for lead poisoned children.

(2) All childhood immunization as recommended by the Advisory Committee on Immunization Practices of the United State Public Health Service and the Department of Health and Senior Services pursuant to section 7 of P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in writing, of any change in the health care services provided with respect to childhood immunizations and any related changes in premium. Such notification shall be in a form and manner to be determined by the Commissioner of Banking and Insurance.

(3) Screening for newborn hearing loss by appropriate electrophysiologic screening measures and periodic monitoring of infants for delayed onset

hearing loss, pursuant to P.L.2001, c.373 (C.26:2-103.1 et al.). Payment for this screening service shall be separate and distinct from payment for routine new baby care in the form of a newborn hearing screening fee as negotiated with the provider and facility.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits plan, except that a deductible shall not be applied for benefits provided pursuant to this subsection; however, with respect to a small employer health benefits plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), a deductible shall not be applied for any benefits that represent preventive care as permitted by that federal law, and shall not be applied as provided pursuant to section 16 of P.L.2005, c.248 (C.17B:27A-19.14). This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

l. The board shall consider including benefits for speech-language pathology and audiology services, as rendered by speech-language pathologists and audiologists within the scope of their practices, in at least one of the five standard policies and in at least one of the five riders to be developed under this section.

m. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2001, c.361 (C.17:48-6z et al.) and effective on the first 12-month anniversary date of a health benefits plan in effect on the effective date of P.L.2001, c.361 (C.17:48-6z et al.), the health benefits plans required pursuant to this section that provide benefits for expenses incurred in the purchase of prescription drugs shall provide benefits for expenses incurred in the purchase of specialized non-standard infant formulas, when the covered infant's physician has diagnosed the infant as having multiple food protein intolerance and has determined such formula to be medically necessary, and when the covered infant has not been responsive to trials of standard non-cow milk-based formulas, including soybean and goat milk. The coverage may be subject to utilization review, including periodic review, of the continued medical necessity of the specialized infant formula.

The benefits shall be provided to the same extent as for any other prescribed items under the health benefits plan.

This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

n. Effective immediately for a health benefits plan issued on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) and effective on the first 12-month anniversary date of a small employer health benefits plan in effect on the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.),

the health benefits plans required pursuant to this section that qualify as high deductible health plans for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), including any plans offered by a State approved or federally qualified health maintenance organization, shall contain benefits for expenses incurred in connection with any medically necessary benefits provided in-network that represent preventive care as permitted by that federal law.

The benefits provided pursuant to this subsection shall be provided to the same extent as for any other medical condition under the health benefits plan, except that no deductible shall be applied for benefits provided pursuant to this subsection. This subsection shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

C.17B:27A-19.14 High deductible health plan, small employer, deductible inapplicable, certain circumstances.

16. Notwithstanding the provisions of subsection k. of section 3 of P.L.1992, c.162 (C.17B:27A-19) regarding deductibles for a high deductible health plan, a health benefits plan offered pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), shall not apply a deductible for any benefits for which a deductible is not applicable pursuant to any law enacted after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.). This section shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

C.17B:27A-19a Small employer carrier, offering of high deductible plan.

17. A small employer carrier, as a condition of transacting business in this State, may offer, on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), a health benefits plan pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), if that health benefits plan is offered to an eligible small employer that:

a. is a policy or contract holder prior to and on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) under a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) which does not qualify as a high deductible health plan for which qualified

medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223);

b. is not a policy or contract holder on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.) under a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) which does not qualify as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223) for a period of five years; or

c. was not a policy or contract holder under a small employer health benefits plan issued pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) prior to the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.).

C.17B:27A-55 Written notice required for issuance, renewal of high deductible health plan; declaration of understanding.

18. a. An insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State shall not issue or renew a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223) on or after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), unless the application for the contract or policy is accompanied by a written notice, approved by the Commissioner of Banking and Insurance, identifying and containing a one page, double-sided declaration of understanding for high deductible health plans for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223). At the time a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223) is issued or renewed, the contract holder or policyholder shall sign and return a copy of the one page, double-sided declaration of understanding to the insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization. The contract holder or policyholder is responsible for retaining a copy of the one page, double-sided declaration of understanding.

b. The declaration of understanding shall include a signature line representing the recipient's receipt and understanding of the declaration, and shall also include, but not be limited to, information as to the terms of the plan, presented in plain and simple language, concerning:

- (1) covered services;
- (2) applicable deductibles;
- (3) the responsibility of the contract holder or policyholder and any other covered persons for applicable deductibles;
- (4) claims processing; and
- (5) any other information required by State or federal law.

c. The Commissioner of Banking and Insurance shall enforce the provisions of this section. An insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization found in violation of this section shall be liable for a civil penalty of not more than \$1,000 for each day that the payer is in violation if reasonable notice in writing is given of the intent to levy the penalty and, at the discretion of the commissioner, the payer has 30 days, or such additional time as the commissioner shall determine to be reasonable, to remedy the condition which gave rise to the violation and fails to do so within the time allowed. The penalty shall be collected by the commissioner in the name of the State in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

d. Nothing in this section shall be construed to prohibit the promulgation of regulations by the Commissioner of Banking and Insurance to establish standards for the declaration of understanding required pursuant to this section, which standards may require the declaration of understanding to include additional information not stated in this section as deemed appropriate by the commissioner.

C.17B:27A-56 Provision of biannual surveys to DOBI by health insurers.

19. a. Any health insurer, as a condition of transacting business in this State, offering a contract, policy, or plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), shall provide biannual surveys to the Department of Banking and Insurance, based upon information requested and collected from subscribers, insureds, enrollees, and covered persons covered by qualifying high deductible health plans. Each survey shall request, but is not limited to requesting, information concerning: the income levels of the subscribers, insureds, enrollees, or covered persons, covered by qualifying high deductible health plans; the type of contract, policy, or plan which previously provided coverage to those individuals; the amount of out-of-pocket expenses incurred by those individuals; and the percentage of income used by those individuals to pay deductibles.

b. All disclosures made pursuant to this section shall be made in accordance with section 2713 of the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191 (42 U.S.C. s.300gg-13).

20. Section 8 of P.L.1968, c.413 (C.30:4D-8) is amended to read as follows:

C.30:4D-8 Claim payment method.

8. The determination of the method of providing payment of claims under this act shall be made by the State Medicaid Commission on recommendation of the commissioner which method may be:

a. (1) By contract, except as prohibited by paragraph (2) of this subsection, with insurance companies incorporated and licensed to do business in the State of New Jersey or with nonprofit health service corporations, dental service corporations, hospital service corporations or medical service corporations, incorporated in New Jersey, and authorized to do business pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), P.L.1968, c.305 (C.17:48C-1 et seq.), P.L.1938, c.366 (C.17:48-1 et seq.) or P.L.1940, c.74 (C.17:48A-1 et seq.), to underwrite, but not for profit, on an insured premium approach, that portion of the program covering all cash grant beneficiaries plus all other State certified recipients of medical assistance within the classes set forth in section 3i. of this act, with the exception of those persons who are confined in institutions for tuberculosis and mental care or who are required by medical necessity to be confined on a presumably permanent basis in other medical care institutions by reason of disease or injury, which contract executed pursuant to this subsection shall provide that for those persons included in the program but not covered on an underwritten basis, the same carrier selected under this subsection shall act as fiscal agent for the department, but not for profit, for such medical assistance benefits as may be available, and any carrier selected pursuant to the provisions of this act is hereby expressly authorized and empowered to undertake the performance of the requirements of such contract.

(2) The State Medicaid Commission shall not approve any contract, pursuant to section 11 of P.L.1968, c.413 (C.30:4D-11), with an insurance company or corporation as set forth in paragraph (1) of this subsection that offers 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 Medicaid using any contract that provides for a deductible which qualifies the contract as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223).

b. (1) By contract, except as prohibited by paragraph (2) of this subsection, with any corporation doing business in the State of New Jersey, including nonprofit organizations incorporated in New Jersey and authorized to do business pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), P.L.1968, c.305 (C.17:48C-1 et seq.), P.L.1938, c.366 (C. 17:48-1 et seq.) or P.L.1940, c.74 (C.17:48A-1 et seq.), to act as fiscal agent.

(2) The State Medicaid Commission shall not direct that payment of claims be made by the Department of Human Services, pursuant to section 11 of P.L.1968, c.413 (C.30:4D-11), with a corporation or nonprofit organization as set forth in paragraph (1) of this subsection that offers 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 Medicaid using any contract that provides for a deductible which qualifies the contract as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223).

c. By direct administration by the Department of Human Services.

C.30:4J-12.1 NJ FamilyCare Program, high deductible contract prohibited.

21. The Commissioner of Human Services shall not utilize or establish any contract that provides for a deductible which qualifies the contract as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223) in the implementation and operation of the NJ FamilyCare Program, established pursuant to sections 3 through 5 of P.L.2005, c.156 (C.30:4J-10 through C.30:4J-12).

C.26:2H-18.71 Funding of health care treatment for lead poisoned children.

22. a. Notwithstanding the purposes of the "Lead Hazard Control Assistance Fund" provided by P.L.2003, c.311 (C.52:27D-437.1 et al.), the Commissioner of Community Affairs shall transfer to the Division of Medical Assistance and Health Services in the Department of Human Services from the "Lead Hazard Control Assistance Fund" established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4), upon certification by the director of the division pursuant to paragraph (2) of subsection d. of this section, an amount not to exceed \$500,000 annually in each fiscal year following the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), to fund the costs incurred by licensed health care facilities and licensed health care providers for any necessary medical follow-up and treatment for lead poisoned children covered under a contract, policy, or plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of

the federal Internal Revenue Code of 1986 (26 U.S.C. s.223), as provided in this section.

b. The division shall administer a claim reimbursement program to reimburse licensed health care facilities and licensed health care providers for their costs incurred in providing services pursuant to subsection c. of this section for any necessary medical follow-up and treatment of lead poisoned children: (1) whose family income does not exceed 400% of the federal poverty level; (2) who are eligible to receive benefits under a contract, policy, or plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223); and (3) for whom the deductible limits of that contract, policy, or plan have not been exceeded.

c. Licensed health care facilities and licensed health care providers shall provide necessary medical follow-up and treatment of lead poisoned children: (1) whose family income does not exceed 400% of the federal poverty level; (2) who are covered under a contract, policy, or plan that qualifies as a high deductible health plan for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223); and (3) for whom the deductible limits of that contract, policy, or plan are not exceeded. Licensed health care facilities and licensed health care providers shall not seek reimbursement for any costs incurred pursuant to this subsection from the insureds covered under a contract, policy, or plan that qualifies as a high deductible health plan for which medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223) or the carrier that issued the high deductible health plan for which medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223).

d. (1) Licensed health care facilities and licensed health care providers shall submit claims for necessary medical follow-up and treatment cost reimbursement to the division in a form and manner as prescribed by the director by regulation.

(2) The director of the division shall, at least once every other month, or more frequently as provided by regulation, certify the amount of reimbursement claims submitted by licensed health care facilities and licensed health care providers and forward the certification to the Commissioner of Community Affairs. The commissioner shall, upon receipt of the certification, immediately transfer the specified amount of funds, not to exceed \$500,000 annually, from the "Lead Hazard Control Assistance Fund" estab-

lished pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4) to the division.

(3) Upon receipt of the funds, the division shall provide reimbursements for services provided pursuant to subsection c. of this section to the licensed health care facilities and licensed health care providers at the Medicaid rate.

23. a. The Commissioner of Banking and Insurance shall monitor the implementation and effect of P.L.2005, c.248 (C.17:48E-35.27 et al.) on the health insurance marketplace and shall report to the Governor, the Legislature, and the committees as provided in subsection c. of this section, no later than: 12 months after the effective date of this act with an initial report; and 24 months after the effective date of this act with a final report containing the commissioner's findings.

b. The commissioner's initial and final reports may include, but shall not be limited to, information concerning: the number of insurance carriers offering only contracts, policies or plans that qualify as high deductible health plans for which qualified medical expenses are paid using a health savings account established pursuant to section 223 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.223); the deductible amounts applicable to those plans; any adverse selection by subscribers, insureds, enrollees, or covered persons relative to those plans; any increase in cost shifting to the subscribers, insureds, enrollees, or covered persons covered by those plans; any increase in cost shifting to publicly funded health programs for expenses incurred in treating subscribers, insureds, enrollees, or covered persons covered by those plans; and the data contained in the biannual surveys provided by insurance carriers to the Department of Banking and Insurance as required by section 19 of this act. The final report shall also include the commissioner's recommendation for any legislative reforms deemed appropriate by the commissioner.

c. The Senate Health, Human Services and Senior Citizens Committee and the General Assembly Health and Human Services Committee, or their respective successors, are each charged with monitoring and evaluating the effect of the provisions of P.L.2005, c.248 (C.17:48E-35.27 et al.) on the insurance marketplace. The Commissioner of Banking and Insurance shall, no later than 24 months after the effective date of P.L.2005, c.248 (C.17:48E-35.27 et al.), present the findings of the commissioner's final report prepared pursuant to subsection a. of this section before each committee, which committee meetings shall be open to the public and include public comment periods. The committees shall, upon receiving the final report prepared pursuant to subsection a. of this section, and the testimony of the commissioner and the public provided pursuant to this subsection, issue as it may deem necessary and proper, recommendations for administrative or

legislative changes affecting the implementation of P.L.2005, c.248 (C.17:48E-35.27 et al.).

24. This act shall take effect on December 31, 2005 and shall apply to all contracts and policies that are delivered, issued, executed or renewed or approved for issuance or renewal in this State on or after the effective date.

Approved December 21, 2005.

CHAPTER 249

AN ACT concerning the redirection of payroll taxes from the unemployment compensation fund to the Health Care Subsidy Fund and the extension of certain unemployment compensation benefits and amending R.S.43:21-7 and P.L.1970, c.324.

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

1. R.S.43:21-7 is amended to read as follows:

Contributions.

43:21-7. Contributions. Employers other than governmental entities, whose benefit financing provisions are set forth in section 4 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in section 3 of P.L.1971, c.346 (C.43:21-7.2), shall pay to the controller for the unemployment compensation fund, contributions as set forth in subsections (a), (b) and (c) hereof, and the provisions of subsections (d) and (e) shall be applicable to all employers, consistent with the provisions of the "unemployment compensation law" and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

(a) Payment.

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter (R.S.43:21-1 et seq.), with respect to having individuals in his employ during that calendar year, at the rates and on the basis hereinafter set forth. Such contributions shall become due and be paid by each employer to the controller for the fund, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$0.005 or more, in which case it shall be increased to \$0.01.

(b) Rate of contributions. Each employer shall pay the following contributions:

(1) For the calendar year 1947, and each calendar year thereafter, 2 7/10% of wages paid by him during each such calendar year, except as otherwise prescribed by subsection (c) of this section.

(2) The "wages" of any individual, with respect to any one employer, as the term is used in this subsection (b) and in subsections (c), (d) and (e) of this section 7, shall include the first \$4,800.00 paid during calendar year 1975, for services performed either within or without this State; provided that no contribution shall be required by this State with respect to services performed in another state if such other state imposes contribution liability with respect thereto. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessors, 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 and Workforce Development 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 $2\frac{8}{10}\%$, 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 $2\frac{8}{10}\%$, unless as of the preceding January 31 such employer shall have paid contributions with respect to wages paid in each of the three calendar years immediately preceding such year, in which case such employer's rate for the 12 months commencing July 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be:

(1) $2\frac{5}{10}\%$, if such excess equals or exceeds 4%, but less than 5%, of his average annual payroll (as defined in paragraph (2), subsection (a) of R.S.43:21-19);

(2) $2\frac{2}{10}\%$, if such excess equals or exceeds 5%, but is less than 6%, of his average annual payroll;

(3) $1\frac{9}{10}\%$, if such excess equals or exceeds 6%, but is less than 7%, of his average annual payroll;

(4) $1\frac{6}{10}\%$, if such excess equals or exceeds 7%, but is less than 8%, of his average annual payroll;

(5) $1\frac{3}{10}\%$, if such excess equals or exceeds 8%, but is less than 9%, of his average annual payroll;

(6) 1%, if such excess equals or exceeds 9%, but is less than 10%, of his average annual payroll;

(7) $\frac{7}{10}$ of 1%, if such excess equals or exceeds 10%, but is less than 11%, of his average annual payroll;

(8) $\frac{4}{10}$ of 1%, if such excess equals or exceeds 11% of his average annual payroll.

(B) If the total of an employer's contributions, paid on his own behalf, for all past periods for the purposes of this paragraph (4), is less than the total benefits charged against his account during the same period, his rate shall be:

(1) 4%, if such excess is less than 10% of his average annual payroll;

(2) $4\frac{3}{10}\%$, if such excess equals or exceeds 10%, but is less than 20%, of his average annual payroll;

(3) $4\frac{6}{10}\%$, if such excess equals or exceeds 20% of his average annual payroll.

(C) Specially assigned rates.

(i) 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:

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

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.

(ii) If, following the purchase of a corporation with little or no activity, known as a corporate shell, the resulting employing unit operates a new or different business activity, the employing unit shall be assigned a new employer rate.

(iii) Entities operating under common ownership, management or control, when the operation of the entities is not identifiable, distinguishable and severable, shall be considered a single employer for the purposes of this chapter (R.S. 43:21-1 et seq.).

(D) The contribution rates prescribed by subparagraphs (A) and (B) of this paragraph (4) shall be increased or decreased in accordance with the provisions of paragraph (5) of this subsection (c) for experience rating periods through June 30, 1986.

(5)(A) Unemployment Trust Fund Reserve Ratio. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 4% but is less than 7% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{3}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection. If on March 31 of any calendar year the balance of the unemployment trust fund exceeds $2\frac{1}{2}\%$ but is less than 4% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection.

If on March 31 of any calendar year the balance of the unemployment trust fund is less than $2\frac{1}{2}\%$ of the total taxable wages reported to the controller as of that date in respect to employment during the preceding

calendar year, the contribution rate, effective July 1 following, of each employer (1) eligible for a contribution rate calculation based upon benefit experience, shall be increased by (i) $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and (ii) an additional amount equal to 20% of the total rate established herein, provided, however, that the final contribution rate for each employer shall be computed to the nearest multiple of $\frac{1}{10}$ % if not already a multiple thereof; (2) not eligible for a contribution rate calculation based upon benefit experience, shall be increased by $\frac{6}{10}$ of 1% over the contribution rate otherwise established under the provisions of paragraph (4) of this subsection. For the period commencing July 1, 1984 and ending June 30, 1986, the contribution rate for each employer liable to pay contributions under R.S.43:21-7 shall be increased by a factor of 10% computed to the nearest multiple of $\frac{1}{10}$ % 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 $12\frac{1}{2}$ % of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by $\frac{3}{10}$ 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 $\frac{4}{10}$ of 1%. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds $12\frac{1}{2}$ % of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by $\frac{6}{10}$ 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 $\frac{3}{10}$ 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 $\frac{4}{10}$ 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) (Deleted by amendment, P.L.1997, c.263).

(ii) (Deleted by amendment, P.L.2001, c.152).

(iii) (Deleted by amendment, P.L.2003, c.107).

(iv) (Deleted by amendment, P.L.2004, c.45).

(v) With respect to the experience rating year beginning on July 1, 2003, 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 Ratio¹

Employer Reserve Ratio ²	2.50% and Over A	2.00% to 2.49% B	1.50% to 1.99% C	1.00% to 1.49% D	0.99% 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

¹Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

²Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(vi) With respect to experience rating years beginning on or after July 1, 2004, 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 Ratio¹

Employer Reserve Ratio ²	1.40% and Over A	1.00% to 1.39% B	0.75% to 0.99% C	0.50% to 0.74% D	0.49% 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

¹Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

²Employer 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.

(iii) With respect to experience rating years beginning on or after July 1, 2004, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 0.50%, 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 and on or after January 1, 2002 until June 30, 2006, 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, 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%;

From January 1, 2002 until March 31, 2002, a factor of 36%;

From April 1, 2002 until June 30, 2002, a factor of 85%;

From July 1, 2002 until June 30, 2003, a factor of 15%;

From July 1, 2003 until June 30, 2004, a factor of 15%;

From July 1, 2004 until June 30, 2005, a factor of 7%;

From July 1, 2005 until December 31, 2005, a factor of 16%; and

From January 1, 2006 until June 30, 2006, a factor of 34%.

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 and Workforce Development 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 and Workforce Development 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%.

(J) On or after July 1, 2001, 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 0.0175%, except that, during any experience rating year starting on or after July 1, 2001, in which the fund reserve ratio is equal to or greater than 3.5%, there shall be no decrease pursuant to this subparagraph (J) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under. The amount of the reduction in the employer contributions stipulated by this subparagraph (J) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraphs (G) and (H) 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 (J) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(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, except that, following a transfer as described under R.S.43:21-7(c)(7)(D), neither the predecessor nor successor in interest shall be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year. 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, liable for 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. The successor in interest may, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, request a reconsideration of the transfer of employment experience of the predecessor employer. The request for reconsideration shall demonstrate, to the satisfaction of the controller, that the employment experience of the predecessor is not indicative of the future employment experience of the successor.

(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) If an employer who transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business shall also be transferred to and combined with the employment experience of the successor in interest. The transfer of the employment experience is mandatory and not subject to appeal or protest.

(E) The transfer of part of an employer's employment experience to a successor in interest shall become effective as of the first day of the calendar quarter following the acquisition by the successor in interest. As of the effective date, the successor in interest shall have its employer rate recalculated by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it shall be assigned the new employer rate until the effective date of the transfer of employment experience.

(F) Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of the acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(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 govern-

mental 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.43:21-25 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, 2001, 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 January 1, 2002 until June 30, 2004, contribute to the unemployment compensation fund 0.1825% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or a 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 0.0825% 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 July 1, 2004, contribute to the unemployment compensation fund 0.3825% 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 0.0825% 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" (C.43:21-33) 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 $\frac{1}{2}$ of 1% of the wages paid by such employer to workers with respect to employment unless he is not a covered employer as defined in section 3 of the "Temporary Disability Benefits Law" (C.43:21-27 (a)), except that the rate for the State of New Jersey shall be $\frac{1}{10}$ of 1% for the calendar year 1980 and for the first six months of 1981. Prior to July 1, 1981 and prior to July 1 each year thereafter, the controller shall review the experience accumulated in the account of the State of New Jersey and establish a rate for the next following fiscal year which, in combination with worker contributions, will produce sufficient revenue to keep the account in balance; except that the rate so established shall not be less than $\frac{1}{10}$ of 1%. Such contributions shall become due and be paid by the employer to the controller for the State disability benefits fund as established by law, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded

unless it amounts to \$0.005 or more, in which case it shall be increased to \$0.01.

(2) During the continuance of coverage of a worker by an approved private plan of disability benefits under the "Temporary Disability Benefits Law," the employer shall be exempt from the contributions required by subparagraph (1) above with respect to wages paid to such worker.

(3) (A) The rates of contribution as specified in subparagraph (1) above shall be subject to modification as provided herein with respect to employer contributions due on and after July 1, 1951.

(B) A separate disability benefits account shall be maintained for each employer required to contribute to the State disability benefits fund and such account shall be credited with contributions deposited in and credited to such fund with respect to employment occurring on and after January 1, 1949. Each employer's account shall be credited with all contributions paid on or before January 31 of any calendar year on his own behalf and on behalf of individuals in his service with respect to employment occurring in preceding calendar years; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him to the fund either on his own behalf or on behalf of such individuals. Benefits paid to any covered individual in accordance with Article III of the "Temporary Disability Benefits Law" on or before December 31 of any calendar year with respect to disability in such calendar year and in preceding calendar years shall be charged against the account of the employer by whom such individual was employed at the commencement of such disability or by whom he was last employed, if out of employment.

(C) The controller may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(D) Prior to July 1 of each calendar year, the controller shall make a preliminary determination of the rate of contribution for the 12 months commencing on such July 1 for each employer subject to the contribution requirements of this subsection (e).

(1) Such preliminary rate shall be 1/2 of 1% unless on the preceding January 31 of such year such employer shall have been a covered employer

who has paid contributions to the State 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 $1\frac{1}{4}\%$ of his average annual payroll as defined in this chapter (R.S.43:21-1 et seq.);

(ii) $15/100$ of 1% if such excess over \$500.00 equals or exceeds $1\frac{1}{4}\%$ but is less than $1\frac{1}{2}\%$ of his average annual payroll;

(iii) $1/10$ of 1% if such excess over \$500.00 equals or exceeds $1\frac{1}{2}\%$ of his average annual payroll.

(3) If the minimum requirements in (1) above have been fulfilled and the contributions credited exceed the benefits charged but by not more than \$500.00 plus 1% of his average annual payroll, or if the benefits charged exceed the contributions credited but by not more than \$500.00, the preliminary rate shall be $1/4$ of 1%.

(4) If the minimum requirements in (1) above have been fulfilled and the benefits charged exceed the contributions credited by more than \$500.00, such preliminary rate shall be as follows:

(i) $35/100$ of 1% if such excess over \$500.00 is less than $1/4$ of 1% of his average annual payroll;

(ii) $45/100$ of 1% if such excess over \$500.00 equals or exceeds $1/4$ of 1% but is less than $1/2$ of 1% of his average annual payroll;

(iii) $55/100$ of 1% if such excess over \$500.00 equals or exceeds $1/2$ of 1% but is less than $3/4$ of 1% of his average annual payroll;

(iv) $65/100$ of 1% if such excess over \$500.00 equals or exceeds $3/4$ of 1% but is less than 1% of his average annual payroll;

(v) $75/100$ of 1% if such excess over \$500.00 equals or exceeds 1% of his average annual payroll.

(5) Determination of the preliminary rate as specified in (2), (3) and (4) above shall be subject, however, to the condition that it shall in no event be decreased by more than $1/10$ of 1% of wages or increased by more than $2/10$ of 1% of wages from the preliminary rate determined for the preceding year in accordance with (1), (2), (3) or (4), whichever shall have been applicable.

(E)(1) Prior to July 1 of each calendar year the controller shall determine the amount of the State disability benefits fund as of December 31 of the preceding calendar year, increased by the contributions paid thereto during January of the current calendar year with respect to employment occurring in the preceding calendar year. If such amount exceeds the net amount withdrawn from the unemployment trust fund pursuant to section 23 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the

amount at the end of such preceding calendar year of the unemployment disability account as defined in section 22 of said law (C.43:21-46), such excess shall be expressed as a percentage of the wages on which contributions were paid to the State disability benefits fund on or before January 31 with respect to employment in the preceding calendar year.

(2) The controller shall then make a final determination of the rates of contribution for the 12 months commencing July 1 of such year for employers whose preliminary rates are determined as provided in (D) hereof, as follows:

(i) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds $1\frac{1}{4}\%$, the final employer rates shall be the preliminary rates determined as provided in (D) hereof, except that if the employer's preliminary rate is determined as provided in (D)(2) or (D)(3) hereof, the final employer rate shall be the preliminary employer rate decreased by such percentage of excess taken to the nearest $\frac{5}{100}$ of 1%, but in no case shall such final rate be less than $\frac{1}{10}$ of 1%.

(ii) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds $\frac{3}{4}$ of 1% and is less than $1\frac{1}{4}$ of 1%, the final employer rates shall be the preliminary employer rates.

(iii) If the percentage determined in accordance with paragraph (E)(1) of this subsection is less than $\frac{3}{4}$ of 1%, but in excess of $\frac{1}{4}$ of 1%, the final employer rates shall be the preliminary employer rates determined as provided in (D) hereof increased by the difference between $\frac{3}{4}$ of 1% and such percentage taken to the nearest $\frac{5}{100}$ of 1%; provided, however, that no such final rate shall be more than $\frac{1}{4}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, more than $\frac{1}{2}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, nor more than $\frac{3}{4}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof.

(iv) If the amount of the State disability benefits fund determined as provided in paragraph (E)(1) of this subsection is equal to or less than $\frac{1}{4}$ of 1%, then the final rate shall be $\frac{2}{5}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, $\frac{7}{10}$ of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, and 1.1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof. Notwithstanding any other provision of law or any determination made by the controller with respect to any 12-month period commencing on July 1, 1970, the final rates for all employers for the period beginning January 1, 1971, shall be as set forth herein.

2. Section 5 of P.L.1970, c.324 (C.43:21-24.11) is amended to read as follows:

C.43:21-24.11 Definitions.

5. For the purposes of the extended benefit program and as used in this act, unless the context clearly requires otherwise:

a. "Extended benefit period" means a period which

(1) Begins with the third week after a week for which there is a state "on" indicator; and

(2) Ends with either of the following weeks, whichever occurs later:

(a) The third week after the first week for which there is a state "off" indicator; or

(b) The thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this State; and provided further, that no extended benefit period may become effective in this State prior to the effective date of this act.

b. (Deleted by amendment.)

c. (Deleted by amendment.)

d. There is a "state 'on' indicator" for this State for a week if:

(1) The division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of the respective week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the "unemployment compensation law" (R.S.43:21-1 et seq.):

(a) Equalled or exceeded 120% of the average of these rates for the corresponding 13-week period during each of the preceding 2 calendar years, and, for weeks beginning after September 25, 1982, equalled or exceeded 5%; or

(b) With respect to benefits for weeks of unemployment beginning after September 25, 1982, equalled or exceeded 6%; or

(2) With respect to any week of unemployment beginning after December 27, 2003, the average seasonally adjusted rate of total unemployment in the State, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published:

(a) Equals or exceeds 6.5%; and

(b) Equals or exceeds 110% of the average seasonally adjusted rate of total unemployment in the State during either or both of the corresponding three-month periods ending in the two preceding calendar years.

e. There is a "state 'off' indicator" for this State for a week if:

(1) The division determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of the respective week and the immediately preceding 12 weeks, paragraph (1) of subsection d. was not satisfied; and

(2) With respect to any week of unemployment beginning after December 27, 2003, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published, paragraph (2) of subsection d. was not satisfied.

f. "Rate of insured unemployment," for purposes of subsections d. and e. means the percentage derived by dividing

(1) The average weekly number of individuals filing claims for regular benefits in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the United States Secretary of Labor, by

(2) The average monthly covered employment for the specified period.

g. "Regular benefits" means benefits payable to an individual under the "unemployment compensation law" (R.S.43:21-1 et seq.) or under any other State law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. s.8501 et seq.) other than extended benefits.

h. "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. s.8501 et seq.) payable to an individual under the provisions of this act for weeks of unemployment in his eligibility period.

i. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended benefit period, any weeks thereafter which begin in the period.

j. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(1) Has received prior to the week, all of the regular benefits that were available to him under the "unemployment compensation law" (R.S. 43:21-1 et seq.) or any other State law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. s.8501 et seq.) in his current benefit year that includes such week, provided, that for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(2) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week; and

(3) (a) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(b) has not received and is not seeking unemployment benefits under the Unemployment Compensation Law of Canada; but if he is seeking these benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an exhaustee if the other provisions of this definition are met.

k. "State law" means the unemployment insurance law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1986, 26 U.S.C. s.3304.

l. "High unemployment period" means any period beginning after December 27, 2003 during which the average seasonally adjusted rate of total unemployment in the State, as determined by the United States Secretary of Labor for the most recent three-month period for which data for all states are published:

(1) Equals or exceeds 8%; and

(2) Equals or exceeds 110% of the average seasonally adjusted rate of total unemployment in the State during either or both of the corresponding three-month periods ending in the two preceding calendar years.

3. This act shall take effect immediately.

Approved December 21, 2005.

CHAPTER 250

AN ACT concerning the use of certain ammunition by law enforcement officers and amending N.J.S.2C:3-11.

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

1. N.J.S.2C:3-11 is amended to read as follows:

Definitions.

2C:3-11. Definitions. In this chapter, unless a different meaning plainly is required: a. "Unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence, or mental capacity; duress, youth, or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

b. "Deadly force" means force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force unless the firearm is loaded with less-lethal ammunition and fired by a law enforcement officer in the performance of the officer's official duties. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.

c. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging except that, as used in 2C:3-7, the building or structure need not be the actor's own home or place of lodging.

d. "Serious bodily harm" means bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.

e. "Bodily harm" means physical pain, or temporary disfigurement, or impairment of physical condition.

f. "Less-lethal ammunition" means ammunition approved by the Attorney General which is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. The term shall also include ammunition approved by the Attorney General which is designed to gain access to a building or structure and is used for that purpose.

2. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 251

AN ACT concerning insurance coverage for prescribed contraceptives and supplementing Titles 17, 26 and 52 of the Revised Statutes and Title 17B of the New Jersey Statutes.

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

C.17:48-6ee Hospital service corporation, coverage for prescription female contraceptives.

1. A hospital service corporation that provides hospital or medical expense benefits for expenses incurred in the purchase of outpatient prescription drugs under a contract shall provide coverage under every such contract 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, for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a hospital service corporation shall grant, an exclusion under the contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective subscribers and subscribers. The provisions of this section shall not be construed as authorizing a hospital service corporation to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of a subscriber. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the contract.

This section shall apply to those contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7bb Medical service corporation, coverage for prescription female contraceptives.

2. A medical service corporation that provides hospital or medical expense benefits for expenses incurred in the purchase of outpatient prescription drugs under a contract shall provide coverage under every such contract 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, for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a medical service corporation shall grant, an exclusion under the contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective subscribers and subscribers. The provisions of this section shall not be construed as authorizing a medical service corporation to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of a subscriber. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the contract.

This section shall apply to those contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-35.29 Health service corporation, coverage for prescription female contraceptives.

3. A health service corporation that provides hospital or medical expense benefits for expenses incurred in the purchase of outpatient prescription drugs under a contract shall provide coverage under every such contract 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, for expenses incurred in the purchase

of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a health service corporation shall grant, an exclusion under the contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective subscribers and subscribers. The provisions of this section shall not be construed as authorizing a health service corporation to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of a subscriber. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the contract.

This section shall apply to those contracts in which the health service corporation has reserved the right to change the premium.

C.17B:27-46.1ee Group health insurer, coverage for prescription female contraceptives.

4. A group health insurer that provides hospital or medical expense benefits for expenses incurred in the purchase of outpatient prescription drugs under a policy shall provide coverage under every such policy 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, for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and an insurer shall grant, an exclusion under the policy for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective insureds and insureds. The provisions of this section shall not be construed as authorizing an insurer to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of an insured. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the policy.

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.17B:26-2.1y Individual health insurer, coverage for prescription female contraceptives.

5. An individual health insurer that provides hospital or medical expense benefits for expenses incurred in the purchase of outpatient prescription drugs under a policy shall provide coverage under every such policy 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, for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and an insurer shall grant, an exclusion under the policy for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective insureds and insureds. The provisions of this section shall not be construed as authorizing an insurer to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of an insured. For the purposes of this

section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the policy.

This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.26:2J-4.30 Health maintenance organization, coverage for prescription female contraceptives.

6. A certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this act for a health maintenance organization that provides health care services for outpatient prescription drugs under a contract, unless the health maintenance organization also provides health care services for prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a health maintenance organization shall grant, an exclusion under the contract for the health care services required by this section if the required health care services conflict with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective enrollees and enrollees. The provisions of this section shall not be construed as authorizing a health maintenance organization to exclude health care services for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of an enrollee. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The health care services shall be provided to the same extent as for any other outpatient prescription drug under the contract.

The provisions of this section shall apply to those contracts for health care services by health maintenance organizations under which the right to change the schedule of charges for enrollee coverage is reserved.

C.17B:27A-7.12 Individual health benefits plan, coverage for prescription female contraceptives.

7. An individual health benefits plan required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) that provides benefits for expenses incurred in the purchase of outpatient prescription drugs shall provide coverage for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a carrier shall grant, an exclusion under the health benefits plan for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective covered persons and covered persons. The provisions of this section shall not be construed as authorizing a carrier to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of a covered person. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the health benefits plan.

This section shall apply to all individual health benefits plans in which the carrier has reserved the right to change the premium.

C.17B:27A-19.15 Small employer health benefits plan, coverage for prescription female contraceptives.

8. A small employer health benefits plan required pursuant to section 3 of P.L.1992, c.162 (C.17B:27A-19) that provides benefits for expenses incurred in the purchase of outpatient prescription drugs shall provide coverage for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female,

which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a carrier shall grant, an exclusion under the health benefits plan for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains such an exclusion shall provide written notice thereof to prospective covered persons and covered persons. The provisions of this section shall not be construed as authorizing a carrier to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of a covered person. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the health benefits plan.

This section shall apply to all small employer health benefits plans in which the carrier has reserved the right to change the premium.

C.17:48F-13.2 Prepaid prescription service organization, coverage for prescription female contraceptives.

9. A prepaid prescription service organization that provides benefits for expenses incurred in the purchase of outpatient prescription drugs under a contract shall provide coverage under every such contract 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, for expenses incurred in the purchase of prescription female contraceptives. For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

A religious employer may request, and a prepaid prescription service organization shall grant, an exclusion under the contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that

obtains such an exclusion shall provide written notice thereof to prospective enrollees and enrollees. The provisions of this section shall not be construed as authorizing a prepaid prescription service organization to exclude coverage for prescription drugs that are prescribed for reasons other than contraceptive purposes or for prescription female contraceptives that are necessary to preserve the life or health of an enrollee. For the purposes of this section, "religious employer" means an employer that is a church, convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches as defined in 26 U.S.C.s.3121(w)(3)(A), and that qualifies as a tax-exempt organization under 26 U.S.C.s.501(c)(3).

The benefits shall be provided to the same extent as for any other outpatient prescription drug under the contract.

This section shall apply to those prepaid prescription contracts in which the prepaid prescription service organization has reserved the right to change the premium.

C.52:14-17.29j State Health Benefits Program, coverage for prescription female contraceptives.

10. The State Health Benefits Commission shall ensure that every contract purchased by the commission on or after the effective date of this act that provides benefits for expenses incurred in the purchase of outpatient prescription drugs shall provide benefits for expenses incurred in the purchase of prescription female contraceptives.

For the purposes of this section, "prescription female contraceptives" means any drug or device used for contraception by a female, which is approved by the federal Food and Drug Administration for that purpose, that can only be purchased in this State with a prescription written by a health care professional licensed or authorized to write prescriptions, and includes, but is not limited to, birth control pills and diaphragms.

11. This act shall take effect on the 180th day after enactment and shall apply to policies or contracts issued or renewed on or after the effective date.

Approved January 4, 2006.

CHAPTER 252

AN ACT concerning federal Medicaid waivers for persons with developmental disabilities and supplementing Title 30 of the Revised Statutes.

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

C.30:6D-42.1 Federal Medicaid waivers for persons with developmental disabilities; application, determination.

1. a. The Commissioner of Human Services, in conjunction with the Director of the Division of Developmental Disabilities, shall apply for such Home and Community-Based Services waivers authorized by section 1915(c) of the Social Security Act, 42 U.S.C.1396n(c), as determined appropriate by the commissioner to meet the needs of clients of the division.

b. The commissioner shall report to the chairmen of the Senate Health, Human Services and Senior Citizens Committee and the Assembly Health and Human Services Committee three months after the effective date of this act, and then at three-month intervals until such time as the waiver is approved by the federal government, on the status of the waiver application and the actions taken to date to obtain the waiver.

c. The department shall post on its official Internet web site the final determination by the Centers for Medicare and Medicaid Services of the waiver application, and if the waiver is approved, the number of waiver slots available under the waiver, the type of services that will be covered under the waiver, and such other information that the commissioner deems appropriate.

C.30:6D-42.2 Report issued upon approval of waiver; contents, public hearing.

2. a. Upon approval of the waiver by the federal government, the Commissioner of Human Services, in conjunction with the Director of the Division of Developmental Disabilities, shall issue a report to the chairmen of the Senate Health, Human Services and Senior Citizens Committee and the Assembly Health and Human Services Committee one year after the approval that contains, but is not limited to, the following information:

(1) (a) a list of all waiver-eligible services that were provided by the division in the year prior to the date of the waiver application, indicating if any of the services were covered by an existing waiver and, for each service, the average daily cost of the service per consumer, the percentage of the cost that included non-Medicaid reimbursable costs and the number of consumers who received the service and the number who received the service under an existing waiver; (b) the number of individuals who received State-funded-only services; (c) a discussion of any impediments to expanding existing waiver services including, but not limited to, funding and availability of service providers; and (d) the total administrative cost for the division to implement each waiver, and the percentage of that cost for which federal matching funds are available; and

(2) for each service under the new waiver, the average daily cost of the service per consumer, the percentage of the cost that includes non-Medicaid reimbursable costs, the number of consumers receiving the service and the number who receive the service under the waiver.

b. Each subsequent year, the Commissioner of Human Services, in conjunction with the Director of the Division of Developmental Disabilities, shall issue a report which contains, but is not limited to, updates of the information specified in subsection a. of this section. In addition, the report shall specify the amount of funds that were allocated for each service under the waiver and the proportion that funding represents to the total amount spent for all community-based services.

c. Within 60 days after issuance of each report required by this section, the department shall hold a public hearing, in different regions of the State each year, to encourage community discussion of the division's waivers and the provision of community-based services.

d. The department shall post on its official Internet web site the reports required pursuant to this section.

3. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 253

AN ACT requiring certain notice to members of the non-academic support staff at county colleges and supplementing chapter 64A 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:64A-13.2 County college board of trustees, notices of certain layoffs; required.

1. The board of trustees of a county college shall provide to a member of the non-academic support staff who has been employed for at least one year a notice not less than 30 days prior to the date of the layoff of the member which is necessary for reasons of financial exigency or enrollment decline. If the member has been employed for less than one year, the board shall provide a notice of not less than 14 days prior to the date of the layoff of the member which is necessary for reasons of financial exigency or enrollment decline. The provisions of this section shall not apply to a negotiated agreement in which the deadlines for such notices exceed the applicable 30 days or 14 days.

2. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 254

AN ACT concerning gift certificates and cards and amending P.L.2002, c.14.

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

1. Section 1 of P.L.2002, c.14 (C.56:8-110) is amended to read as follows:

C.56:8-110 Gift certificate, card, validity, terms, required; definitions.

1. a. A gift certificate or gift card sold after the effective date of this amendatory act shall retain full unused value until presented in exchange for merchandise, or shall have any and all conditions and limitations, as permitted in paragraphs (1) through (3) of this subsection, disclosed to the purchaser of the gift certificate or gift card at the time of purchase as provided in subsection b. of this section.

(1) In no case shall a gift certificate or gift card expire within the 24 months immediately following the date of sale.

(2) No dormancy fee shall be charged against a gift certificate or a gift card within the 24 months immediately following the date of sale, nor shall one be charged within the 24 months immediately following the most recent activity or transaction in which the certificate or card was used.

(3) A dormancy fee charged against a gift certificate or gift card as permitted by this subsection shall not exceed \$2.00 per month.

b. The terms of any expiration date or dormancy fee applicable to a gift certificate or gift card, as permitted by subsection a. of this section, shall be disclosed to a consumer by:

(1) written notice of the expiration date or dormancy fee or both printed in at least 10 point font, on the gift certificate or gift card, or the sales receipt for the certificate or card, or the package for the certificate or card; and

(2) written notice, in at least 10 point font, on the gift certificate or gift card, or the sales receipt for the certificate or card, or the package for the certificate or card, of a telephone number which the consumer may call, for information concerning any expiration date or dormancy fee.

c. As used in this section:

"Dormancy fee" means a charge imposed against the unused value of a gift card or gift certificate due to inactivity;

"Gift card" means a tangible device, whereon is embedded or encoded in an electronic or other format a value issued in exchange for payment, which promises to provide to the bearer merchandise of equal value to the remaining balance of the device. "Gift card" does not include a prepaid telecommunications or technology card, prepaid bank card or rewards card;

"Gift certificate" means a written promise given in exchange for payment to provide merchandise in a specified amount or of equal value to the bearer of the certificate. "Gift certificate" does not include a prepaid telecommunications or technology card, prepaid bank card or rewards card;

"Merchandise" means and includes any objects, wares, goods, commodities, services or anything offered, directly or indirectly, to the public for sale;

"Prepaid bank card" means a general use, prepaid card or other electronic payment device that is issued by a bank or other financial institution, or a licensed money transmitter, in a pre-denominated amount usable at multiple, unaffiliated merchants or at automated teller machines, or both, but shall not include a card issued by a retail merchant;

"Prepaid telecommunications or technology card" includes, but is not limited to: a prepaid telephone calling card; prepaid technical support card; or prepaid Internet disk distributed to or purchased by a consumer; and

"Rewards card" means a card or certificate distributed by the issuer to a consumer pursuant to an awards, loyalty, rewards or promotional program, without any money or other consideration or thing of value by the consumer in exchange for the card or certificate.

2. This act shall take effect on the 90th day after the date of enactment, except that no action for a violation of P.L.1960, c.39 (C.56:8-1 et seq.) based upon the requirement as to font size of the notice required by section 1 of P.L.2002, c.14 (C.56:8-110) shall ensue for a gift certificate or gift card issued on or before the 365th day after the date of enactment.

Approved January 4, 2006.

CHAPTER 255

AN ACT concerning certain motor vehicle operators 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.39:3-10.33 Medical review, retesting of certain motor vehicle operators; notice, confirmation to family, certain.

1. a. Whenever a person contacts the New Jersey Motor Vehicle Commission requesting that a family member be given a medical review or be retested to determine whether that family member is capable of safely operating a motor vehicle in this State, upon a request by the person who contacted the commission, the commission shall send confirmation that a notice has been sent regarding a medical review or retesting of the family member to the person who contacted the commission.

b. Whenever the commission is required to send a subsequent notice regarding a medical review or retesting in order to determine whether such a family member is capable of safely operating a motor vehicle in this State because there was no response to the first such notice, upon a request by the person who contacted the commission, the commission shall send a confirmation of that subsequent notice to the person who originally contacted the commission.

2. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 256

AN ACT concerning the Supplemental Annuity Collective Trust of New Jersey and amending P.L.1963, c.123 and P.L.1965, c.90.

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

1. Section 7 of P.L.1963, c.123 (C.52:18A-113) is amended to read as follows:

C.52:18A-113 Contributions.

7. Contributions by a participant shall be made through payroll deductions of integral dollar amounts not in excess of the maximum contribution amount permitted under the federal Internal Revenue Code of 1986, as amended. Participants who are making contributions through payroll deductions may also make lump-sum contributions by direct payments in integral dollar amounts of not less than \$50.00, provided, however, that the total contributions for any one year may not exceed the maximum contribution amount permitted by federal law.

Contributions by a participant shall cease upon retirement, death, or upon termination of membership in a State administered retirement system.

2. Section 4 of P.L.1965, c.90 (C.52:18A-113.1) is amended to read as follows:

C.52:18A-113.1 Purchase of annuity for employee by employer.

4. Any employee who is a member of a State administered retirement system may enter into an agreement with the employee's employer whereby the employee agrees to a reduction in salary in return for the employer's agreement to use the amount of such reduction in salary to purchase on behalf of such employee from the Supplemental Annuity Collective Trust of New Jersey an annuity, provided that any such annuity qualifies under section 403(b) of the Internal Revenue Code of 1986, as amended. The amount of the reduction in salary under any agreement entered into between an employee and the employee's employer pursuant to this section shall not exceed the maximum contribution amount permitted under section 403(b) of the federal Internal Revenue Code, 26 U.S.C. s.403(b). Any such agreement shall remain in effect for at least one year. If an agreement is entered into between an employee and the employee's employer pursuant to this section, the employer shall pay the premiums for the annuity purchased directly to the Supplemental Annuity Collective Trust in accordance with rules and regulations promulgated by the council.

Amounts payable pursuant to this section by an employer on behalf of an employee for a pay period shall be transmitted and credited not later than the fifth business day after the date on which the employee is paid for that pay period.

3. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 257

AN ACT concerning licensure disciplinary actions for certain physicians and supplementing P.L.1995, c.69 (C.45:9-19.16).

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

C.45:9-19.16a Suspension of physician's license, certain circumstances, written notification, hearing.

1. Notwithstanding the provisions of section 8 of P.L.1978, c.73 (C.45:1-21) or any other law to the contrary, in any case in which it receives

documentation demonstrating that a physician's authority to engage in the practice of medicine and surgery is revoked or is currently subject to a final or interim order of active suspension or other bar to clinical practice by any other state, agency or authority, the State Board of Medical Examiners shall immediately suspend the physician's license when the action of the other state, agency or authority is grounded on facts that demonstrate that continued practice would endanger or pose a risk to the public health or safety pending a determination of findings by the board. Otherwise, when such an action of another state, agency or authority is grounded on facts which would provide basis for disciplinary sanction in this State for reasons consistent with section 8 of P.L.1978, c.73 (C.45:1-21) involving gross or repeated negligence, fraud or other professional misconduct adversely affecting the public health, safety or welfare, the board may immediately suspend the physician's license, pending a determination of findings by the board. The documentation from the other state, agency or authority shall be a part of the record and establish conclusively the facts upon which the board rests in any disciplinary proceeding or action pursuant to this section. The State Board of Medical Examiners shall provide written notification to the physician whose license is suspended pursuant to the requirements of this section. The board shall provide the physician with an opportunity to submit relevant evidence in mitigation or, for good cause shown, an opportunity for oral argument only as to the discipline imposed by this State. That relevant evidence in mitigation or oral argument may be submitted to or conducted before the board or a committee to which it has delegated the authority to hear argument and make a recommendation to the board. A final determination as to discipline shall be made within 60 days of the date of mailing or personal service of the notice.

2. This act shall take effect on the 30th day following enactment.

Approved January 4, 2006.

CHAPTER 258

AN ACT concerning rights of handicapped, blind or deaf persons, and amending P.L.1977, c.456 (C.10:5-29.5).

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

1. Section 7 of P.L.1977, c.456 (C.10:5-29.5) is amended to read as follows:

C.10:5-29.5 Violations, misrepresentation, interference with disabled persons, guide or service dogs; fine.

7. Any person who violates the provisions of P.L.1977, c.456 in a manner not otherwise prohibited by P.L.1945, c.169 (C.10:5-1 et seq.), or who fits a dog with a harness of the type commonly used by blind persons in order to represent that such dog is a guide dog when training of the type that guide dogs normally receive has not in fact, been provided, or who otherwise intentionally interferes with the rights of a person with a disability, who is accompanied by a guide or service dog, or the function or the ability to function of a guide or service dog, shall be fined not less than \$100 and not more than \$500.

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

Approved January 4, 2006.

CHAPTER 259

AN ACT concerning podiatrists and revising various parts of the statutory law.

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

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

Degree, abbreviation.

45:5-1. The degree of "D.P.M." is the abbreviation for "doctor of podiatric medicine" when used in this chapter.

2. R.S.45:5-2 is amended to read as follows:

Board of medical examiners to examine applicants for license to practice podiatric medicine; records; official register.

45:5-2. The State Board of Medical Examiners, hereinafter in this chapter designated as the "board," shall, in addition to the examinations provided for in chapter 9 of Title 45 of the Revised Statutes, hold meetings for the examination of all applicants under this chapter for a license to practice podiatric medicine in this State, which meetings shall be held at the

capitol building on the third Tuesday of June and October of each year, and at such other times and places as the board may deem expedient. The board shall keep an official record of all such meetings, and an official register of all applicants for a license to practice podiatric medicine in this State. The register shall show the name, age, nativity, last and intended place of residence of each candidate, the time he has spent in obtaining a competent academic education, and an education in podiatric medicine in a school teaching podiatric medicine, and the names and location of all podiatric medicine schools or examining boards which have granted the applicant any degree or certificate of attendance upon lectures upon podiatric medicine, or State examinations. The register shall also show whether said applicant was examined, licensed or rejected under this chapter, and it shall be prima facie evidence of all matters therein contained.

3. R.S.45:5-3 is amended to read as follows:

Applicants for examination; qualifications in general.

45:5-3. All persons desiring to commence the practice of podiatric medicine in this State shall apply to the board for a license so to do. Every such applicant for examination shall present to the secretary of said board, at least ten days before the commencement of the examination at which he is to be examined, a written application on a form provided by the board, together with satisfactory proof that he is a citizen of the United States more than twenty-one years of age, is of good moral character, has obtained a certificate from the Commissioner of Education of this State, showing that before entering a school or college of podiatric medicine he had obtained an academic education consisting of a four years' course of study in an approved public or private high school or the equivalent thereof, and has received a diploma conferring the degree of doctor of podiatric medicine from some legally incorporated school or college of podiatric medicine of the United States requiring personal attendance, in good standing in the opinion of the board at the time of issuance of such diploma, and that prior to the receipt of such diploma from any such school or college of podiatric medicine of the United States, he had studied podiatric medicine not less than two full school years, including two satisfactory courses of lectures of at least eight months each, in two different calendar years in some legally incorporated American school or college of podiatric medicine requiring personal attendance, in good standing in the opinion of said board, and wherein the curriculum of study shall include instruction in the following branches:

Practical podiatric medicine, podiatric orthopaedics, dermatology, diagnosis, anatomy, physiology, therapeutics in all its branches, pathology,

histology, bacteriology, pharmacy and materia medica, chemistry, surgery and bandaging pertaining to the ailments of the feet or ankles.

4. R.S.45:5-4 is amended to read as follows:

Qualifications after January 1, 1934.

45:5-4. No person who shall have graduated after January first, one thousand nine hundred and thirty-four, shall be admitted to examination for license to practice podiatric medicine unless, in addition to the requirements of R.S.45:5-3 he shall prove further to the board that after the receipt of the diploma conferring the degree of doctor of podiatric medicine he had served an internship in a duly licensed clinic, connected or affiliated with a school or college of podiatric medicine and approved by the board, for one full school year of not less than eight months, consisting of a minimum number of four hundred and eighty hours devoted to the practice of podiatric medicine in all its branches.

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

Qualifications after January 1, 1938.

45:5-5. No person who shall have graduated after January first, one thousand nine hundred and thirty-eight, shall be admitted to examination for license to practice podiatric medicine unless in addition to the above requirements, as set forth in R.S.45:5-3, he shall prove further to the said board that prior to the receipt of diploma conferring the degree of doctor of podiatric medicine, he had studied podiatric medicine not less than three full school years, including three satisfactory courses of at least eight months each, in three different calendar years in some legally incorporated American school or college of podiatric medicine requiring personal attendance, in good standing in the opinion of said board, and wherein the curriculum of study shall include instructions as provided in R.S.45:5-3, and that after the receipt of such diploma, as aforesaid, he had served an internship in a duly licensed clinic, connected or affiliated with a school or college of podiatric medicine and approved by said board, for one full school year of not less than eight months, consisting of a minimum number of four hundred and eighty hours devoted to the practice of podiatric medicine in all its branches.

6. Section 5 of P.L. 1954, c.261 (C.45:5-5.1) is amended to read as follows:

C.45:5-5.1 Educational requirements; internship.

5. No person who shall have graduated after January 1, 1955, shall be admitted to examination for a license to practice podiatric medicine unless

in addition to the requirements set forth in R.S.45:5-3, he shall prove further to the said board (1) that prior to the receipt of a diploma conferring the degree of doctor of podiatric medicine, he had completed a satisfactory course of one full school year in a legally incorporated and recognized college or university, approved by the Commissioner of Education of this State; (2) that he had then studied podiatric medicine for not less than 4 full school years, including the satisfactory completion of 4 courses of at least 8 months each, in 4 different calendar years in a legally incorporated American school or college of podiatric medicine, requiring personal attendance, in good standing in the opinion of said board, wherein the curriculum of study included instructions as provided in R.S.45:5-3; and that (3) after the receipt of such diploma, as aforesaid, he had served a rotating internship in a duly licensed clinic, hospital or institution approved by the board, for one full year devoted to the practice of podiatric medicine in all its branches.

7. Section 10 of P.L.1965, c.141 (C.45:5-5.2) is amended to read as follows:

C.45:5-5.2 Applications by graduates of college of podiatric medicine after May 1, 1964; contents of application.

10. Any person desiring to commence the practice of podiatric medicine in this State who has graduated from a college of podiatric medicine approved by the board after May 1, 1964 shall apply to the board for a license so to do. Every such applicant for examination shall present to the secretary of said board, at least 20 days before the commencement of the examination at which he is to be examined, a written application on a form provided by the board, together with satisfactory proof that he is a citizen of the United States, more than 21 years of age, is of good moral character, and

(1) He has obtained an academic education consisting of a 4-year course of study in an approved public or private high school or the equivalent thereof, and

(2) He has completed a satisfactory course of 2 full school years in a legally incorporated and recognized college or university, approved by the board, and

(3) He has studied podiatric medicine for not less than 4 full school years, including the satisfactory completion of 4 courses of at least 8 months each, in 4 different calendar years, or has graduated from an equivalent accelerated course, in a legally incorporated American school or college of podiatric medicine, requiring personal attendance, in good standing in the opinion of said board, wherein the curriculum of study included instruction in the following branches:

Practical podiatric medicine, podiatric orthopedics, dermatology, diagnosis, anatomy, physiology, therapeutics in all its branches, pathology, histology, bacteriology, pharmacy and materia medica, chemistry, surgery and bandaging pertaining to the ailments of the feet or ankles, and

(4) He has received a doctorate degree in podiatric medicine, and

(5) Thereafter he has served a residency in a duly licensed clinic, hospital, or institution, approved by the board, for 1 full year devoted to the practice of podiatric medicine in all its branches.

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

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

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

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

"Podiatric medicine" or "practice of podiatric medicine" is defined to be the diagnosis or treatment of or the holding out of a right or ability to diagnose or treat any ailment of the human foot or ankle, including local manifestations of systemic diseases as they appear on the lower leg, foot or ankle but not treatment of systemic diseases of any other part of the body, or the holding out of a right or ability to treat the same by any one or more of the following means: local medical, mechanical, surgical, manipulative and physio-therapeutic, including the application of any of the aforementioned means to the lower leg and ankle for the treatment of a foot or ankle ailment. Such means shall not be construed to include the amputation of the leg or foot. The term "local medical" hereinbefore mentioned shall be construed to mean the prescription or use of a therapeutic agent or remedy where the action or reaction is intended for a localized area or part. A podiatrist is a physician within the scope of this chapter, and may be referred to as a podiatric physician.

Every person practicing podiatric medicine under this act shall at all times conspicuously display in his place of practice his license and yearly

registration to practice. It shall be unlawful to practice podiatric medicine in this State without so displaying such license and registration. Any applicant for a license to practice podiatric medicine upon proving that he has been examined and licensed by the examining and licensing board of another state, territory of the United States, or the District of Columbia, may in the discretion of the board be granted a license to practice podiatric medicine without further examination upon payment to the board of a license fee of \$100.00; provided, such applicant shall furnish proof that he can fulfill the requirements demanded in the other sections of this chapter relating to applicants for admission by examinations; provided further, that the laws of such state, territory or the District of Columbia accord equal reciprocal rights to a licensed podiatrist of this State, who desires to practice his profession in such state, territory or the District of Columbia; provided further, that said applicant has been in lawful and ethical practice of podiatric medicine in the state, territory or District of Columbia from which he applies for five full consecutive years next prior to filing his application; and provided, further, that said applicant shall, within six months after the issuance of his license hereunder, remove to this State, establish his permanent and only legal residence and cease to operate his practice in the state from which he applies and not use such license for part-time practice in this State. An affidavit setting forth his intention to comply with the requirements of this proviso must be filed with the application for license. In any such application for a license without examination, all reciprocal questions of academic requirements of other states, territories or the District of Columbia shall be determined by the board. The board shall consider each application for such license on its individual merits and may, in its discretion and without establishing a precedent, waive the requirements for residency in lieu of 10 or more years of active and continuous ethical practice outside of this State.

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

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

is given under this provision, an additional fee of \$25.00 may be required for examiner compensation.

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

9. R.S.45:5-9 is amended to read as follows:

Biennial certificate of registration for licensed podiatrist; reinstatement procedure.

45:5-9. a. Every licensed podiatrist shall procure every two years from the executive director of the board, on or before November 1, a biennial certificate of registration, which shall be issued by the executive director upon payment of a fee to be determined by the board. The executive director shall mail to each licensed podiatrist on or before October 1 every two years a printed blank form to be properly filled in and returned to the executive director by such licensed person on or before the succeeding November 1, together with such fee. Upon the receipt of said form properly filled in, and such fee, the biennial certificate of registration shall be issued and transmitted. Every licensed podiatrist who continues the practice of podiatric medicine after having failed to secure a biennial certificate of registration at the time and in the manner required by this section shall be subject to a penalty of \$25.00 for each failure. Immediately after November 1, the executive director shall send by registered mail to every podiatrist who has failed to obtain a biennial registration certificate for the ensuing two-year period a notice that their license will be automatically suspended within 30 days unless the penalty and registration fee is paid immediately. Upon failure to register after such notice, the license of such person shall be automatically suspended and shall not be reinstated except upon full payment of penalty and registration fee. However, such suspension shall not apply to anyone who has ceased to practice in this State. Any person whose license shall have been automatically suspended under this section shall during such period of suspension be regarded as an unlicensed person, and if he continues to engage in the practice of podiatric medicine during such period, he shall be liable to the penalties prescribed by R.S.45:5-11.

b. If an applicant for reinstatement of licensure has not engaged in practice in any jurisdiction for a period of more than five years, or the board's review of the reinstatement application establishes a basis for concluding that there may be clinical deficiencies in need of remediation, before reinstatement the board may require the applicant to submit to, and successfully pass, an examination or an assessment of skills. If that examination or assessment identifies clinical deficiencies or educational needs, the board may require the licensee, as a condition of reinstatement of licensure, to take and success-

fully complete any educational training, or to submit to any supervision, monitoring or limitations, as the board determines are necessary to assure that the licensee practices with reasonable skill and safety.

10. R.S.45:5-10 is amended to read as follows:

Construction of chapter; certain acts not prohibited; fees for permitting out-of-State podiatrist to take charge of resident's practice.

45:5-10. Nothing in this chapter shall be construed to prohibit a duly licensed physician from treating diseases or ailments of the feet or ankles, or a lawfully qualified podiatrist residing in another State from meeting registered podiatrists of this State in consultation, or any legally qualified podiatrist of another State from taking charge of the practice of a legally qualified podiatrist of this State temporarily on written permission of the board during the latter's absence therefrom and upon the latter's written request to the board for permission so to do. Such permission may be granted for a period of not more than 3 months upon payment of a fee of \$10.00. The board, in its discretion and upon payment of an additional fee of \$10.00, may extend such permission for a further period but not to exceed 6 months. Nothing in this act shall prohibit the fitting, recommending or sale of corrective shoes, arch supports or other mechanical appliances by retail dealers or manufacturers, provided, however, that they shall not be made or fabricated from plaster casts or models or by any other means for specific individual persons except upon the prescription of a podiatrist or physician.

11. R.S.45:5-11 is amended to read as follows:

Unlawful acts; penalty; display of name; recovery of penalties.

45:5-11. (a) Whoever practices podiatric medicine in this State without first having obtained and filed the license herein provided for, or contrary to any of the provisions of this chapter, or whoever practices podiatric medicine under a false or assumed name, or falsely impersonates another practitioner of a like or different name, or buys, sells, or fraudulently obtains any diploma as a podiatrist, or any podiatric medicine license, record or registration, or aids or assists any person not regularly licensed and registered to practice podiatric medicine in this State, to practice podiatric medicine therein, or whoever violates any of the provisions of this chapter, shall be liable to a penalty of \$200.00.

Every person practicing podiatric medicine and every person practicing podiatric medicine as an employee of another shall cause his name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where such practice shall be conducted, and any person who shall

neglect to cause his name to be displayed as herein required shall be liable to a penalty of \$100.00.

Using the title doctor or its abbreviation in the practice of podiatric medicine must be qualified by the word or words "podiatrist" or "surgeon podiatrist." Any person who violates this provision shall be liable to a penalty of \$100.00.

It shall be unlawful for any person not licensed under this act to use terms, titles, words or letters which would designate or imply that he or she is qualified to treat foot or ankle ailments, or to hold himself or herself out as being able to diagnose, treat, operate, or prescribe for any ailment of the human foot or ankle, or offer or attempt to diagnose, treat, operate or prescribe for any ailment of the human foot or ankle.

(b) The Superior Court and municipal courts, within their respective territorial jurisdictions, shall have jurisdiction to hear and determine actions for penalties under this chapter. The penalties provided for by this section shall be sued for and recovered by and in the name of the State Board of Medical Examiners of New Jersey, as plaintiff. Penalties imposed because of the violation of any provision of this chapter shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall issue at the suit of the board, as plaintiff, and shall be either in the nature of a summons or warrant.

12. Section 5 of P.L.1943, c.95 (C.45:5-17) is amended to read as follows:

C.45:5-17 Restraining unlawful practice; inapplicable to spiritual or religious healers.

5. The Superior Court may in an action at the suit of the Attorney General or of the said board prevent and restrain the practice of podiatric medicine in this State by any person who has not first obtained and filed the license herein provided for, or the violation by any person of the provisions of this act; or of the practice of podiatric medicine by any person under a false or assumed name; or the false presentation of another practitioner of a like or different name; or for practicing podiatric medicine under any name, title or heading other than that under which he or she has a license to practice podiatric medicine. This section shall not apply nor shall it in any manner be construed to apply to persons practicing healing by spiritual or religious means if no material medicine is prescribed or used and no manipulation or material means are used.

13. Section 1 of P.L.1966, c.89 (C.45:5-20) is amended to read as follows:

C.45:5-20 Services considered as medical or surgical under Workers' Compensation Act.

1. The services of a podiatrist which he is authorized by law to perform shall be considered as medical or surgical services under the Workers' Compensation Act, or any standard health and accident, disability, sickness or other insurance policy, or coverage under labor-management trustee plan, union welfare plan, employee organization plan, employee benefit plan, or any private insurance or welfare plan, for which he shall be entitled to compensation under said act, or under any such policy or plan if such policy or plan provides compensation for medical or surgical services and does not exclude services which, under the law, such podiatrist is authorized to perform.

14. Section 9 of P.L.1989, c.300 (C.45:9-19.9) is amended to read as follows:

C.45:9-19.9 Notice received by review panel; actions, recommendations.

9. a. The review panel shall receive:

(1) Notice from a health care entity, provided through the Division of Consumer Affairs in the Department of Law and Public Safety, pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b);

(2) Notice from an insurer or insurance association or a practitioner, pursuant to section 2 of P.L.1983, c.247 (C.17:30D-17), regarding a medical malpractice claim settlement, judgment or arbitration award or a termination or denial of, or surcharge on, the medical malpractice liability insurance coverage of a practitioner; and

b. The review panel may receive referrals from the board which may include complaints alleging professional misconduct, incompetence, negligence or impairment of a practitioner from other health care providers and consumers of health care.

c. Upon receipt of a notice or complaint pursuant to this section, the review panel shall promptly investigate the information received and obtain any additional information that may be necessary in order to make a recommendation to the board. The review panel may seek the assistance of a consultant or other knowledgeable person, as necessary, in making its recommendation. The review panel may request the board or the Attorney General to exercise investigative powers pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) in the conduct of its investigation.

(1) If the review panel has reasonable cause to believe that a practitioner represents an imminent danger to his patients, the review panel shall immediately notify the State Board of Medical Examiners and the Attorney General and recommend the initiation of an application before the board to tempo-

rarily suspend or otherwise limit the practitioner's license pending further proceedings by the review panel or the board.

If the board temporarily suspends or otherwise limits the license, the board shall notify each health care entity with which the practitioner is affiliated and every practitioner in the State with which the practitioner is directly associated in his private practice.

(2) A practitioner who is the subject of an investigation shall be promptly notified of the investigation, pursuant to procedures adopted by regulation of the board that give consideration to the health, safety and welfare of the practitioner's patients and to the necessity for a confidential or covert investigation by the review panel. At the panel's request or upon a good cause showing by the practitioner an informal hearing shall be scheduled before the review panel or a subcommittee of at least three review panel members, in accordance with regulations adopted by the board. The hearing shall be transcribed and the practitioner shall be entitled to a copy of the transcript, at his own expense. A practitioner who presents information to the review panel is entitled to be represented by counsel.

(3) Notwithstanding any provision of this section to the contrary, in any case in which the board determines to conduct an investigation of a practitioner who it has reasonable cause to believe represents an imminent danger to his patients, the board may direct the review panel to provide the board with its files pertaining to that practitioner and may direct the review panel to promptly terminate its investigation of that practitioner without making a recommendation pursuant to subsection d. of this section.

Upon request of the review panel, the State Board of Medical Examiners shall provide the review panel with any information contained in the board's files concerning a practitioner.

d. Upon completion of its review, the review panel shall prepare a report recommending one of the following dispositions:

(1) Recommend to the State Board of Medical Examiners that the matter be referred to the Attorney General for the initiation of disciplinary action against the practitioner who is the subject of the notice or complaint, pursuant to section 8 or 9 of P.L.1978, c.73 (C.45:1-21 or 45:1-22);

(2) Defer making a recommendation to the board pending the outcome of litigation or a health care entity disciplinary proceeding, if there is no evidence that the practitioner's professional conduct may jeopardize or improperly risk the health, safety or life of a patient;

(3) Refer the practitioner to the appropriate licensed health care practitioner treatment program recognized by the State Board of Medical Examiners and promptly notify the medical director of the board of the referral;

(4) Refer the practitioner to the appropriate focused education program recognized by the State Board of Medical Examiners and promptly notify the educational director of the board of the referral; or

(5) Find that no further action is warranted at this time.

e. A member of the State Board of Medical Examiners shall not participate by voting or any other action in any matter before the board on which the board member has participated previously as a review panel member.

f. The State Board of Medical Examiners may affirm, reject or modify any disposition of the review panel. After its consideration of the panel recommendation the board shall notify the practitioner who has been the subject of a notice or complaint of the review panel's recommendation and the board's determination.

g. Nothing in this section shall be construed to prevent or limit the State Board of Medical Examiners, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the Attorney General from taking any other action permitted by law against a practitioner who is the subject of an investigation by the review panel.

h. For the purposes of this section, "practitioner" means a person licensed to practice: medicine and surgery under chapter 9 of Title 45 of the Revised Statutes or a medical resident or intern; or podiatric medicine under chapter 5 of Title 45 of the Revised Statutes.

i. As used in this section, "focused education program" means an individualized and systematic process to assess the educational needs of a licensee based on scientific analysis, technical skill and interpersonal evaluation as they relate to the licensee's professional practice, and the institution of remedial education and any supervision, monitoring or limitations of the licensee.

15. Section 12 of P.L.1989, c.300 (C.45:9-19.12) is amended to read as follows:

C.45:9-19.12 Issuance of permits, registration to practitioners in training.

12. The State Board of Medical Examiners shall, by regulation, provide for the issuance of permits to, or registration of, persons engaging in the practice of medicine or surgery or podiatric medicine while in training, and establish the scope of permissible practice by these persons within the context of an accredited graduate medical education program conducted at a hospital licensed by the Department of Health and Senior Services. A permit holder shall be permitted to engage in practice outside the context of a graduate medical education program for additional remuneration only if that practice is:

- a. Approved by the director of the graduate medical education program in which the permit holder is participating; and
- b. With respect to any practice at or through a health care facility licensed by the Department of Health and Senior Services, supervised by a plenary licensee who shall either remain on the premises of the health care facility or be available through electronic communications; or
- c. With respect to any practice outside of a health care facility licensed by the Department of Health and Senior Services, supervised by a plenary licensee who shall remain on the premises.

16. R.S.45:9-21 is amended to read as follows:

Certain persons and practices excepted from operation of chapter.

45:9-21. The prohibitory provisions of this chapter shall not apply to the following:

- a. A commissioned surgeon or physician of the regular United States Army, Navy, or Marine hospital service while so commissioned and actively engaged in the performance of his official duties. This exemption shall not apply to reserve officers of the United States Army, Navy or Marine Corps, or to any officer of the National Guard of any state or of the United States;
- b. A lawfully qualified physician or surgeon of another state taking charge temporarily, on written permission of the board, of the practice of a lawfully qualified physician or surgeon of this State during his absence from the State, upon written request to the board for permission so to do. Before such permission is granted by the board and before any person may enter upon such practice he must submit proof that he can fulfill the requirements demanded in the other sections of this article relating to applicants for admission by examination or indorsement from another state. Such permission may be granted for a period of not less than two weeks nor more than four months upon payment of a fee of \$50. The board in its discretion may extend such permission for further periods of two weeks to four months but not to exceed in the aggregate one year;
- c. A physician or surgeon of another state of the United States and duly authorized under the laws thereof to practice medicine or surgery therein, if such practitioner does not open an office or place for the practice of his profession in this State;
- d. A person while actually serving as a member of the resident medical staff of any legally incorporated charitable or municipal hospital or asylum approved by the board. Hereafter such exemption of any such resident physician shall not apply with respect to any individual after he shall have served as a resident physician for a total period of five years;

- e. The practice of dentistry by any legally qualified and registered dentist;
- f. The ministration to, or treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug material remedy;
- g. The practice of optometry by any legally qualified and registered optometrist;
- h. The practice of podiatric medicine by any legally licensed podiatrist;
- i. The practice of pharmacy by a legally licensed and registered pharmacist of this State, but this exception shall not be extended to give to said licensed pharmacist the right and authority to carry on the business of a dispensary, unless the dispensary shall be in charge of a legally licensed and registered physician and surgeon of this State;
- j. A person claiming the right to practice medicine and surgery in this State who has been practicing therein since before July 4, 1890, if said right or title was obtained upon a duly registered diploma, of which the holder and applicant was the lawful possessor, issued by a legally chartered medical institution which, in the opinion of the board, was in good standing at the time the diploma was issued;
- k. A professional nurse, or a registered physical therapist, masseur, while operating in each particular case under the specific direction of a regularly licensed physician or surgeon. This exemption shall not apply to such assistants of persons who are licensed as osteopaths, chiropractors, optometrists or other practitioners holding limited licenses;
- l. A person while giving aid, assistance or relief in emergency or accident cases pending the arrival of a regularly licensed physician, or surgeon or under the direction thereof;
- m. The operation of a bio-analytical laboratory by a licensed bio-analytical laboratory director, or any person working under the direct and constant supervision of a licensed bio-analytical laboratory director;
- n. Any employee of a State or county institution holding the degree of M.D. or D.O., regularly employed on a salary basis on its medical staff or as a member of the teaching or scientific staff of a State agency, may apply to the State Board of Medical Examiners of New Jersey and may, in the discretion of said board, be granted exemption from the provisions of this chapter; provided said employee continues as a member of the medical staff of a State agency or county institution or of the teaching or scientific staff of a State agency and does not conduct any type of private medical practice;
- o. The practice of chiropractic by any legally licensed chiropractor; or
- p. The practice of a physician assistant in compliance with the provisions of P.L.1991, c.378 (C.45:9-27.10 et al.).

17. Section 3 of P.L.1991, c.512 (C.45:12B-3) is amended to read as follows:

C.45:12B-3 Definitions relative to orthotics and prosthetics.

3. As used in this act:

"Board" means the Orthotics and Prosthetics Board of Examiners created by section 4 of this act.

"Chairperson" means the member that is elected yearly by the board.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Orthotic appliance" means, solely for the purposes of this act, a brace or support but does not include fabric and elastic supports, corsets, arch supports, trusses, elastic hose, canes, crutches, cervical collars, dental appliances or other similar devices carried in stock and sold by drug stores, department stores, corset shops or surgical supply facilities.

"Orthotics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing orthotic appliances for the correction or alleviation of musculoskeletal diseases, injuries, or deformities as permitted by prescriptions from a licensed doctor of medicine, dentist, or podiatrist.

"Licensed orthotist" means any person who practices orthotics and who represents himself to the public by title or by description of services, under any title incorporating such terms as "orthotics," "orthotists," "orthotic," or "L.O." or any similar title or description of services, provided that the individual has met the eligibility requirements contained in section 11 of this act and has been duly licensed under this act.

"Licensed orthotist assistant" means a person who is licensed pursuant to the provisions of this amendatory and supplementary act and who assists a licensed orthotist under his supervision.

"Person" means any individual, corporation, partnership, association, or other organization.

"Prosthetic appliance" means, solely for the purposes of this act, any artificial device that is not surgically implanted and that is used to replace a missing limb, appendage, or any other external human body part including devices such as artificial limbs, hands, fingers, feet and toes, but excluding dental appliances and largely cosmetic devices such as artificial breasts, eyelashes, wigs, or other devices which could not by their use have a significantly detrimental impact upon the musculoskeletal functions of the body.

"Prosthetics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing prosthetic appliances as permitted by prescriptions from a licensed doctor of medicine or podiatric medicine.

"Licensed prosthetist" means a person who practices prosthetics and who represents himself to the public by title or by description of services, under any title incorporating such terms as "prosthetics," "prosthetist," "prosthetic," or "L.P." or any similar title or description of services, provided that the individual has met the eligibility requirements contained in section 11 and has been duly licensed under this act.

"Licensed prosthetist assistant" means a person who is licensed pursuant to the provisions of this amendatory and supplementary act and who assists a licensed prosthetist under his supervision.

"Licensed prosthetist-orthotist" means any person who practices both disciplines of prosthetics and orthotics and who represents himself to the public by title or by description of services, under any title incorporating such terms as "prosthetics-orthotics," "prosthetist-orthotist," "prosthetic-orthotic," or "L.P.O." or any similar title or description of services, provided that the individual has met the eligibility requirements contained in section 11 and has been duly licensed in both disciplines of prosthetics and orthotics under this act.

"Licensed prosthetist-orthotist assistant" means a person who is licensed pursuant to the provisions of this amendatory and supplementary act and who assists a licensed prosthetist-orthotist under his supervision.

18. Section 5 of P.L.1991, c.512 (C.45:12B-5) is amended to read as follows:

C.45:12B-5 Membership of the board.

5. The board shall consist of 11 residents of this State, 10 of whom shall be appointed by the Governor with the advice and consent of the Senate, as follows. Two members shall be orthotists who shall fulfill the licensure requirements of this act, and two members shall be prosthetists who shall fulfill the licensure requirements of this act. Two members shall be prosthetist-orthotists who shall fulfill the licensure requirements of this act. One member shall be licensed to practice medicine and surgery in this State pursuant to chapter 9 of Title 45 of the Revised Statutes and one member shall be a doctor of podiatric medicine licensed to practice podiatric medicine pursuant to chapter 5 of Title 45 of the Revised Statutes. Two members shall be public members, one of whom is a prosthetic user and one of whom is an orthotic user. One member shall be a member of the executive branch who shall be appointed by the Governor. Members shall be appointed to affect balanced geographic representation from the central, northern and southern areas of the State. The board shall annually elect from its members a chairperson and a vice-chairperson.

19. Section 18 of P.L.1991, c.512 (C.45:12B-18) is amended to read as follows:

C.45:12B-18 Inapplicability of act.

18. The provisions of this act shall not apply to:

- a. The activities and services of any person who is licensed to practice medicine and surgery, dentistry or podiatric medicine by this State;
- b. The activities and services of a student, fellow, or trainee in orthotics or prosthetics pursuing a course of study at an accredited college or university, or working in a recognized training center or research facility, if these activities and services constitute a part of his course of study under a supervisor licensed pursuant to this act;
- c. The design, modification, fabrication and application of upper extremity adaptive equipment, finger splints and hand splints by an occupational therapist or a licensed physical therapist;
- d. The provision of corsets and soft cervical collars by licensed physical therapists;
- e. The provision of lower extremity orthotics made of fabric, canvas, neoprene or elastic with or without metal or plastic insertable or removable hinges or stays by licensed physical therapists;
- f. The provision by a licensed physical therapist of any lower extremity, low temperature splint or ankle foot orthotic when such bracing is for the evaluation or treatment of an adult patient for less than three months or a pediatric patient for less than one year without the consultation of a licensed orthotist and when the braces do not become the patient's property;
- g. The provision of any off-the-shelf ankle foot orthosis made of fabric, canvas, neoprene, elastic with or without metal or plastic inserts and any low temperature posterior leaf ankle foot orthosis by a licensed physical therapist;
- h. The provision of any high temperature posterior leaf ankle foot orthosis by a licensed physical therapist conducting research at a college or university accredited by a regional or national accrediting agency recognized by the United States Secretary of Education in accordance with standard protocols;
- i. The management of lower extremity prosthetic volumetric changes by a licensed physical therapist. Any non-reversible changes shall be addressed by the treating licensed physical therapist only after direct consultation with the treating prosthetist; or
- j. The activities and services of a certified pedorthist; except that this subsection shall not prevent any certified pedorthist from applying for and obtaining a license under the provisions of P.L.1991, c.512 (C.45:12B-1 et seq.) limiting that person's practice of orthotics and prosthetics to the ankle and below. As used in this subsection: "certified pedorthist" means a person

certified by the American Board for Certification in Podorthotics, or its successor, in the design, manufacture, fit and modification of shoes and related foot appliances from the ankle and below as prescribed by a licensed doctor of medicine or podiatric medicine for the amelioration of painful or disabling conditions of the foot; and "foot appliances" includes, but is not limited to, prosthetic fillers and orthotic appliances for use from the ankle and below.

20. Section 2 of P.L.1997, c.353 (C.2C:21-4.2) is amended to read as follows:

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, podiatric medicine, 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.

21. Section 14 of P.L.1989, c.300 (C.2C:21-20) is amended to read as follows:

C.2C:21-20 Unlicensed practice of medicine, surgery, podiatric medicine, crime of third degree.

14. A person is guilty of a crime of the third degree if he knowingly does not possess a license or permit to practice medicine and surgery or podiatric medicine, or knowingly has had the license or permit suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners, and he:

- a. engages in that practice;
- b. exceeds the scope of practice permitted by the board order;
- c. holds himself out to the public or any person as being eligible to engage in that practice;
- d. engages in any activity for which such license or permit is a necessary prerequisite, including, but not limited to, the ordering of controlled dangerous substances or prescription legend drugs from a distributor or manufacturer; or

e. practices medicine or surgery or podiatric medicine under a false or assumed name or falsely impersonates another person licensed by the board.

22. Section 3 of P.L.1969, c.232 (C.14A:17-3) is amended to read as follows:

C.14A:17-3 Terms defined.

3. Terms defined. As used in this act, the following words shall have the meanings indicated:

(1) "Professional service" shall mean any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this act and by reason of law could not be performed by a corporation. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, architects, optometrists, ophthalmic dispensers and technicians, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law;

(2) "Professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within this State to render such professional service;

(3) "Closely allied professional service" means and is limited to the practice of (a) architecture, professional engineering, land surveying and land planning and (b) any branch of medicine and surgery, optometry, opticianry, physical therapy, registered professional nursing, and dentistry;

(4) "Domestic professional legal corporation" means a professional corporation incorporated under P.L.1969, c.232 (C.14A:17-1 et seq.) for the sole purpose of rendering legal services of the type provided by attorneys-at-law;

(5) "Foreign professional legal corporation" means a corporation incorporated under the laws of another state for the purpose of rendering legal services of the type provided by attorneys-at-law.

23. Section 3 of P.L.1975, c.301 (C.17:30D-3) is amended to read as follows:

C.17:30D-3 Definitions.

3. As used in this act:

- a. "Association" means the New Jersey Medical Malpractice Reinsurance Association established pursuant to the provisions of this act.
- b. "Commissioner" means the Commissioner of Banking and Insurance.
- c. "Licensed medical practitioner" means and includes all persons licensed in this State to practice medicine and surgery, chiropractic, podiatric medicine, dentistry, optometry, psychology, pharmacy, nursing, physical therapy and as a bioanalytical laboratory director.
- d. "Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed medical practitioner or health care facility or a claim arising out of ownership, operation or maintenance of the practitioner's or facility's business premises, including primary and excess coverages.
- e. "Health care facility" means and includes all hospitals within this State, and any other health care facility as defined in the "Health Care Facilities Planning Act." P.L.1971, c.136 (C.26:2H-1 et seq.).
- f. "Plan of operation" means the plan of operation of the association approved by the commissioner pursuant to the provisions of this act.
- g. "Net direct premium written" means direct written personal injury liability and property damage liability insurance as provided in R.S.17:17-1 d. and e., excluding workmen's compensation and employer's liability insurance written in connection therewith, less policyholder dividends and return premiums for the unused or unabsorbed portion of premium deposits and excluding premiums ceded to or written by the association.
- h. "Provider" means an insurer admitted and licensed in this State to write general liability insurance which has been qualified by the board of directors of the association and has not been disqualified by the commissioner.

24. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to read as follows:

C.17:30D-17 Insurer to notify Medical Practitioner Review Panel of malpractice settlement, judgment, award.

2. a. Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Medical Practitioner Review Panel established pursuant to section 8 of P.L.1989, c.300 (C.45:9-19.8) in writing of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance

association. Any practitioner licensed by the board who is not covered by medical malpractice liability insurance issued in this State, who has coverage through a self-insured health care facility or health maintenance organization, or has medical malpractice liability insurance which has been issued by an insurer or insurance association from outside the State shall notify the review panel in writing of any medical malpractice claim settlement, judgment or arbitration award to which the practitioner is a party. The review panel or board, as the case may be, shall not presume that the judgment or award is conclusive evidence in any disciplinary proceeding and the fact of a settlement is not admissible in any disciplinary proceeding.

In any malpractice action against a practitioner, a settlement prohibiting a complaint against the practitioner or the providing of information to the review panel or board concerning the underlying facts or circumstances of the action is void and unenforceable.

b. An insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the review panel in writing of any termination or denial of coverage to a practitioner or surcharge assessed on account of the practitioner's practice method or medical malpractice claims history.

c. The form of notification shall be prescribed by the Commissioner of Banking and Insurance, shall contain such information as may be required by the board and the review panel and shall be made within seven days of the settlement, judgment or award or the final action for a termination or denial of, or surcharge on, the medical malpractice liability insurance. Upon request of the board, the review panel or the commissioner, an insurer or insurance association shall provide all records regarding the defense of a malpractice claim, the processing of the claim and the legal proceeding; except that nothing in this subsection shall be construed to authorize disclosure of any confidential communication which is otherwise protected by statute, court rule or common law.

An insurer or insurance association, or any employee thereof, shall be immune from liability for furnishing information to the review panel and the board in fulfillment of the requirements of this section unless the insurer or insurance association, or any employee thereof, knowingly provided false information.

d. An insurer, insurance association or practitioner who fails to notify the review panel as required pursuant to this section shall be subject to such penalties as the Commissioner of Banking and Insurance may determine pursuant to section 12 of P.L.1975, c.301 (C.17:30D-12). In addition to, or in lieu of suspension or revocation, the commissioner may assess a fine which shall not exceed \$1,000 for the first offense and \$2,000 for the second and each subsequent offense, which may be recovered in a summary pro-

ceeding, brought in the name of the State in a court of competent jurisdiction pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

e. A practitioner who fails to notify the review panel as required pursuant to this section shall be subject to disciplinary action and civil penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73 (C.45:1-21, 45:1-22 and 45:1-25).

f. An insurer or insurance association shall make available to the review panel or the board, upon request, any records of termination or denial of coverage to a practitioner or surcharge assessed on account of the practitioner's practice method or medical malpractice claims history, which occurred up to five years prior to the effective date of P.L.1989, c.300 (C.45:9-19.4 et al.).

g. For the purposes of this section, "practitioner" means a person licensed to practice: medicine and surgery under chapter 9 of Title 45 of the Revised Statutes or a medical resident or intern; or podiatric medicine under chapter 5 of Title 45 of the Revised Statutes.

h. Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Commissioner of Banking and Insurance, in a form and manner specified by the commissioner, of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or insurance association. The notification shall include the specialty or area of professional practice of the practitioner and the amount of the settlement, judgment or arbitration award, but shall not include the name or other identifying information of the practitioner.

25. Section 63 of P.L.1990, c.8 (C.17:33B-58) is amended to read as follows:

C.17:33B-58 \$100 annual fee to be assessed by Board of Medical Examiners.

63. The State Board of Medical Examiners shall assess an annual fee in the amount of \$100 payable by:

a. Each physician licensed to practice medicine or surgery in this State pursuant to the provisions of R.S.45:9-1 et seq., and certified or registered pursuant to the provisions of section 1 of P.L.1971, c.236 (C.45:9-6.1), except physicians holding a certificate of registration as a retired physician pursuant to that section. As used in this subsection "physician" includes both doctors of medicine and doctors of osteopathy; and

b. Each person licensed in this State to practice podiatric medicine pursuant to the provisions of R.S.45:5-1 et seq. and registered pursuant to the provisions of R.S.45:5-9.

Fees imposed pursuant to this section shall be payable on or before July 1 of each calendar year from 1990 through 1996. Payments are to be remitted to the board and credited by the State Treasurer to the New Jersey Automobile Insurance Guaranty Fund created by section 23 of this 1990 amendatory and supplementary act.

26. Section 1 of P.L.1953, c.283 (C.17:48A-26) is amended to read as follows:

C.17:48A-26 Podiatrist, services performed by.

1. Notwithstanding any other provision of the act to which this act is a supplement, benefits shall not be denied to an eligible individual for eligible services when such services are performed or rendered such persons by a licensed podiatrist within the scope of his practice. The practice of podiatric medicine shall be deemed to be within the provisions of the act to which this act is a supplement and licensed podiatrists shall have the privileges and benefits in the scope of their practice under such act as are afforded thereunder to licensed physicians and surgeons in the scope of their practice.

27. 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 podiatrists; (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 "poli-

cyholder," "member," or "employer" under a group contract where the context requires.

28. Section 12 of P.L.1985, c.236 (C.17:48E-12) is amended to read as follows:

C.17:48E-12 Eligible providers' services.

12. In any contract entered into by a health service corporation, which includes coverage for health care services provided by a physician, coverage shall be deemed to include health care services provided by a registered bio-analytic laboratory or physical therapist, a certified nurse-midwife, a registered professional nurse, or a licensed podiatrist, dentist, optometrist, psychologist or chiropractor, when the provider performs an eligible service within the scope of his practice and for which he is not being compensated by a hospital or other health care facility. The practices of the providers of health care services shall be deemed to be within the provisions of this act and the providers shall have the privileges and benefits in the scope of their practices under this act afforded hereunder to other approved providers of health care services in the scope of their practices.

29. N.J.S.18A:6-40 is amended to read as follows:

"Qualifying academic certificate" defined.

18A:6-40. For the purposes of this article, the term "qualifying academic certificate" shall be deemed to be any certificate issued by the commissioner certifying that the person to whom the same is issued has had the preliminary academic education required by the rules of the supreme court or by any law of this State at the time the certificate is issued for admission to an examination for license to practice law, medicine, dentistry, podiatric medicine, pharmacy, or for license as a certified public accountant, and for any other profession or vocation for which a certificate of academic education, issued by the commissioner, is now or may hereafter be required by law or by the rules of the supreme court or certifying that the person to whom the same is issued has had the education required for high school graduation in this state, as the case may be.

30. N.J.S.18A:68-17 is amended to read as follows:

Schools for midwifery, podiatric medicine excepted.

18A:68-17. This article shall not apply to a school conducted for the sole purpose of training persons to practice midwifery or podiatric medicine.

31. Section 3 of P.L.1981, c.295 (C.26:2D-26) is amended to read as follows:

C.26:2D-26 Definitions.

3. As used in this act:

a. "Board" means the Radiologic Technology Board of Examiners created pursuant to section 5 of this act.

b. "License" means a certificate issued by the board authorizing the licensee to use equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes in accordance with the provisions of this act.

c. "Chest x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the chest area for diagnostic purposes only.

d. "Commissioner" means the Commissioner of Environmental Protection.

e. "Dental x-ray technologist" means a person; other than a licensed practitioner, whose practice of radiologic technology is limited to intraoral radiography for diagnostic purposes only.

f. "Health physicist" means a person who is certified by the American Board of Health Physics or the American Board of Radiology in radiation physics.

g. "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatric medicine, osteopathy or chiropractic.

h. "Radiation therapy technologist" means a person, other than a licensed practitioner, whose application of radiation on human beings is for therapeutic purposes.

i. "Diagnostic x-ray technologist" means a person, other than a licensed practitioner, whose application of radiation on human beings is for diagnostic purposes.

j. "Radiologic technologist" means any person who is licensed pursuant to this act.

k. "Radiologic technology" means the use of equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

l. "Podiatric x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the operation of x-ray machines as used by podiatrists on the lower leg, foot and ankle area for diagnostic purposes only.

m. "Orthopedic x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the spine and extremities for diagnostic purposes only.

n. "Urologic x-ray technologist" means a person, other than a licensed practitioner, whose practice of radiologic technology is limited to the abdomen and pelvic area for diagnostic purposes only.

32. Section 4 of P.L.1981, c.295 (C.26:2D-27) is amended to read as follows:

C.26:2D-27 X-ray technologist licenses.

4. a. Except as hereinafter provided, no person other than a licensed practitioner or the holder of a license as provided in this act shall use x-rays on a human being.

b. A person holding a license as a diagnostic x-ray technologist may use the title "licensed radiologic technologist" or the letters (LRT) (R) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed diagnostic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed diagnostic technologist.

c. A person holding a limited license as a chest x-ray technologist may use the title "licensed chest x-ray technologist" or the letters (LRT)(C) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed chest x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed chest x-ray technologist.

d. A person holding a limited license as a dental x-ray technologist may use the title "licensed dental x-ray technologist" or the letters (LRT)(D) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed dental x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed dental x-ray technologist.

e. A person holding a license as a radiation therapy technologist may use the title "licensed therapy technologist" or (LRT)(T) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed therapy technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed therapy technologist.

f. A person holding a license as provided by this act shall use medical equipment emitting ionizing radiation on human beings only for diagnostic or therapeutic purposes on a case by case basis at the specific direction of a licensed practitioner, and only if the application of the equipment is limited in a manner hereinafter specified.

g. Nothing in the provisions of this act relating to radiologic technologists shall be construed to limit, enlarge or affect, in any respect, the practice of their respective professions by duly licensed practitioners.

h. The requirement of a license shall not apply to a hospital resident specializing in radiology, who is not a licensed practitioner in the State of New Jersey, or a student enrolled in and attending a school or college of medicine, osteopathy, podiatric medicine, dentistry, dental hygiene, dental assistance, chiropractic or radiologic technology, who applies radiation to a human being while under the direct supervision of a licensed practitioner.

i. A person holding a license as a diagnostic x-ray technologist and a license as a radiation therapy technologist may use the letters (LRT)(R)(T) after his name.

j. A person holding a limited license as a podiatric x-ray technologist may use the title "licensed podiatric x-ray technologist" or the letters (LRT)(P) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed podiatric x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed podiatric x-ray technologist.

k. A person holding a limited license as an orthopedic x-ray technologist may use the title "licensed orthopedic x-ray technologist" or the letters (LRT)(O) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed orthopedic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed orthopedic x-ray technologist.

l. A person holding a limited license as a urologic x-ray technologist may use the title "licensed urologic x-ray technologist" or the letters (LRT)(U) after his name. No other person shall be entitled to use the title or letters, or any other title or letters after his name that indicate or imply that he is a licensed urologic x-ray technologist; nor may any person hold himself out in any way, whether orally or in writing, expressly or by implication, as a licensed urologic x-ray technologist.

33. Section 5 of P.L.1981, c.295 (C.26:2D-28) is amended to read as follows:

C.26:2D-28 Radiologic Technology Board of Examiners.

5. a. There is created a Radiologic Technology Board of Examiners which shall be an agency of the Commission on Radiation Protection in the Department of Environmental Protection and which shall report to the commission. The board shall consist of two commission members appointed annually to the membership of the board by the chairman of the commission, and 13 additional members appointed by the Governor with the advice and consent of the Senate. Of the members appointed by the Governor, two shall be radiologists who have practiced not less than five years; one shall be a licensed physician who has actively engaged in the practice of medicine not less than five years; one shall be a licensed dentist who has actively engaged in the practice of dentistry for not less than five years; one shall be a licensed podiatrist who has actively engaged in the practice of podiatric medicine for not less than five years; one shall be an administrator of a general hospital with at least five years' experience; one shall be a health physicist who has practiced not less than five years; three shall be practicing radiologic technologists with at least five years of experience in the practice of radiologic technology and holders of current certificates issued pursuant to this act; two shall be members of the general public; and one shall be a representative of the department designated by the Governor pursuant to subsection c. of section 2 of P.L.1971, c.60 (C.45:1-2.2).

b. The terms of office of the members appointed by the Governor shall be three years. Vacancies shall be filled for an unexpired term only in the manner provided for the original appointment.

c. Members of the board shall serve without compensation but shall be reimbursed for their reasonable and necessary traveling and other expenses incurred in the performance of their official duties.

d. The commissioner shall designate an officer or employee of the department to act as secretary of the board who shall not be a member of the board.

e. The board, for the purpose of transacting its business, shall meet at least once every four months at times and places fixed by the board. At its first meeting each year it shall organize and elect from its members a chairman. Special meetings also may be held at times as the board may fix, or at the call of the chairman or the commissioner. A written and timely notice of the time, place and purpose of any special meeting shall be mailed by the secretary to all members of the board.

f. A majority of the members of the board shall constitute a quorum for the transaction of business at any meeting.

Repealer.

34. Section 1 of P.L.1983, c.249 (C.26:2H-12.2) repealed by P.L.2005, c.83, s.20.

35. Section 2 of P.L.1972, c.70 (C.39:6A-2) is amended to read as follows:

C.39:6A-2 Definitions.

2. As used in this act:

a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

b. "Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

c. "Income" means salary, wages, tips, commissions, fees and other earnings derived from work or employment.

d. "Income producer" means a person who, at the time of the accident causing personal injury or death, was in an occupational status, earning or producing income.

e. "Medical expenses" means reasonable and necessary expenses for treatment or services as provided by the policy, including medical, surgical, rehabilitative and diagnostic services and hospital expenses, provided by a health care provider licensed or certified by the State or by another state or nation, and reasonable and necessary expenses for ambulance services or other transportation, medication and other services as may be provided for, and subject to such limitations as provided for, in the policy, as approved by the commissioner. "Medical expenses" shall also include any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

f. "Hospital expenses" means the cost of treatment and services, as provided in the policy approved by the commissioner, by a licensed and accredited acute care facility which engages primarily in providing diagnosis,

treatment and care of sick and injured persons on an inpatient or outpatient basis; the cost of covered treatment and services provided by an extended care facility which provides room and board and skilled nursing care 24 hours a day and which is recognized by the administrators of the federal Medicare program as an extended care facility; and the cost of covered services at an ambulatory surgical facility supervised by a physician licensed in this State or in another jurisdiction and recognized by the Commissioner of Health and Senior Services, or any other facility licensed, certified or recognized by the Commissioner of Health and Senior Services or the Commissioner of Human Services or a nationally recognized system such as the Commission on Accreditation of Rehabilitation Facilities, or by another jurisdiction in which it is located.

g. "Named insured" means the person or persons identified as the insured in the policy and, if an individual, his or her spouse, if the spouse is named as a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage shall be extended to the spouse for the full term of any policy period in effect at the time of the cessation of residency.

h. "Pedestrian" means any person who is not occupying, entering into, or alighting from a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks.

i. "Noneconomic loss" means pain, suffering and inconvenience.

j. "Motor vehicle" means a motor vehicle as defined in R.S.39:1-1, exclusive of an automobile as defined in subsection a. of this section.

k. "Economic loss" means uncompensated loss of income or property, or other uncompensated expenses, including, but not limited to, medical expenses.

l. "Health care provider" or "provider" means those persons licensed or certified to perform health care treatment or services compensable as medical expenses and shall include, but not be limited to, (1) a hospital or health care facility which is maintained by a state or any of its political subdivisions, (2) a hospital or health care facility licensed by the Department of Health and Senior Services, (3) other hospitals or health care facilities designated by the Department of Health and Senior Services to provide health care services, or other facilities, including facilities for radiology and diagnostic testing, freestanding emergency clinics or offices, and private treatment centers, (4) a nonprofit voluntary visiting nurse organization providing health care services other than in a hospital, (5) hospitals or other health care facilities or treatment centers located in other states or nations, (6) physicians licensed to practice medicine and surgery, (7) licensed chiropractors, (8) licensed dentists, (9) licensed optometrists, (10) licensed pharmacists, (11) licensed podiatrists, (12) registered bio-analytical laboratories, (13) licensed psychologists, (14) licensed physical therapists, (16) certified

nurse-midwives, (17) certified nurse-practitioners/clinical nurse-specialists, (18) licensed health maintenance organizations, (19) licensed orthotists and prosthetists, (20) licensed professional nurses, and (21) providers of other health care services or supplies, including durable medical goods.

m. "Medically necessary" means that the treatment is consistent with the symptoms or diagnosis, and treatment of the injury (1) is not primarily for the convenience of the injured person or provider, (2) is the most appropriate standard or level of service which is in accordance with standards of good practice and standard professional treatment protocols, as such protocols may be recognized or designated by the Commissioner of Banking and Insurance, in consultation with the Commissioner of Health and Senior Services or with a professional licensing or certifying board in the Division of Consumer Affairs in the Department of Law and Public Safety, or by a nationally recognized professional organization, and (3) does not involve unnecessary diagnostic testing.

n. "Standard automobile insurance policy" means an automobile insurance policy with at least the coverage required pursuant to sections 3 and 4 of P.L.1972, c.70 (C.39:6A-3 and 39:6A-4).

o. "Basic automobile insurance policy" means an automobile insurance policy pursuant to section 4 of P.L.1998, c.21 (C.39:6A-3.1).

36. Section 1 of P.L.1973, c.322 (C.45:1-10) is amended to read as follows:

C.45:1-10 Agreement by practitioner for payments to laboratory for tests without disclosure to patient, third party payor; prohibited.

1. It shall be unlawful for any person licensed in the State of New Jersey to practice medicine or surgery, dentistry, osteopathy, podiatric medicine or chiropractic to agree with any clinical, bio-analytical or hospital laboratory, wheresoever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bills to patients and third party payors the name and address of such laboratory and the net amount or amounts paid or to be paid to such laboratory for individual tests, combination of tests or test series.

37. Section 1 of P.L.1975, c.300 (C.45:1-12) is amended to read as follows:

C.45:1-12 Extra fee for completion of medical claim form, certain practitioners, penalty.

1. No podiatrist, optometrist or psychologist and no professional service corporation engaging in the practice of podiatric medicine, optometry or psychology in this State shall charge a patient an extra fee for services rendered in completing a medical claim form in connection with a health

insurance policy. Any person violating this act shall be subject to a fine of \$100.00 for each offense.

Such penalty shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and municipal court shall have jurisdiction within its territory of such proceedings. Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the State Board of Medical Examiners with respect to podiatrists, the New Jersey State Board of Optometry for optometrists or the State Board of Psychological Examiners for psychologists.

38. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 260

AN ACT concerning the participation of certain students in interscholastic athletic programs and supplementing chapter 46 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:46-13.1 Disabled students, certain, participation in interscholastic athletic programs.

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, a pupil who is disabled and who is placed by the parents or guardians at their own expense in a nonpublic school for treatment of the disability shall be eligible to participate in the interscholastic athletic program of the student's resident school district, provided the student otherwise meets the eligibility requirements of the program and the student's participation has the written approval of the board of education of the school district where the program is located.

2. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 261

AN ACT authorizing the county clerk to act as the local registrar of vital statistics, authorizing a local registration district to designate the county

clerk as its local registrar and amending R.S.26:8-11 and N.J.S.40A:9-73.

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

1. R.S.26:8-11 is amended to read as follows:

Local registrar, appointment; county clerk, authorized to act as local registrar, certain circumstances.

26:8-11. a. (1) The county governing body, by resolution, subject to the provisions of paragraph (2) of this subsection, may permit the county clerk to act as the local registrar for any registration district within the county that designates the county clerk as its local registrar pursuant to subsection b. of this section. The resolution may limit the districts eligible to use the county clerk as the local registrar by population.

(2) Whenever a county governing body adopts a resolution permitting the county clerk to act as the local registrar for any registration district within the county, the resolution shall not take effect until 30 days after the governing body has:

(a) published the resolution, together with a notice of the date of passage or approval, or both, at least once in a newspaper published in the county, or, if there is no newspaper published in the county, then in a newspaper of general circulation within the county,

(b) prepared operations plans clearly delineating the responsibilities of the local registrar and the county clerk and filed those operations plans with the State Registrar, and

(c) prepared a plan to ensure the security of the vital records, related indices, safety papers and other materials of the county including the planned method of secure storage and transfer of the vital records from a municipality to the county, and filed the security plan with the State Registrar.

b. The local board having jurisdiction over an eligible registration district, within a county that permits the county clerk to act as local registrar, may designate the county clerk as its local registrar by adopting a resolution for that purpose and filing the resolution with the county clerk.

c. The local board having jurisdiction over each registration district shall appoint a local registrar for that district, which shall be the county clerk in the case of a registration district that has designated the county clerk pursuant to this section. In those districts which by governmental organization structure have no separate board of health, the appointment shall be made by the governing body.

In any district having a population of less than 5,000 persons in which the county clerk does not act as the local registrar the municipal clerk shall be appointed as local registrar at a salary to be determined by the appointing authority.

2. N.J.S.40A:9-73 is amended to read as follows:

Powers of county clerk.

40A:9-73. a. A county clerk while in office may perform all the duties and exercise the powers pertaining to the office of notary public or commissioner of deeds and upon certifying to any acknowledgment or affidavit shall affix to his signature the designation "county clerk".

b. After the adoption of a resolution by the county governing body pursuant to subsection a. of R.S.26:8-11, the county clerk may act as the local registrar for a registration district so choosing pursuant to R.S.26:8-1 within the county on such terms and conditions as the county governing body deems appropriate.

3. This act shall take effect immediately.

Approved January 4, 2006.

CHAPTER 262

AN ACT concerning dispensing of contact lenses, and amending and supplementing various parts of statutory law.

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

1. R.S.45:12-19 is amended to read as follows:

Illegal practices; peddling eyeglasses, contact lenses; attending confined person.

a. No person, not a holder of a certificate of registration duly issued to him, shall practice optometry within the State, and no person shall falsely personate a registered optometrist of a like or different name, nor buy, sell or fraudulently obtain a certificate issued to another. No person shall directly or indirectly for himself or others do or engage in any acts or practices specifically prohibited to duly registered optometrists by the provisions of section 45:12-11 of this chapter.

b. No person shall peddle spectacles, eyeglasses or lenses or practice optometry from house to house or on the streets or highways notwithstanding

any law providing for the licensing of peddlers. This shall not prohibit, however, an optometrist from attending, prescribing, and furnishing spectacles, eyeglasses or lenses to a person who by reason of an illness, or physical or mental infirmity is confined to his place of abode, or to a hospital or other institution. For the purposes of this section, "lenses" shall include contact lenses without power, sometimes referred to as "plano" lenses.

2. Section 2 of P.L.1991, c.447 (C.52:17B-41.26) is amended to read as follows:

C.52:17B-41.26 Definitions.

2. As used in this act:

a. "Practice of contact lens dispensing" means the sale or delivery of contact lenses to the patient based upon the prescription of powers for vision and specifications for contact lenses for the patient as provided by a licensed physician or optometrist. The practice includes, but is not limited to, the analysis and interpretation of prescriptions and specifications for contact lenses; the preparation of orders and the grinding for fabrication of contact lenses; the instruction of the patient as to the proper insertion, removal, care and the use of the contact lenses; and the duplication, reproduction and replacement of previously prepared contact lenses. For the purposes of this act, "contact lenses" shall include contact lenses without power, sometimes referred to as "plano" lenses.

b. "Prescription" means written instructions or orders from a licensed physician or optometrist stating the powers of vision of a person.

c. "Duplication" means the replacement or reproduction of contact lenses based upon a prescription or specifications of record.

C.2C:40-25 Persons permitted to dispense contact lenses; violations, fines, penalties.

3. a. No person shall dispense contact lenses in this State unless he is a licensed ophthalmic dispenser or person licensed to practice medicine or optometry in this State. For the purposes of this act, "contact lenses" shall include contact lenses without power, sometimes referred to as "plano" lenses.

b. Any person who dispenses contact lenses in violation of the provisions of this section is guilty of a crime in the fourth degree, provided, however, that the court shall:

- (1) impose a fine of not less than \$1,000 for a first offense;
- (2) impose a fine of not less than \$5,000 and require the performance of 40 hours of community service for a second offense; and
- (3) impose a fine of not less than \$10,000 and require the performance of 100 hours of community service for a third and each subsequent offense.

c. Upon conviction of a person under this section, the court shall authorize the appropriate law enforcement agency or officer to seize and destroy all contact lenses held or owned by, or under the control of, the convicted person, with the exception of any contact lenses which have been prescribed for his personal use and dispensed by a licensed ophthalmic dispenser or person licensed to practice medicine or optometry in this State.

d. Notwithstanding any other provision of law to the contrary, half of the fines imposed and collected under authority of law for any violation of this section shall be forwarded by the judge to whom the same have been paid to the financial officer of the county or municipality, as designated by the governing body of the respective county or municipality, for all violations occurring within their jurisdictions, provided the complaining witness was a law enforcement officer or other official of the county or municipality.

4. This act shall take effect on the first day of the third month after enactment.

Approved January 4, 2006.

CHAPTER 263

AN ACT concerning investigators in the Department of Corrections and amending P.L.1988, c.176.

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

1. Section 5 of P.L.1988, c.176 (C.52:17B-68.1) is amended to read as follows:

C.52:17B-68.1 Basic training, course for investigators.

5. a. A person appointed as an adult or juvenile corrections officer or as a juvenile detention officer by the State or county shall satisfactorily complete prior to permanent appointment a basic training course approved by the Police Training Commission. A corrections officer or juvenile detention officer who was appointed before the effective date of this act shall satisfactorily complete, within two years of the effective date of this act, an in-service basic training course approved by the Police Training Commission and designed to meet the training needs of corrections officers or juvenile detention officers with prior work experience.

A person may be exempt from the requirements of this section if that person has successfully completed training conducted by a federal, State or county agency the requirements of which are substantially equivalent to the requirements of a basic training course approved by the Police Training Commission pursuant to section 4 of this act.

b. A person shall be given a probationary appointment as a corrections officer or as a juvenile detention officer for a period of one year so that the person seeking permanent appointment may satisfactorily complete a basic training course for corrections officers or for juvenile detention officers conducted at a school approved by the Police Training Commission. The probationary time may exceed one year for those persons enrolled within the one-year period in a basic training course scheduled to end after the expiration of the one-year period. A person shall participate in a basic training course only if that person holds a probationary appointment and that person shall be entitled to a leave of absence with pay to attend a basic training course.

c. Prior to permanent appointment, a person appointed as an investigator in the Department of Corrections shall satisfactorily complete a basic course for investigators approved by the Police Training Commission.

2. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 264

AN ACT concerning the immunity of charitable organizations in certain circumstances 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:53A-7.4 Inapplicability, certain, of civil immunity granted to certain charitable entities.

1. The immunity from civil liability granted to a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes pursuant to the provisions of P.L.1959, c.90 (C.2A:53A-7 to 2A:53A-11) shall not apply to a claim in any civil action that the negligent hiring, supervision or retention of any employee, agent or servant resulted in a sexual offense being committed against a person under the age of 18 who was a beneficiary of the nonprofit organization. As used in this supplementary act, P.L.2005, c.264 (C.2A:53A-7.4 et seq.), "sexual

offense" means any actions that would constitute any crime set forth in chapter 14 of Title 2C of the New Jersey Statutes or set forth in paragraph (3) or (4) of subsection b. of N.J.S.2C:24-4.

C.2A:53A-7.5 Application of act.

2. The provisions of this supplementary act, P.L.2005, c.264 (C.2A:53A-7.4 et seq.), shall apply prospectively and also shall be applicable to all civil actions for which the statute of limitations has not expired as of the effective date of this act, including the statutes of limitation set forth in N.J.S. 2A:14-2, section 1 of P.L. 1964, c. 214 (C. 2A:14-2.1), section 1 of P.L. 1992, c. 109 (C. 2A:61B-1) or any other statute. These applicable actions include but are not limited to matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date of this act.

3. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 265

AN ACT concerning the credits of students completing courses in county juvenile detention centers and supplementing chapter 7C of Title 18A of the New Jersey Statutes.

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

C.18A:7C-12 Education programs, certain, in county juvenile detention centers, validity in public school districts.

1. Notwithstanding any provision of law to the contrary, in the case of a student enrolled in an educational program in a county juvenile detention center that meets the standards for a thorough and efficient education developed by the Office of Education in the Juvenile Justice Commission, in consultation with the Commissioner of Education, pursuant to section 9 of P.L. 1979, c.207 (C.18A:7B-5), who subsequently enrolls in a public school district, the district shall accept all days of attendance and courses studied by the student at the county juvenile detention center and apply them toward district requirements for elementary, middle, or high school graduation.

2. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 266

AN ACT requiring school districts to provide alternative education projects to pupils who choose not to participate in certain activities and supplementing chapter 35 of Title 18A of the New Jersey Statutes.

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

C.18A:35-4.24 Definitions relative to alternative education projects.

1. As used in this act:

"Alternative education project" means the use of video tapes, models, films, books, computers, or any other tools which provide an alternative method for obtaining and testing the knowledge, information, or experience required by a course of study.

"Animal" means any living organism that is an invertebrate, or is in the phylum chordata or organisms which have a notochord and includes an animal's cadaver or severed parts of an animal's cadaver.

C.18A:35-4.25 Refusal to participate in certain school activities related to animal dissection, etc.

2. a. A public school pupil from kindergarten through grade 12 may refuse to dissect, vivisect, incubate, capture or otherwise harm or destroy animals or any parts thereof as part of a course of instruction.

b. A school shall notify pupils and their parents or guardians at the beginning of each school year of the right to decline to participate in the activities enumerated in subsection a. of this section and shall authorize parents or guardians to assert the right of their children to refuse to participate in these activities. Within two weeks of the receipt of the notice, the pupils, parents or guardians shall notify the school if the right to decline participation in the enumerated activities will be exercised.

c. Any pupil who chooses to refrain from participation in or observation of a portion of a course of instruction in accordance with this section shall be offered an alternative education project for the purpose of providing the pupil with the factual knowledge, information or experience required by the course of study. A pupil may refuse to participate in an alternative education project which involves or necessitates any harmful use of an animal or animal parts.

d. A pupil shall not be discriminated against, in grading or in any other manner, based upon a decision to exercise the rights afforded pursuant to this act.

3. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 267

AN ACT concerning certain county and municipal water supply facilities, and amending N.J.S.40A:31-23.

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

1. N.J.S.40A:31-23 is amended to read as follows:

Nonimpairment of obligations for provision of water supply services, facilities; BPU jurisdiction.

40A:31-23. a. Nothing contained in this act shall in any way impair the obligations previously assumed by any other public or private agency for the provision of water supply services and facilities to the citizens and industries of this State, or for any other purpose authorized by any law repealed by N.J.S.40A:31-24.

b. In the event a municipal utilities authority has been established in a local unit pursuant to the provisions of the "municipal and county utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.), no local unit or units shall establish any facility within the territory of that local unit which is competitive with any water supply facility operated by that authority.

c. No water supply services shall be provided in accordance with this act to users in another local unit without the prior approval of the governing body of that other local unit.

d. (1) Except as may otherwise be provided by subsection e. of this section and subject to the terms of any agreement entered into by participating local units or between a supplying and receiving local unit or units and the provisions of this act, a local unit or local units owning and operating water supply facilities in accordance with the provisions of N.J.S.40A:31-4, which supply water to more than 1,000 billed customers within another local unit, shall be subject to the jurisdiction, regulation and control of the Board of Public Utilities in accordance with the provisions of Title 48 of the Revised Statutes. The provisions of this subsection shall not apply whenever water is supplied to customers in another local unit at bulk rates.

(2) Notwithstanding any provision of this subsection to the contrary, whenever the governing body of a city of the first class enters into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body operates water supply facilities as authorized

pursuant to the provisions of N.J.S.40A:31-4, which supply water to customers within another local unit, the nonprofit association or governing body shall be subject to the jurisdiction, rate regulation and control of the Board of Public Utilities to the extent the nonprofit association or governing body supplies water to customers within that other local unit. The provisions of this paragraph shall apply whenever water is supplied to customers in another local unit at bulk rates.

e. Notwithstanding any law, rule, order or regulation to the contrary, whenever any supplying local unit or units charge the same rates or rentals to the billed customers outside of the supplying local unit or units as are charged to customers within the supplying local unit or units, the local unit or units owning and operating water supply facilities in accordance with the provisions of N.J.S.40A:31-4, shall, with respect to the rates or rentals to be charged to users of water supply services, be exempt from the jurisdiction, regulation and control of the Board of Public Utilities. Any increase in rates or rentals to be charged to users of water supply services shall be authorized by ordinance, in the case of a municipality, or ordinance or resolution, as appropriate, in the case of a county or parallel ordinances or resolutions of the governing body of each supplying local unit or units, as appropriate. Prior to adopting a resolution increasing the rates or rentals to be charged to users of water supply services, the governing body of a county shall hold a public hearing. Customers outside of the supplying local unit or units shall have an opportunity to be heard at the public hearing.

f. Nothing in subsection e. of this section shall be construed to exempt any supplying local unit or units supplying billed customers outside of the supplying local unit or units, from the jurisdiction, regulation and control of the Board of Public Utilities, with respect to service and reliability.

g. Supplying local units shall continue to pay an assessment to the Board of Public Utilities in accordance with the provisions of this section for those billed customers outside of the supplying local units.

2. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 268

AN ACT concerning membership on the Police Training Commission and amending P.L.1961, c.56.

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

1. Section 5 of P.L.1961, c.56 (C.52:17B-70) is amended to read as follows:

C.52:17B-70 Police training commission established; members; terms.

5. There is hereby established in the Division of Criminal Justice in the Department of Law and Public Safety a Police Training Commission whose membership shall consist of the following persons:

a. Two citizens of this State who shall be appointed by the Governor with the advice and consent of the Senate for terms of three years commencing with the expiration of the terms of the citizen members, other than the representative of the New Jersey Office of the Federal Bureau of Investigation, now in office.

b. The president or other representative designated in accordance with the bylaws of each of the following organizations: the New Jersey State Association of Chiefs of Police; the New Jersey State Patrolmen's Benevolent Association, Inc.; the New Jersey State League of Municipalities; the New Jersey State Lodge, Fraternal Order of Police; the County Prosecutors' Association of New Jersey; the Sheriffs' Association of New Jersey; the Police Academy Directors Association; the New Jersey County Jail Wardens Association; and the New Jersey Juvenile Detention Association.

c. The Attorney General, the Superintendent of State Police, the Commissioner of Education, the Executive Director of the New Jersey Commission on Higher Education, and the Commissioner of the Department of Corrections, ex officio, or when so designated by them, their deputies.

d. The Special Agent in Charge of the State of New Jersey for the Federal Bureau of Investigation or his designated representative.

2. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 269

AN ACT concerning fines for violations of municipal ordinances and amending R.S.40:49-5 and P.L.1950, c.210.

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

1. R.S.40:49-5 is amended to read as follows:

Penalties for violations of municipal ordinances.

40:49-5. The governing body may prescribe penalties for the violation of ordinances it may have authority to pass, by one or more of the following: imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$2,000; or by a period of community service not exceeding 90 days.

The governing body may prescribe that for the violation of any particular ordinance at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100.

The governing body may prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000.

The court before which any person is convicted of violating any ordinance of a municipality shall have power to impose any fine, term of imprisonment, or period of community service not less than the minimum and not exceeding the maximum fixed in such ordinance.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

Any municipality that chooses to impose a fine in an amount greater than \$1,250 upon an owner for violations of housing or zoning codes shall provide a 30-day period in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent deter-

mination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

2. Section 2-4 of P.L. 1950, c. 210 (C.40:69A-29) is amended to read as follows:

C.40:69A-29 Powers of municipality.

2-4. Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

(a) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their terms, tenure and compensation;

(b) Adopt and enforce local police ordinances of all kinds and impose one or more of the following penalties: fines not exceeding \$2,000 or imprisonment for any term not exceeding 90 days, or a period of community service not exceeding 90 days for the violation thereof; prescribe that for the violation of particular ordinances at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100; prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000; to construct, acquire, operate or maintain any and all public improvements, projects or enterprises for any public purpose, subject to referendum requirements otherwise imposed by law, and to exercise all powers of local government in such manner as its governing body may determine;

(c) Sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;

(d) Exercise powers of condemnation, borrowing and taxation in the manner provided by general law.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the

maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

Any municipality that chooses to impose a fine in an amount greater than \$1,250 upon an owner for violations of housing or zoning codes shall provide a 30-day period in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

3. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 270

AN ACT concerning information to be disclosed to law enforcement by providers of electronic communication or remote computing services and amending P.L.1993, c.29.

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

1. Section 23 of P.L.1993, c.29 (C.2A:156A-29) is amended to read as follows:

C.2A:156A-29 Requirements for access.

23. Requirements for access.

a. A law enforcement agency, but no other governmental entity, may require the disclosure by a provider of electronic communication service or remote computing service of the contents of an electronic communication without notice to the subscriber or the customer if the law enforcement agency obtains a warrant.

b. Except as provided in subsection c. of this section, a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber or customer of the

service to any person other than a governmental entity. This subsection shall not apply to the contents covered by subsection a. of this section.

c. A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber or customer of the service, other than contents covered by subsections a. and f. of this section, to a law enforcement agency under the following circumstances:

- (1) the law enforcement agency has obtained a warrant;
- (2) the law enforcement agency has obtained the consent of the subscriber or customer to the disclosure; or
- (3) the law enforcement agency has obtained a court order for such disclosure under subsection e. of this section.

A law enforcement agency receiving records or information pursuant to this subsection is not required to provide notice to the customer or subscriber.

d. Notwithstanding any other provision of law to the contrary, no service provider, its officers, employees, agents or other specified persons shall be liable in any civil action for damages as a result of providing information, facilities or assistance in accordance with the terms of a court order or warrant under this section.

e. A court order for disclosure under subsection b. or c. may be issued by a judge of competent jurisdiction and shall issue only if the law enforcement agency offers specific and articulable facts showing that there are reasonable grounds to believe that the record or other information pertaining to a subscriber or customer of an electronic communication service or remote computing service is relevant and material to an ongoing criminal investigation. A judge who has issued an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

f. A provider of electronic communication service or remote computing service shall disclose to a law enforcement agency or to the State Commission of Investigation the:

- (1) name;
 - (2) address;
 - (3) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address;
 - (4) local and long distance telephone connection records or records of session times and durations;
 - (5) length of service, including start date, and types of services utilized;
- and

(6) means and source of payment for such service, including any credit card or bank account number,

of a subscriber to or customer of such service when the law enforcement agency obtains a grand jury or trial subpoena or when the State Commission of Investigation issues a subpoena.

g. Upon the request of a law enforcement agency, a provider of wire or electronic communication service or a remote computing service shall take all necessary steps to preserve, for a period of 90 days, records and other evidence in its possession pending the issuance of a court order or other legal process. The preservation period shall be extended for an additional 90 days upon the request of the law enforcement agency.

2. This act shall take effect on the first day of the fourth month after enactment.

Approved January 5, 2006.

CHAPTER 271

AN ACT authorizing units of local government to impose limits on political contributions by contractors and supplementing Title 40A of the New Jersey Statutes and Title 19 of the Revised Statutes.

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

C.40A:11-51 Limitations on awarding public contracts to entities that made political contributions; authority of local units, nonpreemption by State law.

1. a. A county, municipality, independent authority, board of education, or fire district is hereby authorized to establish by ordinance, resolution or regulation, as may be appropriate, measures limiting the awarding of public contracts therefrom to business entities that have made a contribution pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.) and limiting the contributions that the holders of a contract can make during the term of a contract, notwithstanding the provisions and parameters of sections 1 through 12 of P.L.2004, c.19 (C.19:44A-20.2 et al.) and section 22 of P.L.1973, c.83 (C.19:44A-22).

b. The provisions of P.L.2004, c.19 shall not be construed to supersede or preempt any ordinance, resolution or regulation of a unit of local government that limits political contributions by business entities performing or seeking to perform government contracts. Any ordinance, resolution or regulation in effect on the effective date of P.L.2004, c.19 shall remain in

effect and those adopted after that effective date shall be valid and enforceable.

c. An ordinance, resolution or regulation adopted or promulgated as provided in this section shall be filed with the Secretary of State.

C.19:44A-20.26 Submission of list of political contributions by contractor to State, local agencies; definitions.

2. a. Not later than 10 days prior to entering into any contract having an anticipated value in excess of \$17,500, except for a contract that is required by law to be publicly advertised for bids, a State agency, county, municipality, independent authority, board of education, or fire district shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L.1973, c.83 (C.19:44A-1 et seq.) and that were made by the business entity during the preceding 12-month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a State agency shall disclose contributions to any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or any continuing political committee. A business entity contracting with a county, municipality, independent authority, other than an independent authority that is a State agency, board of education, or fire district shall disclose contributions to: any State, county, or municipal committee of a political party; any legislative leadership committee; or any candidate committee of a candidate for, holder of, an elective office of that public entity, of that county in which that public entity is located, of another public entity within that county, or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county, or any continuing political committee.

The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

b. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the

Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

c. As used in this section:

"business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction;

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

"State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and any independent State authority, commission, instrumentality or agency.

d. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

C.19:44A-20.27 Annual disclosure statement by business entities of contributions filed with ELEC; definitions; enforcement.

3. a. Any business entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year \$50,000 or more in the aggregate through agreements or contracts with a public entity, shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission, established pursuant to section 5 of P.L.1973, c.83 (C.19:44A-5), setting forth all such contributions made by the business entity during the 12 months prior to the reporting deadline.

b. The commission shall prescribe forms and procedures for the reporting required in subsection a. of this section which shall include, but not be limited to:

(1) the name and mailing address of the business entity making the contribution, and the amount contributed during the 12 months prior to the reporting deadline;

(2) the name of the candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee receiving the contribution; and

(3) the amount of money the business entity received from the public entity through contract or agreement, the dates, and information identifying each contract or agreement and describing the goods, services or equipment provided or property sold.

c. The commission shall maintain a list of such reports for public inspection both at its office and through its Internet site.

d. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity, or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

As used in this section:

"business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction; and

"interest" means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate.

e. Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to be determined by the commission which may be based upon the amount that the business entity failed to report.

4. This act shall take effect immediately.

Approved January 5, 2006.

CHAPTER 272

AN ACT allowing the New Jersey Commission on Science and Technology to receive percentage of royalties from certain intellectual property awarded to science and technology companies assisted by the commission and amending P.L.1985, c.102 and P.L.1995, c.277.

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

1. Section 9 of P.L.1985, c.102 (C.52:9X-9) is amended to read as follows:

C.52:9X-9 Duties of commission.

9. The commission shall:
 - a. Be responsible for the development and oversight of policies and programs in science and technology for New Jersey;
 - b. Ensure that the programs in science and technology are adequately funded to achieve their stated goals;
 - c. Stimulate academic-industrial collaboration through such mechanisms as advanced technology centers, innovation partnership grants, business incubation facilities, and technology extension services;
 - d. Plan and assist in the establishment of new advanced technology centers, business incubation facilities, and technology extension services and adopt rules and regulations regarding the operation of these activities;
 - e. Coordinate activities of the advanced technology centers, business incubation facilities and technology extension services in conjunction with designated public and private institutions of higher education;
 - f. Recommend funding levels, determine eligible fields and supervise the process of making awards for innovation partnership grants;
 - g. Continue to identify and to support research opportunities at New Jersey academic institutions and other institutions that can advance economic development and employment;
 - h. Encourage and coordinate activities to help entrepreneurs and inventors;
 - i. Stimulate technology transfer between higher education institutions and industry, including transfer of information available from various federal agencies;
 - j. Appoint a peer review committee, where warranted, for each of the fields of technology, drawn from the academic, scientific and industrial communities to review all situations involving either competitive applications for agency support or judgments on complex scientific or technological

matters with the stipulation that neither reviewers nor their affiliated institutions shall be eligible as applicants;

k. Monitor changes in national and international economic conditions which might justify a reorientation of the State's technology program;

l. Identify future fields of science and technology that offer potential for application in New Jersey and help to find funding sources;

m. Adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the provisions of this act, consistent with the rules and regulations of the Commission on Higher Education;

n. Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business;

o. Adopt and have a seal and alter the same at pleasure;

p. Have authority to sue and be sued;

q. Have authority to conduct meetings and public hearings in connection with the purposes of this act;

r. Have authority to enter into contracts, public and private, with a person upon those terms and conditions as the commission determines to be reasonable and to effectuate the purposes of this act;

s. Employ consultants and specialists in science and technology and any other employees as may be required in the judgment of the commission to effectuate the purposes of this act, and to fix and pay their compensation from funds available therefor, all without regard to the provisions of Title 11 of the Revised Statutes;

t. Receive and disburse funds from non-State sources including but not limited to federal funds;

u. Have authority to receive a percentage of royalty payments from any intangible property, as that term is defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), awarded to any science and technology company that received assistance from the commission and which assistance led to the awarding of the intangible property, as appropriate, except that three-fourths of the amount of any royalty payments received by the commission shall be remitted to the State Treasurer for deposit in the General Fund pursuant to an agreement with the State Treasurer; and

v. Have authority to do any and all things necessary or convenient to carry out its purposes and exercise the powers granted in this act.

2. Section 3 of P.L.1995, c.277 (C.52:9X-9.3) is amended to read as follows:

C.52:9X-9.3 Program to promote biotechnology and other industries, established.

3. The New Jersey Commission on Science and Technology, in consultation with the Department of Commerce and Economic Development, shall

establish a program to promote biotechnology and other high technology industries in the State and to attract biotechnology and other high technology companies to the State.

The program shall: include research and information on commercial opportunities in biotechnology and high technology; provide technical and financial assistance to biotechnology and high technology companies considering locating in New Jersey; regularly represent or assist in representing the interests of New Jersey based firms in the national and international markets for biotechnology and high technology through conferences and seminars; provide New Jersey based firms with customized technical, financial and other assistance; authorize receiving a percentage of royalty payments from any intangible property, as that term is defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), awarded to those biotechnology and high technology companies that received assistance from the commission and which assistance led to the awarding of the intangible property, as appropriate, except that three-fourths of the amount of any royalty payments received by the commission shall be remitted to the State Treasurer for deposit in the General Fund pursuant to an agreement with the State Treasurer; and recruit capital investment in New Jersey to be applied to the high technology and biotechnology industries.

3. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 273

AN ACT concerning certain vehicles, amending R.S.39:1-1 and supplementing Title 39 of the Revised Statutes.

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

1. R.S.39:1-1 is amended to read as follows:

Words and phrases defined.

39:1-1. As used in this subtitle, unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

"Alley" means a public highway wherein the roadway does not exceed 12 feet in width.

"Authorized emergency vehicles" means vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the chief administrator when operated in response to an emergency call.

"Automobile" includes all motor vehicles except motorcycles.

"Berm" means that portion of the highway exclusive of roadway and shoulder, bordering the shoulder but not to be used for vehicular travel.

"Business district" means that portion of a highway and the territory contiguous thereto, where within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the roadway.

"Car pool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating capacity of nine passengers or less.

"Chief Administrator" or "Administrator" means the Chief Administrator of the New Jersey Motor Vehicle Commission.

"Commercial motor vehicle" includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

"Commission" means the New Jersey Motor Vehicle Commission established by section 4 of P.L.2003, c.13 (C.39:2A-4).

"Commissioner" means the Commissioner of Transportation of this State.

"Commuter van" means a motor vehicle having a seating capacity of not less than seven nor more than 15 adult passengers, in which seven or more persons commute on a daily basis to and from work and which vehicle may also be operated by the driver or other designated persons for their personal use.

"Crosswalk" means that part of a highway at an intersection, either marked or unmarked existing at each approach of every roadway intersection, included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the shoulder, or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other marking on the surface.

"Dealer" includes every person actively engaged in the business of buying, selling or exchanging motor vehicles or motorcycles and who has an established place of business.

"Deputy Chief Administrator" means the deputy chief administrator of the commission.

"Driver" means the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

"Flammable liquid" means any liquid having a flash point below 200 degrees Fahrenheit, and a vapor pressure not exceeding 40 pounds.

"Gross weight" means the combined weight of a vehicle and a load thereon.

"High occupancy vehicle" or "HOV" means a vehicle which is used to transport two or more persons and shall include public transportation, car pool, van pool, and other vehicles as determined by regulation of the Department of Transportation.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Horse" includes mules and all other domestic animals used as draught animals or beasts of burden.

"Inside lane" means the lane nearest the center line of the roadway.

"Intersection" means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses another.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

"Leased limousine" means any limousine subject to regulation in the State which:

a. Is offered for rental or lease, without a driver, to be operated by a limousine service as the lessee, for the purpose of carrying passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Leased motor vehicle" means any motor vehicle subject to registration in this State which:

a. Is offered for rental or lease, without a driver, to be operated by the lessee, his agent or servant, for purposes other than the transportation of passengers for hire; and

b. Is leased or rented for a period of one year or more following registration.

"Limited-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway; and includes any highway designated as a "freeway" or "parkway" by authority of law.

"Local authorities" means every county, municipal and other local board or body having authority to adopt local police regulations under the Constitution and laws of this State, including every county governing body with relation to county roads.

"Low-speed vehicle" means a four-wheeled low-speed vehicle, as defined in 49 CFR s. 571.3(b), whose attainable speed is more than 20 miles per hour but not more than 25 miles per hour on a paved level surface and which is not powered by gasoline or diesel fuel and complies with federal safety standards as set forth in 49 CFR s. 571.500.

"Magistrate" means any municipal court and the Superior Court, and any officer having the powers of a committing magistrate and the chief administrator.

"Manufacturer" means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

"Mid-block crosswalk" means a crosswalk located away from an intersection, distinctly indicated by lines or markings on the surface.

"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cc. or said motor is rated at no more than 1.5 brake horsepower or is powered by an electric drive motor and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motorcycle" includes motorcycles, motor bikes, bicycles with motor attached and all motor-operated vehicles of the bicycle or tricycle type, except motorized bicycles as defined in this section, whether the motive power be a part thereof or attached thereto and having a saddle or seat with driver sitting astride or upon it or a platform on which the driver stands.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Motorized scooter" means a miniature motor vehicle and includes, but is not limited to, pocket bikes, super pocket bikes, scooters, mini-scooters, sport scooters, mini choppers, mini motorcycles, motorized skateboards and other vehicles with motors not manufactured in compliance with Federal Motor Vehicle Safety Standards and which have no permanent Federal Safety Certification stickers affixed to the vehicle by the original manufacturer. This term shall not include: electric personal assistive mobility devices, motorized bicycles or low-speed vehicles; or motorized wheelchairs, mobility scooters or similar mobility assisting devices used by persons with physical disabilities, or persons whose ambulatory mobility has been impaired by age or illness.

"Motorized skateboard" means a skateboard that is propelled otherwise than by muscular power.

"Motorized wheelchair" means any motor-driven wheelchair utilized to increase the independent mobility, in the activities of daily living, of an individual who has limited or no ambulation abilities, and includes mobility scooters manufactured specifically for such purposes and designed primarily for indoor use.

"Noncommercial truck" means every motor vehicle designed primarily for transportation of property, and which is not a "commercial vehicle."

"Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this subtitle placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

"Omnibus" includes all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if the same are not otherwise used in the transportation of passengers for hire.

"Operator" means a person who is in actual physical control of a vehicle or street car.

"Outside lane" means the lane nearest the curb or outer edge of the roadway.

"Owner" means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to posses-

sion, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this subtitle.

"Parking" means the standing or waiting on a street, road or highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

"Passenger automobile" means all automobiles used and designed for the transportation of passengers, other than omnibuses and school buses.

"Pedestrian" means a person afoot.

"Person" includes natural persons, firms, copartnerships, associations, and corporations.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads, such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

"Private road or driveway" means every road or driveway not open to the use of the public for purposes of vehicular travel.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

"Recreation vehicle" means a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping or travel purposes and used solely as a family or personal conveyance.

"Residence district" means that portion of a highway and the territory contiguous thereto, not comprising a business district, where within any 600 feet along such highway there are buildings in use for business or residential purposes which occupy 300 feet or more of frontage on at least one side of the highway.

"Ridesharing" means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. The term shall include such ridesharing arrangements known as car pools and van pools.

"Right-of-way" means the privilege of the immediate use of the highway.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the

event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways, collectively.

"Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians, which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

"School bus" means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for the transportation of children to or from school for secular or religious education, which complies with the regulations of the New Jersey Motor Vehicle Commission affecting school buses, including "School Vehicle Type I" and "School Vehicle Type II" as defined below:

"School Vehicle Type I" means any vehicle designed to transport 16 or more passengers, including the driver, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, summer residence camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the New Jersey Motor Vehicle Commission and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School Vehicle Type II" means any vehicle designed to transport less than 16 passengers, including the driver, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, summer residence camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the New Jersey Motor Vehicle Commission and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School zone" means that portion of a highway which is either contiguous to territory occupied by a school building or is where school crossings are established in the vicinity of a school, upon which are maintained appropriate "school signs" in accordance with specifications adopted by the chief administrator and in accordance with law.

"School crossing" means that portion of a highway where school children are required to cross the highway in the vicinity of a school.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Shipper" means any person who shall deliver, or cause to be delivered, any commodity, produce or article for transportation as the contents or load of a commercial motor vehicle. In the case of a sealed ocean container, "shipper" shall not be construed to include any person whose activities with respect to the shipment are limited to the solicitation or negotiation of the sale, resale, or exchange of the commodity, produce or article within that container.

"Shoulder" means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

"Sidewalk" means that portion of a highway intended for the use of pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway and the adjacent right-of-way line.

"Sign." See "Official traffic control devices."

"Slow-moving vehicle" means a vehicle run at a speed less than the maximum speed then and there permissible.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Street" means the same as highway.

"Street car" means a car other than a railroad train, for transporting persons or property and operated upon rails principally within a municipality.

"Stop," when required, means complete cessation from movement.

"Stopping or standing," when prohibited, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Suburban business or residential district" means that portion of highway and the territory contiguous thereto, where within any 1,320 feet along that highway there is land in use for business or residential purposes and that land occupies more than 660 feet of frontage on one side or collectively more than 660 feet of frontage on both sides of that roadway.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

"Trackless trolley" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly, or together, while using any highway for purposes of travel.

"Traffic control signal" means a device, whether manually, electrically, mechanically, or otherwise controlled, by which traffic is alternately directed to stop and to proceed.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Van pooling" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry seven to 15 adult passengers.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

C.39:4-31.1 Operation of low-speed vehicle on public roads; conditions.

2. a. A low-speed vehicle may be operated upon any public road or highway under the jurisdiction of the Department of Transportation with a posted speed of 25 miles per hour or less. The commissioner may in the commissioner's discretion, by order, pursuant to the provisions of P.L.1998, c.28 (C.39:4-8.2 et seq.), permit the use of low-speed vehicles upon any road and highway under the jurisdiction of the Department of Transportation where the posted speed limit is greater than 25 miles per hour but not greater than 35 miles per hour. Notwithstanding the foregoing, the commissioner may by order prohibit the use of low-speed vehicles on any street under the jurisdiction of the Department of Transportation where the commissioner determines that the operation of low-speed vehicles would constitute a hazard.

b. A low-speed vehicle may be operated upon any public road or highway under the jurisdiction of a county or municipality with a posted speed of 25 miles per hour or less. A municipality or county may, by ordinance, or a county may, by ordinance or resolution, as appropriate, in the case of any street under municipal or county jurisdiction, permit the use of low-speed vehicles where the posted speed limit is greater than 25 miles per hour but not greater than 35 miles per hour. Notwithstanding the foregoing, a municipality or county may, by ordinance, or a county may, by ordinance or resolution, as appropriate, prohibit the use of low-speed vehicles on any

street where the municipality or county determines that the operation of low-speed vehicles would constitute a hazard.

c. A low-speed vehicle may enter an intersection and cross any public road or highway under the jurisdiction of the Department of Transportation where the posted speed is 35 miles per hour or less, provided that if the road or highway is more than two lanes or is divided, such crossings shall only occur at signalized intersections or at such non-signalized intersections as the commissioner in the commissioner's discretion determines are appropriate for such crossings either on the commissioner's own motion or at the request of a county or municipality. A low-speed vehicle may enter an intersection and cross any public road or highway under the jurisdiction of the Department of Transportation where the posted speed is in excess of 35 miles per hour only at signalized intersections or at such non-signalized intersections as the commissioner in the commissioner's discretion determines are appropriate for such crossings either upon the commissioner's own motion or at the request of a county or municipality.

d. A low-speed vehicle may enter an intersection and cross any public road or highway under the jurisdiction of a county or municipality where the posted speed is 35 miles per hour or less, provided that if the road or highway is more than two lanes or is divided, such crossings shall only occur at signalized intersections or at such non-signalized intersections as the municipality by ordinance or the county, by ordinance or resolution, as appropriate, determines are appropriate for such crossing. A low-speed vehicle may enter an intersection and cross any public road or highway under the jurisdiction of a county or municipality where the posted speed is in excess of 35 miles per hour only at signalized intersections or at such non-signalized intersections as the municipality by ordinance or the county by ordinance or resolution, as appropriate, determines are appropriate for such crossing.

e. Persons operating a low-speed vehicle upon a public road, street or highway or crossing a public road, street or highway in violation of this section shall be subject to the general penalties of this chapter.

C.39:4-31.2 Requirements for low-speed vehicles operated on public road, highway.

3. a. Low-speed vehicles operated upon any public road or highway in this State shall be maintained in proper condition and comply with the equipment requirements and standards as set forth in 49 CFR s. 571.500, as amended and supplemented.

Low-speed vehicles operated upon any public road or highway in this State shall be equipped with the following additional equipment:

- (1) Brakes adequate to control the movement of and to stop such vehicle;
- (2) An odometer;

(3) A speedometer; and

(4) The original manufacturer's vehicle identification number die stamped upon the body, or frame, or either or both of them, of the vehicle or the original manufacturer's vehicle identification number die stamped upon the engine or motor of the vehicle.

b. All low-speed vehicles shall have a safety information decal as provided by the manufacturer affixed in a conspicuous place on the rear of the vehicle which shall display in prominent lettering "25 MPH Vehicle."

c. Any person operating a low-speed vehicle without the equipment prescribed in this section shall, on conviction, be fined for each violation as provided in R.S.39:3-79.

C.39:4-31.3 Valid driver's license required for operation of low-speed vehicle; registration, insurance.

4. a. Any person operating a low-speed vehicle in this State authorized pursuant to section 2 of P.L.2005, c.273 (C.39:4-31.1) shall be in possession of a valid driver's license pursuant to the applicable provisions of R.S.39:3-10.

b. Low-speed vehicles operated on the roads and highways of this State shall be properly registered and insured in accordance with the provisions of R.S.39:3-4. All low-speed vehicles operated on the roads and highways of this State shall properly display a license plate issued by the New Jersey Motor Vehicle Commission or issued pursuant to the laws of another state.

The driver's license, the registration certificate of a motor vehicle and an insurance identification card shall be in the possession of the driver or operator at all times when he is in charge of a low-speed vehicle on the highways of this State.

c. Every person operating a low-speed vehicle upon a public road, street or highway shall be subject to the provisions of chapter 4 of Title 39 of the Revised Statutes, and chapter 11 and chapter 12 of Title 2C of the New Jersey Statutes applicable to the drivers of motor vehicles.

C.39:4-31.4 Certificate of origin of low-speed vehicle; waiver of liability by purchaser.

5. a. When a new low-speed vehicle is delivered in this State by the manufacturer to his agent or a dealer, or a person purchasing directly from the manufacturer, the manufacturer shall execute and deliver to his agent or a dealer, or a person purchasing directly from the manufacturer, a certificate of origin, and no person shall bring into this State any new low-speed vehicle unless he has in his possession the certificate of origin. The certificate of origin shall contain the manufacturer's vehicle identification number and the motor number, if available, when the vehicle is sold, the name of the manufacturer, the manufacturer's shipping weight, and identify the vehicle as a

low-speed vehicle, and provide a general description of the body, if any, the type and model and the gross vehicle weight rating.

When a new low-speed vehicle is sold in this State, the manufacturer, his agent or a dealer shall execute and deliver to the purchaser an assignment of the certificate of origin, with the genuine names and business or residence addresses of both stated thereon, and certified to have been executed with full knowledge of the contents and with the consent of both purchaser and seller. If, in connection with such sale, a security interest is taken or retained by the seller to secure all or a part of the purchase price of the vehicle, or is taken by a person who by making an advance or incurring an obligation gives value to enable the purchaser to acquire rights in the motor vehicle, the name and the business or residence address of the secured party or his assignee shall be noted on the manufacturer's certificate of origin. Nothing in this section shall apply to security interests in motor vehicles which constitute inventory held for sale, but such interests shall be subject to chapter 9 of Title 12A of the New Jersey Statutes.

b. Each purchaser of a new low-speed vehicle in this State shall execute a waiver and certify to have purchased a low-speed vehicle with full knowledge of the potentially hazardous characteristics of such vehicles as detailed by the manufacturer or his agent or dealer. The waiver shall be prepared by the manufacturer and kept in the possession of the manufacturer and his agent or dealer of low-speed vehicles. An executed copy shall be provided to the purchaser. The signing of this waiver by the purchaser shall serve to eliminate any liability of the manufacturer and his agent or dealer of low-speed vehicles.

C.39:4-31.5 Low-speed vehicle exempt from inspection.

6. No low-speed vehicle shall be subject to a motor vehicle inspection by the New Jersey Motor Vehicle Commission. The registered owner of a low-speed vehicle shall be required to maintain the vehicle in proper condition as required by section 3 of this act.

7. This act shall take effect on the 90th day after enactment but such anticipatory action may be taken as necessary to effectuate the purposes of this act.

Approved January 6, 2006.

CHAPTER 274

AN ACT establishing a New Jersey Elderly Person Suicide Prevention Advisory Council and supplementing Title 26 of the Revised Statutes.

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

C.26:2MM-1 Findings, declarations relative to elderly person suicide prevention.

1. The Legislature finds and declares that:
 - a. According to the National Institute of Mental Health, elderly Americans are disproportionately likely to die by suicide; individuals 65 years of age and older comprise only 13% of the United States population, but they accounted for 18% of all suicide deaths in 2000;
 - b. In New Jersey, individuals 65 years of age and older also comprise about 13% of the State population and they accounted for 17% of all suicide deaths in the State in 2000;
 - c. The national suicide rate for men is relatively constant from 25 to 64 years of age, but increases significantly after 65 years of age, with men accounting for 84% of suicides among individuals 65 years of age and older in 2000; and for women the national suicide rate peaks between 45 and 64 years of age and does so again after 75 years of age;
 - d. When categorized by race and gender, white men 85 years of age and older have among the highest suicide rates nationally, with 59 deaths per 100,000 persons in 2000, which is more than five times the national rate of 10.6 per 100,000, and according to "Healthy New Jersey 2010," issued by the Department of Health and Senior Services, the seventh leading cause of premature death among New Jerseyans is suicide, with the highest rates among elderly white males;
 - e. The risk factors for suicide among elderly Americans differ from those among younger groups; elderly persons have a higher prevalence of depression, greater use of highly lethal methods and greater social isolation;
 - f. The presence of mental illness (especially depression and alcohol abuse), the presence of physical illness or impairment, unrelieved pain, financial stress and social isolation (especially being widowed in males) and the availability of firearms in the home contribute to the higher incidence of suicide among elderly Americans;
 - g. Suicide among elderly Americans may even be underreported by 40% or more; omitted from statistics are "silent suicides," such as deaths from noncompliance with medical instructions, prescription overdoses, self-starvation or dehydration and other self-induced "accidents";
 - h. Most elderly patients who complete suicide saw their physicians within a few months of their deaths and more than a third did so within the week of their suicide, and warning signs which indicate a serious risk of suicide include: loss of interest in things or activities that are usually seen as enjoyable; lessening of social interactions, self-care and grooming; violating medical regimens or prescription dosages; experiencing or expecting loss

of a spouse; feeling hopeless or worthless; and putting personal affairs in order, including giving things away or making changes to a will; and

i. Physicians, nurses and other health care professionals who treat and care for elderly patients need to be aware of the higher incidence of suicide among elderly Americans and recognize the risk factors associated with this age group.

C.26:2MM-2 Definitions relative to elderly person suicide prevention.

2. As used in this act:

"Alcohol and drug counselor" means a person who is a certified alcohol and drug counselor or a licensed clinical alcohol and drug counselor pursuant to P.L.1997, c.331 (C.45:2D-1 et seq.).

"Attempted suicide" means destructive behavior intended by the actor to result in the actor's harm or death.

"Completed suicide" means a death that is known or reasonably suspected to have resulted from an intentional act of the deceased, regardless of whether it has been ruled a suicide by a medical examiner.

"Council" means the New Jersey Elderly Person Suicide Prevention Advisory Council established pursuant to section 3 of this act.

"Department" means the Department of Health and Senior Services.

"Elderly person" means a person 65 years of age and older.

"Licensed clinical social worker" means a person who holds a current, valid license issued pursuant to subsection a. of section 6 or subsection a. or d. of section 8 of P.L.1991, c.134 (C.45:15BB-1 et seq.).

C.26:2MM-3 New Jersey Elderly Person Suicide Prevention Advisory Council.

3. There is established in the Department of Health and Senior Services the New Jersey Elderly Person Suicide Prevention Advisory Council.

a. The purpose of the council shall be to examine existing needs of and services for elderly persons at risk of suicide and make recommendations to the department for suicide prevention and intervention strategies to help reduce the incidence of attempted and completed suicides among elderly persons.

b. The council shall consist of nine members as follows:

(1) the Commissioners of Health and Senior Services and Human Services and the chairman of the Community Mental Health Citizens Advisory Board established pursuant to P.L.1957, c.146 (C.30:9A-1 et seq.), or their designees, who shall serve ex officio;

(2) two public members appointed by the Governor, one of whom shall be a person with personal or family experience with suicide of an elderly person and one of whom shall be an alcohol and drug counselor;

(3) two public members appointed by the Speaker of the General Assembly, who are not members of the same political party, one of whom shall

be a registered professional nurse and one of whom shall be a licensed clinical social worker; and

(4) two public members appointed by the President of the Senate, who are not members of the same political party, one of whom shall be a physician who has been specially trained in caring for elderly persons and has a certificate of added qualifications in geriatrics and one of whom shall be a geropsychiatrist.

c. The public members shall be appointed no later than 60 days after the enactment of this act.

d. The public members shall serve for a term of five years; but, of the members first appointed, two shall serve for a term of three years, two shall serve for a term of four years and two shall serve for a term of five years. Members are eligible for reappointment upon the expiration of their terms. Vacancies in the membership of the council shall be filled in the same manner provided for the original appointments.

e. The council shall organize as soon as practicable following the appointment of its members and shall select a chairperson and vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the council.

f. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the council.

g. The council shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

h. The Department of Health and Senior Services shall provide staff support to the council.

C.26:2MM-4 Annual report.

4. a. The council shall report annually to the department on the needs of and services for elderly persons at risk of suicide and make any recommendations for suicide prevention and intervention strategies to help reduce the incidence of attempted and completed suicides among elderly persons.

b. The department shall report, in a manner and form prescribed by the department, specific recommendations, as appropriate, to the Director of the Division of Consumer Affairs in the Department of Law and Public Safety who shall inform appropriate health care professionals, through the respective professional licensing boards, of the council's recommendations.

5. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 275

AN ACT concerning certain municipal redevelopment agencies and supplementing P.L.1992, c.79.

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

C.40A:12A-11.1 Findings, declarations relative to municipal redevelopment agencies; additional commissioners, certain.

1. a. The Legislature finds and declares that:

(1) The redevelopment agencies of municipalities across this State renew the vitality and fabric of their neighborhoods and business districts, improve their image, visibility and stature, construct new housing, generate employment opportunities for the local work force and draw consumers and tourists to the municipality; and

(2) These agencies achieve these goals by planning and implementing projects that provide housing, jobs, parks and office buildings; and

(3) Municipalities with a large area and population are faced with a greater burden of responsibility in order to achieve their goals than their smaller, less populated counterparts; and

(4) Increasing the number of commissioners on the redevelopment agencies of larger municipalities in this State will expedite the redevelopment of these municipalities and contribute to a Statewide renaissance that stands to benefit all State residents.

b. Notwithstanding other provisions of this law to the contrary, a municipality with an area of more than 15 square miles and having a population of more than 40,000, according to the most recent federal decennial census, may create a redevelopment agency with nine commissioners or increase the membership of a redevelopment agency already created from seven to nine commissioners. Except as otherwise provided in this subsection, the commissioners shall be appointed by the governing body in the manner generally required for appointments by the form of government under which the municipality is governed. Except as otherwise provided in this subsection, commissioners shall each serve for a term of five years; except that the first of these appointees shall be designated to serve for the following terms: one for a term of one year, two for a term of two years, two for terms of three years, two for a term of four years, and two for terms of five years. Except as otherwise provided in this subsection, where a redevelopment agency of seven commissioners already exists, the additional two commissioners shall be appointed to initial terms of two and four years, as determined by lot.

Notwithstanding any provision of law to the contrary, whenever a municipality governed by the borough form of government pursuant to N.J.S.40A:60-1 et seq. creates a redevelopment agency with nine commissioners, or increases the membership of a redevelopment agency from seven to nine commissioners, two commissioners shall be members of the borough council to be appointed by the council. A member of council so appointed may designate another resident of the borough to serve on the redevelopment agency for any particular meeting in the event the member of council is unavailable. The term of a commissioner who is a member of a borough council shall be one year or terminate upon completion of the council-member's term of office, whichever occurs first.

No more than three commissioners shall be officers or employees of the municipality. Each commissioner shall continue to hold office at the expiration of a term until a successor shall have been appointed and qualified. Any vacancy occurring in the office of commissioner, from any cause, shall be filled in the same manner as the original appointment, but for the unexpired term.

2. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 276

AN ACT concerning training for safe schools resource officers and supplementing Title 18A of the New Jersey Statutes and Title 52 of the Revised Statutes

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

1. The Legislature finds and declares that: many New Jersey public schools employ a safe schools resource officer or, in conjunction with local law enforcement agencies, assign a law enforcement officer to serve as a safe schools resource officer, or assign a school employee to serve as a school liaison to law enforcement; most safe schools resource officers perform many roles, including law enforcement officer, law-related counselor and law-related education teacher; every safe schools resource officer works with and among pupils, teachers and administrators, and many also work with parents; by virtue of their daily interaction with pupils, safe schools resource officers invariably make a strong, early impression of the institution of law

enforcement; the job of safe schools resource officer involves great responsibility and highly specialized skills; and the State should provide comprehensive and consistent training for those individuals entrusted with these responsibilities.

C.52:17B-71.8 Training course for safe schools resource officers, liaisons to law enforcement.

2. a. The Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety, in consultation with the Attorney General, shall develop a training course for safe schools resource officers and public school employees assigned by a board of education to serve as a school liaison to law enforcement. The Attorney General, in conjunction with the Police Training Commission, shall ensure that the training course is developed within 180 days of the effective date of this act. The course shall at a minimum provide comprehensive and consistent training in current school resource officer practices and concepts. The course shall be made available to:

(1) any law enforcement officer or public school employee referred by the board of education of the public school to which assignment as a safe schools resource officer or school liaison to law enforcement is sought; and

(2) any safe schools resource officer or school liaison to law enforcement assigned to a public school prior to the effective date of P.L.2005, c.276 (C.52:17B-71.8 et al.).

b. The training course developed by the commission pursuant to subsection a. of this section shall be offered at each school approved by the commission to provide police training courses pursuant to the provisions of P.L.1961, c.56 (C.52:17B-66 et seq.). The commission shall ensure that an individual assigned to instruct the course is proficient and experienced in current school resource officer practices and concepts.

c. The commission shall award a certificate to each individual who successfully completes the course.

d. The Police Training Commission, in consultation with the Commissioner of Education, shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to implement the provisions of this section.

C.18A:17-43.1 Training course required for service as safe schools resource officer, liaison to law enforcement.

3. a. Following the development of the training course pursuant to subsection a. of section 2 of P.L.2005, c.276 (C.52:17B-71.8) or 180 days following the effective date of this act, whichever occurs first, a board of education shall not assign a safe schools resource officer to a public school unless that individual first completes the safe schools resource officer training course.

b. Following the development of the training course pursuant to subsection a. of section 2 of P.L.2005, c.276 (C.52:17B-71.8) or 180 days following the effective date of this act, whichever occurs first, a board of education shall not assign an employee to serve as a school liaison to law enforcement unless that individual first completes the safe schools resource officer training course.

c. A person who is assigned to a public school as a safe schools resource officer prior to the effective date of P.L.2005, c.276 (C.52:17B-71.8 et al.) or assigned to serve as a school liaison to law enforcement prior to that date shall not be required to complete the safe schools resource officer training course developed by the Police Training Commission pursuant to subsection a. of section 2 of P.L.2005, c.276 (C.52:17B-71.8), but may in accordance with that section.

4. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 277

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, 2005 and regulating the disbursement thereof," approved June 30, 2004 (P.L.2004, c.71).

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

1. The following language provision is added on p. 72 of P.L.2004, c.71

46 DEPARTMENT OF HEALTH AND SENIOR SERVICES

20 Physical and Mental Health

21 Health Services

DIRECT STATE SERVICES

From the amount hereinabove appropriated for Cancer Screening -- Early Detection and Education Program, \$75,000 shall be used for a public information campaign on lung cancer in women.

2. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 278

AN ACT concerning the use of needles and other sharp devices with integrated safety features in health care facilities and amending P.L.1999, c.311.

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

1. Section 3 of P.L.1999, c.311 (C.26:2H-5.12) is amended to read as follows:

C.26:2H-5.12 Integrated safety features required on needles, etc.; dentists, exempt, certain circumstances.

3. a. No later than 12 months after the date of enactment of this act, the commissioner shall require that a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) use only needles and other sharp devices with integrated safety features, which needles and other sharp devices have been cleared or approved for marketing by the federal Food and Drug Administration and are commercially available for distribution.

b. By a date established by the commissioner by regulation, but no later than 36 months after the date of enactment of this act, the requirements of subsection a. of this section shall also apply to pre-filled syringes, as that term is defined by the commissioner by regulation pursuant to this act.

c. No later than six months after the date of enactment of this act, the commissioner shall develop evaluation criteria for use by an evaluation committee established pursuant to subsection a. of section 4 of this act in selecting needles and other sharp devices for use by a health care facility.

d. In the event that there is no cleared or approved for marketing product with integrated safety features for a specific patient use, the licensed health care facility shall continue to use the appropriate needle or other sharp device that is available, including any needle or other sharp device with non-integrated, add-on safety features, until such time as a product with integrated safety features is cleared or approved for marketing and is commercially available for that specific patient use.

e. No later than six months after the date of enactment of this act, the commissioner shall develop and make available to health care facilities a standardized form that shall be used by health care professionals and the health care facility's evaluation committee for applying for a waiver and in reviewing a request for a waiver, respectively, and for reporting the use of a needle or other sharp device without integrated safety features in an emer-

gency situation by a health care professional, pursuant to the provisions of subsection d. of section 4 of this act.

f. Notwithstanding the provisions of this section to the contrary, a dentist who determines that use of a needle or other sharp device with integrated safety features potentially may have a negative impact on patient safety or the success of a specific medical procedure may use a needle or other sharp device without integrated safety features, without obtaining a waiver from the evaluation committee and without providing notification to the evaluation committee pursuant to section 4 of P.L.1999, c.311 (C.26:2H-5.13).

2. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 279

AN ACT establishing the "Task Force on Health Care Professional Responsibility and Reporting."

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

1. There is established the "Task Force on Health Care Professional Responsibility and Reporting." The purpose of the task force shall be to assist in the implementation and monitor the impact of health care professional reform measures adopted pursuant to P.L.2005, c.83 (C.45:1-33 et al.).

2. a. The task force shall be comprised of 15 members as follows:

(1) the Commissioners of Health and Senior Services and Human Services and the Attorney General, or their designees, who shall serve ex officio;

(2) four members appointed by the President of the Senate who shall include: one representative recommended by the New Jersey Hospital Association; one representative recommended by the New Jersey State Nurses Association; one representative recommended by the Health Professionals and Allied Employees; and one member of the public who has professional experience or knowledge in issues relating to the work of the task force;

(3) four members appointed by the Speaker of the General Assembly who shall include: one representative recommended by the New Jersey

Council of Teaching Hospitals; one representative recommended by an organization representing physicians in the State; one representative recommended by the New Jersey State AFL-CIO who represents health care workers; and one member of the public who has professional experience or knowledge in issues relating to the work of the task force; and

(4) four members appointed by the Governor who shall include: one representative recommended by the Health Care Association of New Jersey; one representative recommended by the New Jersey Society of Health-System Pharmacists; one representative recommended by the New Jersey Association of Health Plans; and one member of the public who has professional experience or knowledge in issues relating to the work of the task force.

Vacancies in the membership of the task force shall be filled in the same manner provided for the original appointments.

b. The task force shall organize as soon as practicable following the appointment of its members and shall elect a chairperson and vice-chairperson from among the members of the task force. The task force shall appoint a secretary who need not be a member of the task force.

c. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the task force.

d. The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

e. The task force may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature.

f. The Departments of Law and Public Safety and Health and Senior Services shall provide staff support to the task force.

3. It shall be the duty of the task force to:

a. Assist in the development of notices that health care entities may post for, or distribute to, health care professionals who are employed at their entities regarding the required employer and employee reporting provisions of P.L.2005, c.83, including information about job performance that current or former employers must provide to prospective employers about their employees; and

b. Beginning 18 months after the enactment of P.L.2005, c. 83:

(1) review the implementation of the provisions of section 15 of P.L.2005, c.83 (C.26:2H-12.2c) to assess:

(a) if the reporting requirements have resulted in prospective employers' receiving useful information regarding the suitability of an employee for re-

employment at a health care entity and the employees' skills and abilities as they relate to suitability for future employment at a health care entity;

(b) if there has been an adverse effect on health care professional employees and job applicants as a result of the reporting requirements; and

(c) if there is a need for a mechanism to enable employees of health care entities to report to the Division of Consumer Affairs in the Department of Law and Public Safety misuse by their employers of information required to be reported pursuant to section 15 of P.L.2005, c.83 (C.26:2H-12.2c);

(2) monitor the number of notices reported by health care entities to the Division of Consumer Affairs, by type of health care professional, pursuant to the requirements of section 2 of P.L.2005, c.83 (C.26:2H-12.2b);

(3) review the implementation of the requirement that all health care professionals submit to a criminal history record background check; and

(4) monitor the number of reports by health care professionals to the Division of Consumer Affairs concerning an impairment, gross incompetence or unprofessional conduct of another health care professional pursuant to the requirements of section 12 of P.L.2005, c.83 (C.45:1-37).

4. The task force shall periodically report its findings and recommendations to the Governor, Senate Health, Human Services and Senior Citizens Committee and General Assembly Health and Human Services Committee, along with any legislation that it desires to recommend for adoption by the Legislature.

5. This act shall take effect upon the date of enactment of P.L.2005, c.83 and shall expire three years after the date of enactment of P.L.2005, c.83.

Approved January 6, 2006.

CHAPTER 280

AN ACT establishing the "Task Force on Cancer Prevention, Early Detection and Treatment in New Jersey" and supplementing Title 26 of the Revised Statutes.

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

C.26:2-182 "Task Force on Cancer Prevention, Early Detection and Treatment in New Jersey."

1. a. There is established the "Task Force on Cancer Prevention,

Early Detection and Treatment in New Jersey" within the Department of Health and Senior Services.

b. The task force shall be comprised of the following members:

(1) the Commissioner of Health and Senior Services, or his designee, who shall serve ex officio; and

(2) no more than 20 public members to be appointed by the Governor, who shall include representatives from: the Public Health Council; the New Jersey State Commission on Cancer Research; the New Jersey Office on Minority and Multicultural Health; the Medical Society of New Jersey; academic medical centers and universities engaged in cancer education, research and treatment; providers of cancer treatment and support services; pharmaceutical companies engaged in cancer research; community-based organizations and coalitions engaged in cancer outreach, education and screening; and cancer survivors.

c. The public members shall serve for a term of one year. Vacancies in the membership of the task force shall be filled in the same manner as the original appointments were made.

d. The task force shall organize as soon as may be practicable, but no later than the 30th day after the appointment of its members, and shall select a chairperson from among the public members. The chairperson shall appoint a secretary who need not be a member of the task force. The public members shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties.

e. The Department of Health and Senior Services shall supply such staff and resources, including a person to serve as executive director of the task force, as the task force requires to carry out its duties.

f. The task force is entitled to the assistance and services of the employees of any State department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to 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 purpose.

C.26:2-183 Duties of task force.

2. a. The task force shall:

(1) evaluate current trends in cancer incidence, morbidity and mortality, screening, diagnosis, and behaviors that increase risk;

(2) evaluate historic, current and emerging cancer control strategies;

(3) establish cancer reduction goals, which shall seek to reduce mortality rates for breast, cervical, prostate, lung and colorectal cancer;

(4) establish specific goals for:

(a) reducing behavior that increases the risk of cancer, including behavior related to smoking and diet;

- (b) reversing the present trend of annual increases in the rate of invasive melanoma;
- (c) closing the gap in cancer mortality rates between the total population and minorities;
- (d) increasing the use of screening tests for cancer, especially among elderly and minority populations; and
- (e) increasing the percentage of cancers diagnosed at early stages;
- (5) develop an integrated set of priority strategies that are necessary to achieve the goals established pursuant to this act; and
- (6) delineate the respective roles and responsibilities for the State and other entities in implementing the priority strategies identified pursuant to this act.

b. (1) The task force shall report to the Governor, the Commissioner of Health and Senior Services and the Legislature on its findings, recommendations and activities at least biennially.

(2) In addition, the cervical cancer workgroup, which the task force shall establish in addition to such other workgroups as it deems appropriate, shall report to the Governor, the Commissioner of Health and Senior Services and the Legislature at least biennially on its findings and recommendations regarding strategies and actions to reduce the occurrence of, and burdens suffered from, cervical cancer, along with any legislative bills that it desires to recommend for adoption by the Legislature.

C.26:2-184 Task force established by E.O.114 continued as this task force.

3. The task force established pursuant to Executive Order No. 114 of 2000, together with its functions, powers, duties, and workgroups, is continued in the Department of Health and Senior Services as the "Task Force on Cancer Prevention, Early Detection and Treatment in New Jersey" established pursuant to this act.

4. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 281

AN ACT concerning the investment of monies in the Garden State Green Acres Preservation Trust Fund, the Garden State Historic Preservation Trust Fund and the Garden State Farmland Preservation Trust Fund, and amending P.L.1999, c.152.

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

1. Section 3 of P.L.1999, c.152 (C.13:8C-3) is amended to read as follows:

C.13:8C-3 Definitions relative to open space, farmland, and historic preservation.

3. As used in sections 1 through 42 of this act:

"Acquisition" or "acquire" means the obtaining of a fee simple or lesser interest in land, including but not limited to a development easement, a conservation restriction or easement, or any other restriction or easement permanently restricting development, by purchase, installment purchase agreement, gift, donation, eminent domain by the State or a local government unit, or devise; except that any acquisition of lands by the State for recreation and conservation purposes by eminent domain shall be only as authorized pursuant to section 28 of this act;

"Bonds" means bonds issued by the trust pursuant to this act;

"Commissioner" means the Commissioner of Environmental Protection;

"Committee" means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c.31 (C.4:1C-4);

"Constitutionally dedicated moneys" means any moneys made available pursuant to Article VIII, Section II, paragraph 7 of the State Constitution or through the issuance of bonds, notes or other obligations by the trust, as prescribed by Article VIII, Section II, paragraph 7 of the State Constitution and this act, or any moneys from other sources deposited in the trust funds established pursuant to sections 19, 20, and 21 of this act, and appropriated by law, for any of the purposes set forth in Article VIII, Section II, paragraph 7 of the State Constitution or this act;

"Convey" or "conveyance" means to sell, donate, exchange, transfer, or lease for a term of 25 years or more;

"Cost" means the expenses incurred in connection with: all things deemed necessary or useful and convenient for the acquisition or development of lands for recreation and conservation purposes, the acquisition of development easements or fee simple titles to farmland, or the preservation of historic properties, as the case may be; the execution of any agreements or franchises deemed by the Department of Environmental Protection, State Agriculture Development Committee, or New Jersey Historic Trust, as the case may be, to be necessary or useful and convenient in connection with any project funded in whole or in part using constitutionally dedicated moneys; the procurement or provision of appraisal, archaeological, architectural, conservation, design, engineering, financial, geological, historic research, hydrological, inspection, legal, planning, relocation, surveying, or other

professional advice, estimates, reports, services, or studies; the purchase of title insurance; the undertaking of feasibility studies; 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 that may have been transferred or advanced therefrom to any fund established by this act, or any moneys that may have been expended therefrom for, or in connection with, this act;

"Department" means the Department of Environmental Protection;

"Development" or "develop" means, except as used in the definitions of "acquisition" and "development easement" in this section, any improvement made to a land or water area designed to expand and enhance its utilization for recreation and conservation purposes, and shall include the construction, renovation, or repair of any such improvement, but shall not mean shore protection or beach nourishment or replenishment activities;

"Development easement" means an interest in land, less than fee simple title thereto, which interest represents the right to develop that land for all nonagricultural purposes and which interest may be transferred under laws authorizing the transfer of development potential;

"Farmland" means land identified as having prime or unique soils as classified by the Natural Resources Conservation Service in the United States Department of Agriculture, having soils of Statewide importance according to criteria adopted by the State Soil Conservation Committee, established pursuant to R.S.4:24-3, or having soils of local importance as identified by local soil conservation districts, and which land qualifies for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), and any other land on the farm that is necessary to accommodate farm practices as determined by the State Agriculture Development Committee;

"Farmland preservation," "farmland preservation purposes" or "preservation of farmland" means the permanent preservation of farmland to support agricultural or horticultural production as the first priority use of that land;

"Garden State Farmland Preservation Trust Fund" means the Garden State Farmland Preservation Trust Fund established pursuant to section 20 of this act;

"Garden State Green Acres Preservation Trust Fund" means the Garden State Green Acres Preservation Trust Fund established pursuant to section 19 of this act;

"Garden State Historic Preservation Trust Fund" means the Garden State Historic Preservation Trust Fund established pursuant to section 21 of this act;

"Green Acres bond act" means: P.L.1961, c.46; P.L.1971, c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265; P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204; and any State general obligation bond act that may be approved after the date of enactment of this act for the purpose of providing funding for the acquisition or development of lands for recreation and conservation purposes;

"Historic preservation," "historic preservation purposes," or "preservation of historic properties" means any work relating to the conservation, improvement, interpretation, preservation, protection, rehabilitation, renovation, repair, restoration, or stabilization of any historic property, and shall include any work related to providing access thereto for disabled or handicapped persons;

"Historic property" means any area, building, facility, object, property, site, or structure approved for inclusion, or which meets the criteria for inclusion, in the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.);

"Indoor recreation" means active recreation that otherwise is or may be pursued outdoors but, for reasons of extending the season or avoiding inclement weather, is or may be pursued indoors within a fully or partially enclosed building or other structure, and includes basketball, ice skating, racquet sports, roller skating, swimming, and similar recreational activities and sports as determined by the Department of Environmental Protection;

"Land" or "lands" means real property, including improvements thereof or thereon, rights-of-way, water, lakes, riparian and other rights, easements, privileges and all other rights or interests of any kind or description in, relating to, or connected with real property;

"Local government unit" means a county, municipality, or other political subdivision of the State, or any agency, authority, or other entity thereof; except, with respect to the acquisition and development of lands for recreation and conservation purposes, "local government unit" means a county, municipality, or other political subdivision of the State, or any agency, authority, or other entity thereof the primary purpose of which is to administer, protect, acquire, develop, or maintain lands for recreation and conservation purposes;

"New Jersey Historic Trust" means the entity established pursuant to section 4 of P.L.1967, c.124 (C.13:1B-15.111);

"Notes" means the notes issued by the trust pursuant to this act;

"Permitted investments" means any of the following securities;

(1) Bonds, debentures, notes or other evidences of indebtedness issued by any agency or instrumentality of the United States to the extent such obligations are guaranteed by the United States or by another such agency

the obligations (including guarantees) of which are guaranteed by the United States;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any corporation chartered by the United States, including, but not limited to, Governmental National Mortgage Association, Federal Land Banks, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Resolution Funding Corporation, Export-Import Bank, Federal Financing Bank and Student Loan Marketing Association;

(3) Bonds, debentures, notes or commercial paper rated in the highest two rating categories without regard to rating subcategories (derogation) by all nationally recognized investment rating agencies or by a nationally recognized investment rating agency if rated by only one nationally recognized investment rating agency;

(4) Repurchase agreements or investment agreements issued by (i) a commercial bank or trust company or a national banking association, each having a capital stock and surplus of more than \$100,000,000, or (ii) an insurance company with the highest rating provided by a nationally recognized insurance company rating agency, or (iii) a broker/dealer, or (iv) a corporation; provided that the credit of such commercial bank or trust company or national banking association or insurance company or broker/dealer or corporation, as the case may be, is rated (or, in the case of a broker/dealer or corporation, whose obligations thereunder are guaranteed by a commercial bank or trust company or a national banking association or insurance company with the highest rating provided by a nationally recognized insurance company rating agency or corporation whose credit is rated) not lower than the "AA" category without regard to rating subcategories (derogation) of any two nationally recognized investment rating agencies then rating the State; provided that any such agreement shall provide for the investment of funds and shall be collateralized by obligations described in paragraph 1 or paragraph 2 or paragraph 3 above at a level of at least one hundred and two (102) percent in principal amount of those obligations;

"Pinelands area" means the pinelands area as defined pursuant to section 3 of P.L.1979, c.111 (C.13:18A-3);

"Pinelands regional growth area" means a regional growth area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.);

"Project" means all things deemed necessary or useful and convenient in connection with the acquisition or development of lands for recreation and conservation purposes, the acquisition of development easements or fee

simple titles to farmland, or the preservation of historic properties, as the case may be;

"Qualifying open space referendum county" means any county that has: (1) approved and implemented, and is collecting and expending the revenue from, an annual levy authorized pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) for an amount or at a rate equivalent to at least one half of one cent per \$100 of assessed value of real property, or for an amount or at a rate established by the county and in effect as of April 1, 1999, whichever is greater; or (2) adopted an alternative means of funding for the same or similar purposes as an annual levy, which the Department of Environmental Protection, in consultation with the committee and the New Jersey Historic Trust, approves to be stable and reasonably equivalent in effect to an annual levy;

"Qualifying open space referendum municipality" means any municipality that has: (1) approved and implemented, and is collecting and expending the revenue from, an annual levy authorized pursuant to P.L.1997, c.24 (C.40:12-15.1 et seq.) for an amount or at a rate equivalent to at least one half of one cent per \$100 of assessed value of real property, or for an amount or at a rate established by the municipality and in effect as of April 1, 1999, whichever is greater; or (2) adopted an alternative means of funding for the same or similar purposes as an annual levy, which the Department of Environmental Protection, in consultation with the committee and the New Jersey Historic Trust, approves to be stable and reasonably equivalent in effect to an annual levy;

"Qualifying tax exempt nonprofit organization" means a nonprofit organization that is exempt from federal taxation pursuant to section 501 (c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501 (c)(3), and which qualifies for a grant pursuant to section 27, 39, or 41 of this act;

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both; and

"Trust" means the Garden State Preservation Trust established pursuant to section 4 of this act.

2. Section 19 of P.L.1999, c.152 (C.13:8C-19) is amended to read as follows:

C.13:8C-19 "Garden State Green Acres Preservation Trust Fund."

19. The State Treasurer shall establish a fund to be known as the "Garden State Green Acres Preservation Trust Fund." The State Treasurer shall

deposit into the fund all moneys transferred from the trust to the State Treasurer for deposit into the fund pursuant to paragraph (1) of subsection a. of section 18 of this act and any other moneys appropriated by law for deposit into the fund. Moneys in the fund shall be invested in permitted investments or shall be held in interest-bearing accounts in those depositories as the State Treasurer may select, and may be invested and reinvested in permitted investments or as other trust funds in the custody of the State Treasurer in the manner provided by law. All interest or other income or earnings derived from the investment or reinvestment of moneys in the fund shall be credited to the fund. Moneys derived from the payment of principal and interest on the loans to local government units authorized in subsection b. of section 27 of this act shall also be held in the fund. Such grants, contributions, donations, and reimbursements from federal aid programs, including but not limited to funding received by the State from the federal Land and Water Conservation Fund, 16 U.S.C. s.4601-4 et al., and from other public or private sources as may be used lawfully for the purposes of section 26 of this act shall also be held in the fund, but shall be expended in accordance with any purposes for which the moneys were designated and in compliance with any conditions or requirements attached thereto. The moneys in the fund are specifically dedicated and shall be applied to the cost of the purposes set forth in section 26 of this act. Moneys derived from the payment of principal and interest on the loans to local government units authorized in subsection b. of section 27 of this act are specifically dedicated for the issuance of additional loans in accordance with subsection b. of section 27 of this act. Moneys in the fund shall not be expended except in accordance with appropriations from the fund made by law. Unexpended moneys due to project withdrawals, cancellations, or cost savings shall be returned to the fund, except as otherwise provided pursuant to paragraph (3) of subsection a. of section 23 of this act, to be used for the purposes of the fund.

3. Section 20 of P.L.1999, c.152 (C.13:8C-20) is amended to read as follows:

C.13:8C-20 "Garden State Farmland Preservation Trust Fund."

20. The State Treasurer shall establish a fund to be known as the "Garden State Farmland Preservation Trust Fund." The State Treasurer shall deposit into the fund all moneys transferred from the trust to the State Treasurer for deposit into the fund pursuant to paragraph (2) of subsection a. of section 18 of this act and any other moneys appropriated by law for deposit into the fund. Moneys in the fund shall be invested in permitted investments or shall be held in interest-bearing accounts in those depositories as the State Treasurer may select, and may be invested and reinvested in

permitted investments or as other trust funds in the custody of the State Treasurer in the manner provided by law. All interest or other income or earnings derived from the investment or reinvestment of moneys in the fund shall be credited to the fund. Such grants, contributions, donations, and reimbursements from federal aid programs and from other public or private sources as may be used lawfully for the purposes of section 37 of this act shall also be held in the fund, but shall be expended in accordance with any purposes for which the moneys were designated and in compliance with any conditions or requirements attached thereto. The moneys in the fund are specifically dedicated and shall be applied to the cost of the purposes set forth in section 37 of this act. Moneys in the fund shall not be expended except in accordance with appropriations from the fund made by law. Unexpended moneys due to project withdrawals, cancellations, or cost savings shall be returned to the fund, except as otherwise provided pursuant to paragraph (3) of subsection b. of section 23 of this act, to be used for the purposes of the fund.

4. Section 21 of P.L.1999, c.152 (C.13:8C-21) is amended to read as follows:

C.13:8C-21 "Garden State Historic Preservation Trust Fund."

21. The State Treasurer shall establish a fund to be known as the "Garden State Historic Preservation Trust Fund." The State Treasurer shall deposit into the fund all moneys transferred from the Garden State Preservation Trust to the State Treasurer for deposit into the fund pursuant to paragraph (3) of subsection a. of section 18 of this act and any other moneys appropriated by law for deposit into the fund. Moneys in the fund shall be invested in permitted investments or shall be held in interest-bearing accounts in those depositories as the State Treasurer may select, and may be invested and reinvested in permitted investments or as other trust funds in the custody of the State Treasurer in the manner provided by law. All interest or other income or earnings derived from the investment or reinvestment of moneys in the fund shall be credited to the fund. Such grants, contributions, donations, and reimbursements from federal aid programs and from other public or private sources as may be used lawfully for the purposes of section 41 of this act shall also be held in the fund, but shall be expended in accordance with any purposes for which the moneys were designated and in compliance with any conditions or requirements attached thereto. The moneys in the fund are specifically dedicated and shall be applied to the cost of the purposes set forth in section 41 of this act. Moneys in the fund shall not be expended except in accordance with appropriations from the fund made by law. Unexpended moneys due to project withdrawals, cancella-

tions, or cost savings shall be returned to the fund, except as otherwise provided pursuant to paragraph (3) of subsection c. of section 23 of this act, to be used for the purposes of the fund.

5. This act shall take effect immediately.

Approved January 6, 2006.

CHAPTER 282

AN ACT concerning the title of Governor and amending R.S.52:15-5.

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

1. R.S.52:15-5 is amended to read as follows:

Title and signature of acting governor; continuous service of at least 180 days confers title of Governor.

52:15-5. Whenever the functions, powers, duties and emoluments of the office of Governor shall have devolved upon the President of the Senate, the Speaker of the House of Assembly, for the time being, or any other person, other than the Lieutenant Governor, in accordance with the Constitution of this State, or laws adopted pursuant thereto, the official title of the person administering the Government of the State, for the time being, shall be "President of the Senate (or Speaker of the House of Assembly, or as the case may be), Acting Governor of the State of New Jersey." Said title shall be used in all legislative, executive and judicial proceedings or documents in which it is necessary to describe by his title the person administering the Government for the time being. The signature of the person administering the Government for the time being shall be in the following form: "A. B., President of the Senate (or Speaker of the House of Assembly, or as the case may be), Acting Governor," and the attestation to said signature shall be in the following form: "By A. B., President of the Senate (or Speaker of the House of Assembly, or as the case may be), Acting Governor."

However, the official title of a person who serves as Acting Governor for a continuous period of at least 180 days shall thereafter be, for all of the purposes of this section, as well as for all historical purposes, "Governor of the State of New Jersey." A temporary discontinuance of service as Acting Governor, due to travel outside of the State or inability to discharge the duties of office because of illness, shall not render a period of service noncontinuous.

2. This act shall take effect immediately and shall be retroactive to January 1, 2001.

Approved January 9, 2006.

CHAPTER 283

AN ACT concerning charitable registration and amending and supplementing P.L.1994, c.16.

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

1. Section 3 of P.L.1994, c.16 (C.45:17A-20) is amended to read as follows:

C.45:17A-20 Definitions.

3. As used in this act:

"Attorney General" means the Attorney General of the State of New Jersey or his designee.

"Charitable organization" means: (1) any person determined by the federal Internal Revenue Service to be a tax exempt organization pursuant to section 501(c) (3) of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c) (3); or (2) any person who is, or holds himself out to be, established for any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation, or an appeal which has a tendency to suggest there is a charitable purpose to any such solicitation.

"Charitable purpose" means: (1) any purpose described in section 501(c) (3), of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c) (3); or (2) any benevolent, philanthropic, humane, social welfare, public health, or other eleemosynary objective, or an objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

"Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit a charitable organization or purpose.

"Commercial co-venturer" means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in

interest, who, for profit or other consideration is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization, and who advertises that the purchase or use of his goods, services, entertainment or any other thing of value will benefit a charitable organization or charitable purpose.

"Contribution" means the conveyance, promise or pledge of money, credit, property, financial assistance or other thing of any kind or value in response to a solicitation. It does not include any of the following: bona fide fees, dues or assessments paid by members provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation; moneys received pursuant to a governmental grant or contract; or, personal services rendered by a volunteer.

"Federated fund raising organization" means a federation of independent charitable organizations which have voluntarily joined together for purposes of raising and distributing money.

"Fund raising counsel" means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who is retained by a charitable organization for a fixed fee or rate to plan, manage, advise, consult or prepare material for or with respect to the solicitation in this State of contributions for a charitable organization, but who does not solicit contributions or employ, procure or engage any compensated person to solicit contributions. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a fund raising counsel. No attorney, accountant or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of the professional service or advice rendered, to be a fund raising counsel.

"Independent paid fund raiser" means any person, including, but not limited to, any assignee, subcontractor, independent contractor or successor in interest, who for compensation performs for or on behalf of a charitable organization any service in connection with which contributions are or will be solicited in this State by that compensated person or by any compensated person he employs, procures, or engages, directly or indirectly to solicit contributions. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be an independent paid fund raiser. No attorney, accountant or banker who advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of that advice, to be an independent paid fund raiser.

"Local unit" means a charitable organization that is affiliated with a parent organization under terms specified in the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws.

"Membership" means a relationship which entitles a person to the privileges, professional standing, honors or other direct benefit of the organization and either the right to vote or elect officers, or hold office in the organization. Membership shall not include any relationship granted solely upon making a contribution as a result of a solicitation.

"Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws.

"Person" means an individual, corporation, association, partnership, trust, foundation or any other entity, however established within or without this State.

"Registrant" means any person who has filed a registration statement with the Attorney General required by this act.

"Registration statement" means an initial registration, renewal, financial report, or any other document or report required pursuant to section 6, 7, 8, 10 or 11 of this act to be filed with the Attorney General.

"Secretary of State" means the Secretary of State of the State of New Jersey.

"Solicitation" or "solicit" means the request, directly or indirectly, for money, credit, property, financial assistance, or other thing of any kind or value which will be used for a charitable purpose or benefit a charitable organization. Solicitation shall include, but not be limited to, the following methods of requesting or securing money, credit, property, financial assistance or other thing of value:

- (1) Any oral or written request;
- (2) The making of any announcement in the press, over the radio or television, by telephone, through the mail or any other media concerning an appeal or campaign by or for any charitable organization or purpose;
- (3) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain a contribution;
- (4) The offer of, attempt to sell, or sale of any advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable organization or purpose, or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale, or where any state-

ment is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization;

(5) The use or employment of canisters, cards, receptacles or similar devices for the collection of money or other thing of value in connection with which any appeal is made for any charitable organization or purpose.

A solicitation shall take place whether or not the person making the solicitation receives any contribution, except that a charitable organization's use of its own name in any communication shall not alone be sufficient to constitute a solicitation.

"Solicitor" means any individual who attempts to solicit or solicits contributions for compensation. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a solicitor.

2. Section 5 of P.L.1994, c.16 (C.45:17A-22) is amended to read as follows:

C.45:17A-22 Review of registration statement.

5. If the Attorney General determines that the registration or contract requirements established by this act are not satisfied, the Attorney General shall notify the filing party or registrant within 10 business days of receipt of the registration or contract. If notification is not sent within 10 business days: (1) a registration statement is accepted; or (2) performance may begin on a contract. Within 10 business days after receipt of a notification that the requirements have not been satisfied, the charitable organization, fund raising counsel, independent paid fund raiser, commercial co-venturer or solicitor, as appropriate, may satisfy the requirements or request a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Acceptance of a registration or performance of a contract pursuant to this section shall not foreclose the Attorney General from denying an application, enforcing the registration or contract requirements established by P.L.1994, c.16 (C.45:17A-18 et seq.) and the rules adopted pursuant thereto, or taking other appropriate action.

3. Section 7 of P.L.1994, c.16 (C.45:17A-24) is amended to read as follows:

C.45:17A-24 Long form registration statement.

7. a. Every charitable organization operating or soliciting within this State, except for those provided for in section 8 of this act or exempt pursuant to section 9 of this act, shall file a long form registration statement with the Attorney General.

b. The long form shall contain the following:

(1) The name of the organization and any other name or names under which it intends to solicit contributions and the purposes for which it was organized;

(2) The name, street address and telephone number of each officer, director and trustee and each principal salaried executive staff employee and whether the person has been adjudged liable in an administrative or civil action, or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purposes of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction;

(b) "each principal salaried executive staff employee" shall be limited to no more than the five most highly compensated employees in the organization; and

(c) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the officer, director, trustee or principal salaried executive staff employee engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency.

(3) A copy of the most recent Internal Revenue Service Form 990 and Schedule A (990) for every registrant if the organization filed these forms;

(4) A clear description of the specific programs and charitable purpose for which contributions will be used and a statement whether such programs are planned or are in existence;

(5) A statement disclosing pertinent information concerning whether any of the organization's officers, directors, trustees or principal salaried executive staff employees as defined in subparagraph (b) of paragraph (2) of subsection b. of this section:

(a) Are related by blood, marriage or adoption to each other or to any officers, agents or employees of any fund raising counsel or independent paid fund raiser under contract to the organization, or are related by blood, marriage or adoption to any chief executive employee, any other employee of the organization with a direct financial interest in the transaction, or any partner, proprietor, director, officer, trustee, or to any shareholder of the organization with more than a two percent interest of any supplier or vendor providing goods or services to the organization and, if so, the name and business and home address and telephone number of each related party; or

(b) Have a financial interest in any activity engaged in by a fund raising counsel or independent paid fund raiser under contract to the organization

or any supplier or vendor providing goods or services to the organization and, if so, the name and business address and telephone number of each interested party.

(6) The amount of any grant or financial assistance from any agency of government in its preceding fiscal year;

(7) A statement setting forth the place where and the date when the organization was legally established and the form of the organization;

(8) The principal street address and telephone number of the organization and the address and telephone number of each office in this State. If the organization does not maintain an office in this State, the name and address of the individual having custody of its financial records pertaining to operations or solicitations in this State shall be disclosed;

(9) The name, street address and telephone number of each affiliate which shares in the contributions or other revenue raised in this State;

(10) The date when the organization's fiscal year ends;

(11) A statement whether:

(a) The organization is authorized by any other state to solicit contributions and, if so, a listing of the states in which authorization has been obtained;

(b) The organization is or has ever been enjoined in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets;

(c) The organization's registration has been denied, suspended or revoked by any jurisdiction, together with the reasons for that denial, suspension or revocation; and

(d) The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or federal agency or officer;

(12) Whether the organization intends to solicit contributions from the general public; and

(13) Any other information as may be prescribed by rules adopted by the Attorney General. In prescribing the requirements of the long form, the Attorney General shall permit a charitable organization to incorporate by reference any information reported by the organization on its Service Form 990 and Schedule A (990).

c. With initial registration only, every charitable organization required to file a long form registration shall also file a copy of the organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws, and a statement setting forth the organization's tax exempt status with copies of federal or state tax exemption determination or exemption ruling letters;

provided that any changes in the accuracy of this information shall be reported to the Attorney General pursuant to subsection e. of section 14 of this act.

d. (1) Every charitable organization required to file a long form registration shall file an annual financial report with the Attorney General. The annual financial report shall include: a balance sheet; a statement of support revenue, expenses and changes in fund balance; a statement of functional expenses at least divided into program, management, general, and fund raising; and such other information as the Attorney General shall by rule require.

(2) The annual financial report of every charitable organization which received gross revenue in excess of \$250,000, or any greater amount that the Attorney General may prescribe by regulation during its most recently completed fiscal year shall be accompanied by: (a) a financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant; and (b) any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization.

The annual financial reports of all organizations receiving more than \$25,000 but less than \$250,000, or any greater amount that the Attorney General may prescribe by regulation shall be certified by the organization's president or other authorized officer of the organization's governing board and at the request of the Attorney General, the organization shall submit: (a) a financial statement prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant; and (b) any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization.

(3) The Attorney General may accept a copy of a current financial report previously prepared by a charitable organization for another state agency or officer in compliance with the laws of that state, provided that the report filed with the other state agency or officer shall be substantially similar in content to the report required by this subsection.

(4) An independent member agency of a federated fund raising organization shall independently comply with the provisions of this subsection.

e. In order to register its qualified local units pursuant to subsection d. of section 9 of this act, a parent organization registered pursuant to this

section shall include with its initial registration and annual renewal statement a separate statement that provides the following:

(1) The name, principal street address, and phone number of all local units within this State that it is registering;

(2) The amount of gross contributions received by each such unit and the purpose or purposes for which these funds were raised in the preceding fiscal year; and

(3) A statement asserting that each such local unit has provided the parent organization with a written statement reporting the information included on its behalf and asserting that the local unit meets all of the requirements of subsection d. of section 9 of this act.

f. Any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization submitted pursuant to paragraph (2) of subsection d. of this section shall not be considered a public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or P.L.2001, c.404 (C.47:1A-5 et al.), shall not be made available for public inspection nor used for a purpose inconsistent with P.L.1994, c.16 (C.45:17A-18 et seq.), and shall be removed from the record in the custody of the Attorney General at such time that such information is no longer necessary for the enforcement of that act. The records required pursuant to this section shall be maintained for a period of at least three years after the end of the period of time to which they relate.

4. Section 8 of P.L.1994, c.16 (C.45:17A-25) is amended to read as follows:

C.45:17A-25 Short form registration.

8. a. The following charitable organizations shall be required to file a short form registration on forms prescribed by the Attorney General:

(1) Charitable organizations or organizations engaging in a charitable fund raising campaign which do not receive gross contributions in excess of \$25,000 during a fiscal year, if all of their functions including fund raising activities are carried on by volunteers, members, officers or persons who are not compensated for soliciting contributions; except that, if the gross contributions, whether or not all is received by any charitable organization during any fiscal year, are in excess of \$25,000 it shall, within 30 days after the date on which it shall have received the contributions, register with and report to the Attorney General as required by section 7 of this act;

(2) Fraternal, patriotic, social or alumni organizations, historical societies, and similar organizations organized under the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, when solicita-

tion of contributions is confined to their membership and solicitation is performed by members of that organization;

(3) Persons requesting any contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are turned over to the named beneficiary;

(4) Any local post, camp, chapter or similarly designated element, or a county unit of that element, of a bona fide veterans' organization which issues charters to the local elements throughout this State, or to any veterans' organization chartered under federal law or to any service foundation of such an organization recognized in its bylaws.

b. The short form shall contain the following:

(1) Name and street address of the organization;

(2) The name of any independent paid fund raiser, fund raising counsel or commercial co-venturer the charitable organization has engaged;

(3) The purpose for which the charitable organization is organized;

(4) The purposes for which the funds are raised;

(5) The tax status of the charitable organization;

(6) The reason the organization is eligible to file a short form registration;

(7) A copy of the organization's most recent Internal Revenue Service Form 990 and Schedule (A) 990 if the organization filed these forms;

(8) The name, street address and telephone number of each officer, director and trustee and each principal salaried executive staff employee and whether the person has been adjudged liable in an administrative or civil action, or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purposes of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction;

(b) "each principal salaried executive staff employee" shall be limited to no more than the five most highly compensated employees in the organization; and

(c) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the officer, director, trustee or principal salaried executive staff employee engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency.

(9) A statement whether:

(a) The organization is authorized by any other state to solicit contributions and, if so, a listing of the states in which authorization has been obtained;

(b) The organization is or has ever been enjoined in any jurisdiction from soliciting contributions or has been found to have engaged in unlawful practices in the solicitation of contributions or the administration of charitable assets;

(c) The organization's registration has been denied, suspended or revoked by any jurisdiction, together with the reasons for that denial, suspension or revocation; and

(d) The organization has voluntarily entered into an assurance of voluntary compliance agreement or any similar order or legal agreement with any jurisdiction or federal agency or officer; and

(10) Any other information as may be prescribed by rules adopted by the Attorney General.

c. In order to register its qualified local units pursuant to subsection d. of section 9 of this act, a parent organization registered pursuant to this section shall include with its initial registration, a copy of the parent organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument and bylaws, and shall include with its initial registration and annual renewal statement a separate statement that provides the following:

(1) The name, principal street address, and phone number of all local units within this State that it is registering;

(2) The amount of gross contributions received by each such unit and the purpose or purposes for which these funds were raised in the preceding fiscal year;

(3) A statement asserting that each such local unit has provided the parent organization with a written statement reporting the information included on its behalf and asserting that the local unit meets all of the requirements of subsection d. of section 9 of this act.

d. Nothing in subsection c. of this section shall be construed to require a parent organization to register any or all of its local units.

5. Section 9 of P.L.1994, c.16 (C.45:17A-26) is amended to read as follows:

C.45:17A-26 Exemptions from registration requirements.

9. a. The registration requirements of this act shall not apply to any religious corporation, trust, foundation, association or organization incorporated under the provisions of Title 15 or 16 of the Revised Statutes or Title 15A of the New Jersey Statutes or established for religious purposes. Any

agency or organization incorporated or established for charitable purposes and engaged in effectuating one or more charitable purposes, which is affiliated with, operated by, or supervised or controlled by a corporation, trust, foundation, association, or organization incorporated or established for religious purposes, or any other religious agency or organization shall also be exempt.

b. The registration requirements of this act shall not apply to any educational institution, the curriculums of which in whole or in part are registered or approved by the State Department of Education or the New Jersey Commission on Higher Education, either directly or by acceptance of accreditation by an accredited body recognized by these departments; an educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families; or a library registered by the State Department of Education, provided that the annual financial report of that institution or library shall be filed with the State Department of Education where it shall be open for public inspection.

c. The registration requirements of P.L.1994, c.16 (C.45:17A-18 et seq.) shall not apply to any charitable organization or organizations engaging in a charitable fund raising campaign which do not receive gross contributions in excess of \$10,000 during a fiscal year, if all of its functions, including fund raising activities, are carried on by volunteers, members, officers or persons who are not compensated for soliciting contributions, except that if the gross contributions, whether or not all is received by any charitable organization during any fiscal year, are in excess of \$10,000 the charitable organization shall, within 30 days after the date on which it shall have received the contributions, register with and report to the Attorney General as required by section 7 of P.L.1994, c.16 (C.45:17A-24);

d. A charitable organization that meets all of the following requirements shall be considered registered as required by this act:

(1) The charitable organization is a local unit of a parent organization which is registered pursuant to this act;

(2) The parent organization has provided all information concerning the local unit required by subsection e. of section 7 or subsection c. of section 8 of this act;

(3) All solicitations made by the local unit are made by members of the local unit or volunteers;

(4) The local unit does not employ a fund raising counsel or independent paid fund raiser or utilize paid staff in preparation of materials or records concerning or related to the solicitations; and

(5) (a) The local unit does not receive gross contributions in excess of \$25,000 during the fiscal year; or

(b) The local unit is an organization that limits membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State.

e. Nothing in subsection d. of this section shall be construed to require a parent organization to register any or all of its local units.

6. Section 10 of P.L.1994, c.16 (C.45:17A-27) is amended to read as follows:

C.45:17A-27 Registration of fund raising counsel, independent paid fund raiser.

10. a. It shall be unlawful for any person to act as a fund raising counsel or independent paid fund raiser unless registered annually with the Attorney General. Registration statements shall be on forms prescribed by the Attorney General. A registration statement shall be signed and sworn to by the principal officer of the fund raising counsel or independent paid fund raiser and shall contain information as prescribed by rules adopted by the Attorney General.

b. The registration statements shall be accompanied by a fee prescribed pursuant to the provisions of this act, except that a fund raising counsel or independent paid fund raiser which is a partnership or corporation which registers shall pay a single fee. Each registration shall expire on June 30.

c. The Attorney General shall examine the initial registration statement and supporting documents filed by a fund raising counsel or independent paid fund raiser pursuant to section 5 of this act.

d. The relationship between a charitable organization and a fund raising counsel or independent paid fund raiser shall be set forth in a written contract. The relationship between a fund raising counsel or independent paid fund raiser and any other fund raising counsel or independent paid fund raiser shall be set forth in a written contract. The fund raising counsel or independent paid fund raiser shall file a copy of all such contracts with the Attorney General at least 10 business days prior to the performance by the fund raising counsel or independent paid fund raiser of any service within this State. It shall be unlawful for any solicitation pursuant to any contract to begin before the Attorney General has reviewed the contract pursuant to section 5 of this act. All such contracts shall be signed by two authorized officials of the charitable organization, one of whom must be a member of the organization's governing body, and the authorized contracting officer for the fund raising counsel or independent paid fund raiser. Performance of any contract filed for review shall not foreclose the Attorney General from enforcing the contract requirements established by P.L.1994, c.16 (C.45:17A-18 et seq.) and the rules adopted pursuant thereto or taking other appropriate action. For the purposes of this subsection, the term "relationship" shall include, but not be limited to,

any contract, agreement, assignment or arrangement or any other obligation relating to the solicitation of contributions.

e. All contracts for a fund raising counsel or independent paid fund raiser either of whom at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions, shall contain the following:

(1) A statement of the respective obligations of the fund raising counsel, the independent paid fund raiser, and the charitable organization;

(2) A clear statement of the fees or rate which will be paid to the fund raising counsel or independent paid fund raiser;

(3) The projected commencement and termination dates of the solicitation campaign;

(4) A statement as to whether the fund raising counsel or independent paid fund raiser will have custody, control or access to contributions;

(5) A statement as to the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization, if any, or if the solicitation involves the sale of goods, services or tickets to a fund raising event, the percentage of the purchase price which will be remitted to the charitable organization, if any. Any stated percentage shall exclude any amount which the charitable organization is to pay as fund raising costs;

(6) A statement of the percentage of the gross revenue from which the independent paid fund raiser will be compensated and the fixed fee or rate at which the fund raising counsel will be compensated. If the compensation of the independent paid fund raiser is not contingent upon the number of contributions or the amount of revenue received, its compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. If the compensation of the fund raising counsel is calculated on the basis of a rate and time, the statement shall include a reasonable estimate of the total fee and the contract shall clearly disclose the assumptions upon which the estimate is based. With respect to any such contract, the stated assumptions shall be based upon all of the relevant facts known to the fund raising counsel or independent paid fund raiser regarding the solicitation to be conducted by the independent paid fund raiser;

(7) The bank and branch where all moneys will be deposited, each account number and, for each account, all authorized signatories for withdrawals; and

(8) Any other information as may be prescribed by the Attorney General.

f. A fund raising counsel or independent paid fund raiser, either of whom at any time has or intends to have custody, control, possession or

access to a charitable organization's solicited contributions, shall, if requested by the Attorney General, make available the following information:

(1) Each location and telephone number from which the solicitation is conducted;

(2) The name, home address and telephone number of each person responsible for directing and supervising the conduct of the campaign and whether the person has been adjudged liable in an administrative or civil action or convicted in a criminal action, involving theft, fraud or deceptive business practices. For the purpose of this paragraph:

(a) a plea of guilty, non vult, nolo contendere or any similar disposition of alleged criminal activity shall be deemed a conviction; and

(b) a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the person responsible for directing and supervising the conduct of the campaign engaged in an unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension or revocation of an organization's registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency; and

(3) A statement of the charitable purpose for which the solicitation campaign is being conducted.

g. If either a fund raising counsel or independent paid fund raiser at any time has or intends to have custody, control, possession or access to a charitable organization's solicited contributions, that fund raising counsel or independent paid fund raiser shall:

(1) At the time of making application for registration, file with the Attorney General a bond in which it shall be the principal obligor, which shall for the initial application be in the sum of \$20,000 and thereafter shall be an amount prescribed by a rule adopted by the Attorney General pursuant to subsection f. of section 4 of this act. The bond shall provide for one or more sureties whose liability in the aggregate shall at least equal that sum. The fund raising counsel or independent paid fund raiser shall maintain the bond in effect during the entire period of registration. The bond shall be payable to the Attorney General for the benefit of any person who may have a cause of action against the principal obligor of the bond for any violation of this act or for the purpose of satisfying any assessment against the principal obligor of the bond for any such violation;

(2) Deposit each contribution collected by the fund raising counsel or independent paid fund raiser, in its entirety and within five days of its receipt, in an account at a bank or other federally insured financial institution. The account shall be in the name of the charitable organization with whom the

fund raising counsel or independent paid fund raiser has contracted and the charitable organization shall have sole benefit and control of the account and all withdrawals;

(3) Within 40 days after a solicitation campaign has been completed, or in the case of a campaign lasting more than 12 months, within 40 days of the end of the charitable organization's fiscal year, file with the Attorney General a financial report for the campaign on such forms as the Attorney General may prescribe. Those forms shall include, but not be limited to, gross revenues, an itemization of all expenses incurred and the bank and branch where all moneys are deposited. This report shall be signed and sworn to by two authorized officials, one from the charitable organization and one from the fund raising counsel or independent paid fund raiser; and

(4) Maintain a copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution.

7. Section 11 of P.L.1994, c.16 (C.45:17A-28) is amended to read as follows:

C.45:17A-28 Registration of solicitors.

11. a. It shall be unlawful for any person to act as a solicitor of an independent paid fund raiser required to register pursuant to this act unless, prior to that person acting as a solicitor of the independent paid fund raiser, the independent paid fund raiser files registration information including the name, street address, telephone number, and any other information as may be prescribed by the Attorney General, of any such solicitor and files such registration information for that solicitor annually thereafter. Registration statements shall be on forms prescribed by the Attorney General and accompanied by a prescribed fee. The Attorney General shall review the statement pursuant to section 5 of this act and prescribe the fees pursuant to subsection f. of section 4 of this act.

b. It shall be unlawful for any independent paid fund raiser to engage a solicitor to solicit charitable contributions unless the independent paid fund raiser files the solicitor's registration information with the Attorney General pursuant to this section.

8. Section 12 of P.L.1994, c.16 (C.45:17A-29) is amended to read as follows:

C.45:17A-29 Written contract from commercial co-venturer.

12. a. Every charitable organization which permits a charitable sales promotion to be conducted on its behalf shall obtain a written contract from the commercial co-venturer and shall file a copy of the agreement with the

Attorney General at least 10 business days prior to the initiation of that charitable sales promotion. All parties to the contract shall be subject to the provisions of P.L.1994, c.16 (C.45:17A-18 et seq.) and any rules adopted pursuant thereto. Every contract shall contain a provision clearly and conspicuously stating that the parties are subject to this act and any rules adopted pursuant thereto.

b. A charitable organization shall file in writing on forms prescribed by the Attorney General the following information at the conclusion of the charitable sales promotion:

(1) A certification from an officer or principal of the commercial co-venturer attesting to the gross amount of income received by the commercial co-venturer attributable to the charitable sales promotion, solicitation or venture undertaken;

(2) The amount of money or other contribution remitted to the organization covering each event or portion of an extended charitable sales promotion;

(3) A copy of each advertisement, publication, solicitation or other material used as part of the charitable sales promotion to directly or indirectly induce a contribution; and

(4) Any other information as may be required by rules adopted by the Attorney General.

c. All filings pursuant to this section shall be accompanied by a fee prescribed pursuant to the provisions of this act.

d. The commercial co-venturer shall disclose in each advertisement for the charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percent cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial co-venturer shall disclose an estimated dollar amount or percent. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial co-venturer and the charitable organization regarding the charitable sales promotion.

9. Section 13 of P.L.1994, c. 16 (C.45:17A-30) is amended to read as follows:

C.45:17A-30 Disclosure of information prior to solicitation.

13. a. Prior to soliciting a contribution, either orally or by written request, except for any in-person solicitation, any independent paid fund raiser, commercial co-venturer, solicitor, or charitable organization shall clearly and conspicuously disclose any information as prescribed by the rules adopted by the Attorney General.

b. In the case of any solicitation campaign conducted orally, whether by telephone or otherwise, except for any in-person solicitation, a written confirmation or receipt or written reminder shall, upon request of the contributor, be sent and shall include a clear and conspicuous disclosure of any information as prescribed by the rules adopted by the Attorney General.

c. Except as otherwise provided in section 14 of this act, registration statements, reports, notices, contracts or agreements between charitable organizations and fund raising counsels or independent paid fund raisers and commercial co-venturers and all other documents and information required to be filed under this act with the Attorney General are public records and shall be open to the general public at such time and under such conditions as the Attorney General may prescribe.

d. In addition to all other requirements imposed by this act, a charitable organization that limits its membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State or that is a parent organization that includes local units that so limit membership shall:

(1) At least 10 days prior to initiating any solicitation campaign involving multiple solicitations, give written notice describing the nature, purpose and the proposed dates and location of the solicitations to the Attorney General and the county prosecutor of any county in which the solicitations will be made, unless the organization limits its membership to persons who are or were employed by the State, or is a parent organization with local units in more than one county, in which case notice shall be given to the Attorney General who shall notify the appropriate county prosecutors;

(2) Upon request, make any records required by this act available for inspection or provide an audited financial statement of financial records concerning the organization's fund raising activities to the Attorney General.

e. In addition to all other requirements imposed by P.L.1994, c.16 (C.45:17A-18 et seq.), any charitable organization that is or holds itself out to be soliciting contributions through the use of any name, symbol or statement which implies or that would lead a reasonable person to believe that the charitable organization is in any way affiliated with, related to, recognized by, or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State or a governmental agency shall disclose to the potential contributor the nature of the affiliation, relationship, recognition or organization, if any, or shall expressly state that no affiliation, relationship, recognition or organization exists between the charitable organization and emergency service employees, officers statutorily authorized to enforce the criminal laws of this State or governmental agency, as the case may be.

10. Section 15 of P.L.1994, c.16 (C.45:17A-32) is amended to read as follows:

C.45:17A-32 Statements required to be truthful; coercion prohibited; unlawful acts; practices.

15. a. Any statement, whether oral or written, made by a charitable organization, or on behalf of a charitable organization by persons including, but not limited to commercial co-venturers, fund raising counsels, independent paid fund raisers or solicitors shall be truthful.

b. A charitable organization shall establish and exercise control over fund raising activities conducted for its benefit, including approval of all written contracts and agreements, and shall assure that fund raising activities are conducted without coercion.

c. The following acts and practices are declared unlawful as applied to the planning, conduct, or execution of any solicitation or charitable sales promotion:

(1) To misrepresent the purpose or nature of the charitable institution or the purpose or beneficiary of a solicitation; to solicit contributions for a purpose other than the charitable purpose expressed in the statement of the charitable organization or expend contributions in a manner inconsistent with that purpose, or to fail to disclose any material fact. A misrepresentation may be accomplished by words or conduct;

(2) To violate or fail to comply with any of the applicable provisions of this act or the rules adopted under authority of this act;

(3) To violate or fail to comply with any of the applicable provisions of the consumer fraud law, P.L.1960, c.39 (C.56:8-1 et seq.) or the regulations adopted pursuant to that act;

(4) To utilize a name, symbol or statement so closely related or similar to that used by another charitable organization and registered by that organization with the United States Patent and Trademark Office or registered pursuant to R.S.56:2-1 et seq. that its use would tend to confuse or mislead a solicited person or to solicit contributions in a manner or through representations that falsely imply or are likely to create the mistaken belief that the contributions are solicited by or on behalf of another charitable organization;

(5) To utilize or exploit registration so as to lead any person to believe that registration constitutes or implies an endorsement or approval by the State;

(6) To distribute any form of membership badges, shields, courtesy cards or cards of a similar nature identifying the organization in connection with or in any manner related to the solicitation of funds or contributions for or on behalf of the organization in the case of any charitable organization that limits its membership to persons who are or formerly were employed as officers statutorily authorized to enforce the criminal laws of this State or

that is a parent organization that includes local units that so limit membership;

(7) To utilize information, statements or communications that, although literally true, are presented in a manner that has the capacity to mislead the average consumer;

(8) To utilize a name, symbol or statement so closely related or similar to that used by any organization that is affiliated with, related to, recognized by or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State, or a governmental agency in such a way that its use would tend to confuse or mislead a solicited person or to create the erroneous belief that the contributions are solicited by or on behalf of an organization affiliated with, related to, recognized by or organized for the benefit of emergency service employees, officers statutorily authorized to enforce the criminal laws of this State, or a governmental agency;

(9) To utilize a name, symbol or statement that misrepresents the geographic origin or location of a charitable organization or its intended beneficiaries; and

(10) To engage in other unlawful acts and practices as may be determined by rules adopted by the Attorney General.

d. It shall be unlawful for any charitable organization, fund raising counsel, independent paid fund raiser or commercial co-venturer to enter into any contract with any person who is required to have registered and failed to do so.

e. It shall be unlawful for any person to represent that tickets to events will be donated by another, unless the following requirements have been met:

(1) The fund raising counsel or independent paid fund raiser shall obtain commitments, in writing and notarized, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept and for which they are able to provide transportation; copies of such written commitments shall be filed with the Attorney General;

(2) The independent paid fund raiser has taken measures to prevent solicitation of contributions for donated tickets in excess of the number of ticket commitments received from charitable organizations; and

(3) The number of tickets sold will not be greater than the number of seats available at the facility for each event or performance.

11. Section 16 of P.L.1994, c.16 (C.45:17A-33) is amended to read as follows:

C.45:17A-33 Attorney General, designee constituted agency head; violations, penalties.

16. a. For purposes of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General or his designee shall constitute the agency head and have the final decision making power.

b. After notice and an opportunity for a hearing, the Attorney General may revoke, or suspend any registration upon a finding that the registrant or any officer, director, trustee or principal salaried executive staff employee of a registrant or any other person subject to the provisions of P.L.1994, c.16 (C.45:17A-18 et seq.):

(1) Has filed a registration statement containing false or misleading facts or omitting material facts;

(2) Has violated or failed to comply with any of the provisions of this act or the rules adopted under authority of this act;

(3) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

(4) Has been convicted of any criminal offense committed in connection with the performance of activities regulated under this act or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's fitness to perform activities regulated by this act. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction;

(5) Has had the authority to engage in charitable activities denied, revoked or suspended by New Jersey or any other state or jurisdiction;

(6) Has been adjudged liable in an administrative or civil proceeding involving theft, fraud or deceptive business practices including, but not limited to, any finding of unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in penalties, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency;

(7) Has engaged in other forms of misconduct as may be determined by rules adopted by the Attorney General.

c. Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in, any act or practice declared unlawful by this act, or when the Attorney General determines it to be in the public interest to inquire whether a violation may exist, the Attorney General may:

(1) Require any person to file, on a form to be prescribed by the Attorney General, a statement or report in writing under oath, or otherwise, concerning

any relevant and material information in connection with an act or practice subject to this act;

(2) Examine under oath any person in connection with any act or practice subject to this act;

(3) Inspect any location from which the activity regulated by this act is conducted;

(4) Examine any goods, ware or items used in the rendering of any of the services contained in this act;

(5) Require an audited financial statement of the financial records of the organization or person registered, exempted or required to be registered under this act, prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant and any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization;

(6) Examine any book, document, account, computer data, literature, publication or paper maintained by or for any organization or person registered, exempted or required to be registered under this act, in the course of engaging in the activities regulated by this act;

(7) Apply to Superior Court for an order to impound any record, book, document, account, computer data, literature, publication, paper, goods, ware, or item used or maintained by any organization or person registered, exempted or required to be registered under this act in the regular course of engaging in the activities regulated by this act or rules adopted under this act;

(8) In order to accomplish the objectives of this act, or the rules adopted under this act, hold investigative hearings as necessary and issue subpoenas to compel the attendance of any person or the production of books, records, computer data, literature, publication or papers at any investigative hearing or inquiry.

d. Any person who engages in any conduct or an act in violation of any provision of this act and who has not previously violated this act shall, in addition to any other relief authorized by this or any other law, be liable for a civil penalty of not more than \$10,000 for the first violation of this act.

For a second violation of this act, or if a person is found liable for more than one violation of this act within a single proceeding, the liability for the second violation shall not exceed a civil penalty in the amount of \$20,000.

For a third violation of this act, or if a person is found liable for more than two violations of this act within a single proceeding, the liability for a third or any succeeding violation shall not exceed a civil penalty in the amount of \$20,000 for each additional violation.

In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action for the collection or enforcement of civil penalties for the violation of any provision of this act. The action may be brought in a summary manner, pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) and the Rules Governing the Courts of the State of New Jersey governing actions for the collection of civil penalties, in the Municipal Court or Special Civil Part of the Law Division of the Superior Court in the municipality or county where the offense occurred. Process in the action may be by summons or warrant. If the defendant in the action fails to answer the action, the court shall, upon finding that an unlawful act or practice has been committed by the defendant, issue a warrant for the defendant's arrest in order to bring the person before the court to satisfy the civil penalties imposed.

In an action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice. An action alleging the unregistered practice of the activities regulated by this act may be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In an action brought pursuant to this act, the Attorney General or the court may order the payment of attorney's fees and costs for the use of the State.

e. Whenever it shall appear to the Attorney General that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. In the proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter any orders necessary to prevent the performance of an unlawful practice in the future and to remedy fully any past unlawful activity.

f. Upon the failure of any person to comply within 10 days after service of any order of the Attorney General directing payment of penalties, attorney's fees, costs or restoration of moneys or property as authorized by this act, the Attorney General may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for the payment. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon the record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which each payment was directed, the amount of each payment, a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of a dock-

eted judgment in the Superior Court and the Attorney General shall have all rights and remedies of a judgment creditor, in addition to exercising any other available remedies.

g. If a person fails or refuses to file any statement or report, or fails or refuses to grant access to premises from which activities regulated by this act are conducted in any lawfully conducted investigative matter, or fails to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

(1) Adjudging that person in contempt of court and assessing civil penalties in accordance with the amounts prescribed by this act;

(2) Enjoining the conduct of any practice in violation of this act; or

(3) Granting other relief as required.

h. If a person who refuses to testify or produce any computer data, book, paper, or document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or convict him of a crime, is directed to testify or to produce the computer data, book, paper, or document by the Attorney General, he shall comply with the direction.

A person who is entitled by law to and does assert a privilege, and who complies with the direction of the Attorney General, shall not thereafter be prosecuted or subject to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving the testimony or from any civil or administrative action arising from the testimony.

i. In addition or as an alternative to revocation or suspension of a registration, the Attorney General may, after affording an opportunity to be heard and finding a violation of this act:

(1) Assess civil penalties in accordance with this act;

(2) Direct that any person cease and desist from any act or practice in violation of this act or take necessary affirmative corrective action with regard to any unlawful act or practice;

(3) Order any person to restore to any person aggrieved by an unlawful act or practice any money or property, real or personal, acquired by means of any unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant or his agent or any other person violating this act;

(4) Order the payment of attorney's fees and costs for the use of the State; or

(5) Authorize the release of sums from any bond maintained pursuant to this act in satisfaction of assessments.

j. Whenever a person engages in any act or practice in violation of this act the Attorney General may, after notice and opportunity to be heard and upon a finding that the act or practice has occurred, enter an order:

(1) Directing the person to cease and desist from that unlawful act or practice;

(2) Assessing civil penalties in accordance with this act;

(3) Directing that person restore to any person aggrieved by the unlawful act or practice any money or property, real or personal, acquired by means of the unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant, agent or any other person violating this act;

(4) Directing payment of attorney's fees and costs for the use of the State; or

(5) Authorizing the release of sums from any bond maintained pursuant to P.L.1994, c.16 (C.45:17A-18 et seq.) in satisfaction of assessments.

k. When it shall appear to the Attorney General that a person against whom an order pursuant to this section has been entered has violated the order, the Attorney General may initiate a summary proceeding in the Superior Court for enforcement of the order. Any person found to have violated such an order shall be ordered to comply with the prior administrative order and may be ordered to pay civil penalties in the amount of not more than \$25,000 for each violation of the order. If a person fails to pay a civil penalty assessed by the court for violation of an order, the court assessing the unpaid penalty is authorized, upon application of the Attorney General, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

l. In any administrative proceeding on a complaint alleging a violation of this act, the Attorney General may issue subpoenas to compel the attendance of witnesses or the production of computer data, books, records, or documents at the hearing on the complaint as provided by this act.

m. In addition to any other action or remedy available under this act, a charitable organization aggrieved by a violation of paragraph (4) or (8) of subsection c. of section 15 of this act may initiate a civil action or assert a counterclaim in any court of competent jurisdiction against the violator. Upon establishing the violation, the charitable organization shall recover treble its damages or treble the violator's profits, whichever is greater. In all actions under this subsection the court shall award reasonable attorney's fees, filing fees and reasonable costs of suit.

n. Notwithstanding any other provision of this section to the contrary, a parent organization may be held accountable for actions related to information filed on behalf of a local unit only if the parent organization has filed

information knowing that the information is false or misleading or knowing that material facts are omitted.

o. Notwithstanding any other provision of this section to the contrary, any local unit that has provided to its parent organization timely, truthful and complete information and otherwise conducted itself in compliance with the provisions of this act, shall not be held accountable for the misconduct of a parent organization, including, but not limited to, the failure of the parent organization to file timely reports on behalf of the local unit.

12. Section 21 of P.L.1994, c.16 (C.45:17A-38) is amended to read as follows:

C.45:17A-38 Required statement regarding information on file.

21. Any printed solicitation, written confirmation, receipt or written reminder of a contribution issued by a charitable organization, independent paid fund raiser or solicitor concerning a solicitation or contribution on behalf of a charitable organization that is registered pursuant to this act shall contain the following statement which shall be conspicuously printed:

"INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION AND THE PERCENTAGE OF CONTRIBUTIONS RECEIVED BY THE CHARITY DURING THE LAST REPORTING PERIOD THAT WERE DEDICATED TO THE CHARITABLE PURPOSE MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY BY CALLING 000-000-0000 AND IS AVAILABLE ON THE INTERNET AT www.xxxxxxxxxx.xxx. REGISTRATION WITH THE ATTORNEY GENERAL DOES NOT IMPLY ENDORSEMENT."

C.45:17A-30.1 Caller identification blocking technology, use by solicitors, prohibited.

13. Any person soliciting contributions shall not be permitted to use technology that blocks caller identification telephone systems used by any person in this State.

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

Approved January 9, 2006.

CHAPTER 284

AN ACT concerning the Main Street New Jersey program and amending P.L.2001, c.238.

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

1. Section 5 of P.L.2001, c.238 (C.52:27D-456) is amended to read as follows:

C.52:27D-456 Main Street New Jersey Advisory Board.

5. The Main Street New Jersey Advisory Board is established for the purposes of providing guidance and advocacy in formulating policy and assisting with the long-term planning and administration of the "Main Street New Jersey" program. The Main Street New Jersey Advisory Board shall consist of 23 members. Sixteen members shall serve in a voluntary capacity, to be appointed through a process to be determined by the commissioner and shall include a representative of the New Jersey State League of Municipalities. Each voluntary member shall have a demonstrated commitment to the goals of the "Main Street New Jersey" program. The voluntary members shall represent all geographic regions of the State.

The remaining seven advisory board members shall serve *ex officio* and shall be a representative of the Historic Preservation Program in the Department of Environmental Protection, to be appointed by the Commissioner of Environmental Protection, a representative of the New Jersey Economic Development Authority to be designated by the executive director, a representative of the Neighborhood Preservation Program in the Department of Community Affairs, to be appointed by the Commissioner of Community Affairs, a representative of the Housing and Mortgage Finance Agency, to be appointed by the executive director of that agency, a representative of the New Jersey Commerce and Economic Growth Commission, to be appointed by the Chief Executive officer and Secretary of that commission, a representative of the Department of Transportation, to be appointed by the Commissioner of Transportation, and a representative of the Office of State Planning, to be appointed by the Director of the Office of State Planning.

The terms of the voluntary members so appointed, after the initial appointments, shall be three years, and each member may be reappointed. The terms of initial appointments of the voluntary members shall be staggered so that the terms of 1/3 of the advisory board's voluntary members shall expire annually. The advisory board members who are not State employees shall be entitled to reimbursement of their expenses incurred in connection with their duties on the advisory board.

2. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 285

AN ACT concerning the New Jersey Statewide Water Supply Plan, and amending and supplementing P.L.1981, c.262, and making an appropriation.

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

1. 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, both interstate and intrastate;

(4) Recommendations for the diversion or use of fresh surface or ground waters and saline surface or ground waters for aquaculture purposes;

(5) Recommendations for legislative and administrative actions to provide for the maintenance and protection of watershed areas;

(6) Identification of lands purchased by the State for water supply facilities that currently are not actively used for water supply purposes, including, but not limited to, the Six Mile Run Reservoir Site, with recommendations as to the future use of these lands for water supply purposes within or outside of the planning horizon for the plan; and

(7) Recommendations for administrative actions to ensure the protection of ground and surface water quality and water supply sources.

c. Prior to adopting the plan, including any revisions and updates thereto, the department shall:

(1) Prepare and make available to all interested persons a copy of the proposed plan or proposed revisions and updates to the current plan;

(2) Conduct public meetings in the several geographic areas of the State on the proposed plan or proposed revisions and updates to the current plan; and

(3) Consider the comments made at these meetings, make any revisions to the proposed plan or proposed revisions and updates to the current plan as it deems necessary, and adopt the plan.

d. Prior to the adoption of any revision to the New Jersey Statewide Water Supply Plan pursuant to this section, the department shall consult with the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), concerning the possible effects and impact of the plan upon the Highlands regional master plan, adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8), and the water and other natural resources of the Highlands Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

C.58:1A-13.3 Preparation, adoption of revisions, updates to New Jersey Statewide Water Supply Plan.

2. a. The department shall prepare and adopt appropriate revisions and updates to the current New Jersey Statewide Water Supply Plan no later than December 31, 2006 pursuant to the provisions of section 13 of P.L.1981, c.262 (C.58:1A-13).

b. In its preparation of proposed revisions and updates to the current plan, the department shall consult with the New Jersey Water Supply Authority established pursuant to section 4 of P.L.1981, c.293 (C.58:1B-4) and the New Jersey Environmental Infrastructure Trust created pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4), as appropriate, as well as with the public and private water purveyors.

3. There is appropriated to the Department of Environmental Protection from the "Water Supply Fund" created pursuant to the "Water Supply Bond Act of 1981," P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223, the sum of \$2,500,000 to revise and update the New Jersey Statewide Water Supply Plan as provided in section 2 of P.L.2005, c.285.

4. The expenditure of the sum appropriated to the Department of Environmental Protection pursuant to section 3 of P.L.2005, c.285 is subject to the provisions and conditions of P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223, and any regulations adopted by the Commissioner of Environmental Protection pursuant thereto.

5. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 286

AN ACT concerning health care provider fees in managed care plans and supplementing P.L.1997, c.192 (C.26:2S-1 et seq.).

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

C.26:2S-9.2 Written fee schedule information furnished to health care providers, proprietary information.

1. a. A carrier which offers a managed care plan that negotiates with a health care provider to become a participating provider, who is reimbursed per procedure under the plan, shall, upon request, furnish the health care provider with a written fee schedule, or in an electronic format if agreed upon by both parties, showing the fees for the 20 most common evaluation and management codes and the 20 most common office-based or hospital-based in-network services for the health care provider's specialty or subspecialty, to be provided by the health care provider under the plan pursuant to the proposed or existing contract between the carrier and health care provider. If the carrier negotiates with the health care provider to become a participating provider under more than one managed care plan offered by the carrier, the carrier shall provide the applicable fee schedule for each plan. If the carrier negotiates a fee schedule with the health care provider that is specific to that health care provider, the carrier shall provide only the applicable fee schedule for that health care provider. If the rate that the health care provider will be paid is a percentage of another rate, it shall be sufficient for the carrier to provide that formula to the health care provider. The carrier shall furnish the fee schedule pursuant to this subsection within 15 days of the request of the provider.

The fee schedule provided to the health care provider by the carrier is proprietary and shall be confidential. Unauthorized distribution of the fee schedule may result in the health care provider's termination from the network in accordance with the provisions of N.J.A.C.8:38-1.1 et seq.

b. The carrier shall reimburse the health care provider in accordance with the fee schedule provided to the health care provider pursuant to the contract. The carrier may revise the fee schedule upon providing the health care provider with written notice of the change and, upon request, a copy of the revised fee schedule.

c. Nothing in this section shall be construed to limit the ability of a carrier to make payments under a managed care plan based on its claims payment policies.

C.26:2S-9.3 Violations, penalty.

2. A carrier which violates any provision of this act shall be liable to a penalty of not more than \$1,000 for each violation. Each failure to timely respond to a health care provider's request for a fee schedule shall be considered a separate violation. The penalty shall be collected by the Commissioner of Banking and Insurance in the name of the State in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

3. This act shall take effect on the 120th day after enactment.

Approved January 9, 2006.

CHAPTER 287

AN ACT concerning debt adjustment and credit counseling and amending and supplementing P.L.1979, c.16.

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

1. Section 5 of P.L.1979, c.16 (C.17:16G-5) is amended to read as follows:

C.17:16G-5 Bond; financial records; annual audit; filing; examination of agency; annual reports.

5. a. Any nonprofit social service agency or nonprofit consumer credit counseling agency licensed under this act shall be bonded to the satisfaction of the commissioner for each location pursuant to regulation. In setting the bonding requirements for each location, the commissioner shall consider the number of debtors provided credit counseling and debt adjustment services at that location, and the balance of funds in the trust account required to be maintained pursuant to section 3 of P.L.2005, c.287 (C.17:16G-9).

b. The commissioner may require a licensee to file an annual report containing that information required by the commissioner by regulation concerning activities conducted as a licensee in the preceding calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

c. The commissioner may require a high cost home loan counselor to file an annual report containing that information required by the commissioner by regulation concerning activities conducted pursuant to subsection g. of section 5 of P.L.2003, c.64 (C.46:10B-26) as a registrant in the preced-

ing calendar year. The report shall be submitted under oath and in the form specified by the commissioner by regulation.

d. Each licensee shall file with the commissioner on or before April 1 of each year a copy of its annual report, containing the information required by the commissioner by regulation pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.) and section 3 of P.L.2005, c.287 (C.17:16G-9) accompanied by a fee in an amount set by the commissioner by regulation.

e. Each licensee shall have its financial records relating to debt adjustment audited annually by a certified public accountant or a public accountant, which audit shall be filed with the commissioner. Such an audit shall certify that the salaries and expenses paid by the licensee are reasonable compared to those incurred by comparable organizations providing similar services.

f. After reviewing the annual report and audit, the Commissioner of Banking and Insurance may cause an examination of the licensee to be made, the actual expenses of such an examination shall be paid by the licensee, and the commissioner may maintain any action against any licensee to recover the fees and expenses herein provided for.

g. The licensee shall make a copy of the annual report and audit available for public inspection at each of the licensee's locations.

2. Section 8 of P.L.1979, c.16 (C.17:16G-8) is amended to read as follows:

C.17:16G-8 Penalties; summary action; civil action.

8. Any person who violates any provisions of this act shall be subject to a penalty of \$1,000 for the first offense and not more than \$5,000 for the second and each subsequent offense to be collected by and in the name of the commissioner in a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

If the commissioner has reason to believe that any person or licensee has engaged in or is engaging in any practice or transaction prohibited by P.L.1979, c.16 (C.17:16G-1 et seq.), the commissioner may, in addition to any remedies available, bring a summary action in the name of and on behalf of the State against the person or licensee and any other person concerned or in any way participating in or about to participate in those practices or transactions, to enjoin the person or licensee from continuing those practices or engaging in or doing any act in furtherance of those practices or in violation of that act. In addition to any other remedies or penalties available for a violation of P.L.1979, c.16 (C.17:16G-1 et seq.), any debtor injured by a violation of P.L.1979, c.16 (C.17:16G-1 et seq.) may bring a civil action for recovery of damages.

C.17:16G-9 Responsibilities of licensee acting as debt adjuster.

3. Every licensee acting as a debt adjuster shall:
 - a. disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by section 6 of P.L.1979, c.16 (C.17:16G-6), within 10 days of receipt of those funds;
 - b. maintain a separate trust account in a qualified bank as defined in paragraph (12) of section 1 of P.L.1948, c.67 (C.17:9A-1), in the name of the debt adjuster for the benefit of the debtors serviced by the debt adjuster; and
 - c. maintain an appropriate ledger book for the trust account required by subsection b. of this section, having at least one single page for each debtor, with appropriate entries of all deposits into and disbursements from each debtor's account, including copies of all records showing disbursements to creditors and receipts from debtors, which ledger book and records shall be maintained in accordance with generally accepted accounting principles for not less than six years following the close of each debtor's account.

4. This act shall take effect on the 90th day after the date of enactment.

Approved January 9, 2006.

CHAPTER 288

AN ACT requiring owners of pass-through entities to credit certain payments the entities make on the owner's behalf against the owners' estimated taxes, amending P.L.2002, c.40, P.L.1981, c.184, and N.J.S.54A:9-6.

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

1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to read as follows:

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

12. a. (1) A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of

P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

(2)(a) A partnership that is subject to the tax payment requirements of paragraph (1) of this subsection shall make installment payments of 25% of that tax on or before the 15th day of each of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

(b) A partnership required to make an installment payment pursuant to subparagraph (a) of this paragraph shall be deemed to make an installment payment subject to the provisions of section 5 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any additions to tax provided thereunder.

b. An amount of tax paid by a partnership pursuant to paragraph (1) of subsection a. of this section and an installment payment paid pursuant to subparagraph (a) of paragraph (2) of subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

c. For the purposes of this section:

"Investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

2. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended to read as follows:

C.54:10A-15.4 Underpayment; amount added to tax; interest.

5. a. In case of any underpayment of an installment payment by a taxpayer, there shall be added to the tax for the fiscal or calendar accounting year an amount determined by applying the rate established in this section to the amount of the underpayment for the period of the underpayment.

b. For purposes of subsection a., the amount of underpayment shall be the excess of:

(1) The lesser of the amount of the installment payment which would be required to be paid if all installment payments and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c.40 were equal to 90% of the tax shown on the return for the fiscal or calendar accounting year, or if no return was filed, 90% of the tax for that year, or 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year over

(2) The amount, if any, of the installment payment paid on or before the last date prescribed for payment.

c. For purposes of subsection a., the period of the underpayment shall run from the date the installment payment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month after the close of the fiscal or calendar accounting year.

(2) With respect to any portion of the underpayment, the date on which that portion is paid.

For purposes of this subsection, a payment of any installment payment shall be considered a payment of any previous underpayment only to the

extent that payment exceeds the amount of the installment payment determined under subsection b. (1) for that installment payment.

d. Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment payment shall not be imposed if the total amount of all installment payments made on or before the last date prescribed for the payment of that installment equals or exceeds the amount which would have been required to be paid on or before that date if the total amount of all installment payments were the lesser of (1) or (2) as follows:

(1) An amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year; or

(2) An amount equal to 90% of the tax for the current fiscal or calendar accounting year computed by placing on an annualized basis the taxable entire net income and entire net worth:

(a) For the first three months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the fourth month,

(b) For the first three months or for the first five months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the sixth month,

(c) For the first six months or for the first eight months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the ninth month,

(d) For the first nine months or for the first 11 months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the 12th month, and

(e) For the last three months of the preceding taxable year, in the case of the installment payment required to be paid in the first month of the current fiscal or calendar accounting year.

e. Any taxpayer who shall fail to pay, or shall underpay by more than 10% of the amount due, any installment payment required pursuant to this act, shall pay, in addition to the tax, interest on the amount of underpayment as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

3. N.J.S.54A:9-6 is amended to read as follows:

Additions to tax and civil penalties.

54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax return. In case of failure to file a tax return under this act on or before the prescribed date (determined with regard to any extension of time for filing),

unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return such amount as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of this act or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to 10% of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax except as provided pursuant to subsection (d) of this section. There shall be added to the tax for the taxable year an amount at the rate as is required under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., upon the amount of the underpayment for the period of the underpayment but not beyond the 15th day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the lesser of: (1) the amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax (two-thirds of the tax for farmers referred to in subsection (e) of section 54A:8-4) shown on the return for the taxable year (or if no return was filed, of the tax for such year), or (2) 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year; over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subsection (c) with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c.40 made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following set forth in paragraphs (1) and (2) and subject to paragraph (3) is the lesser--

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least--

(A) An amount equal to 100% of the tax shown on the return of the taxpayer for the preceding taxable year, except as provided pursuant to paragraph (3) of this subsection, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to 100% of the tax computed, except as provided pursuant to paragraph (3) of this subsection, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to the taxpayer's personal exemptions for the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 80% of the tax for the taxable year (two-thirds of the tax for farmers referred to in subsection (e) of section 54A:8-4) computed by placing on an annualized basis the income for the months in the taxable year ending before the month in which the installment is required to be paid (or, in the case of a trust or estate, the income for the months ending before the date one month before the month in which the installment is required). For purposes of this subparagraph, the income shall be placed on an annualized basis by--

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the income for the months in the taxable year ending before the month in which the installment is required to be paid (or, in the case of a trust or estate, the income for the months ending before the date one month before the month in which the installment is required),

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls (or, in the case of a trust or estate, the number of months ending before the date one month before the month in which such installment date falls), and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.

(3) If the taxable gross income shown on the return of the taxpayer for the preceding taxable year exceeds \$150,000 (\$75,000 in the case of a married individual within the meaning of section 7703 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing separately for the taxable year for which the amount of the installment is being determined) subparagraphs (A) and (B) of paragraph (1) of this subsection shall be applied by

substituting "110%" for "100%". For purposes of this paragraph, "taxable gross income" means gross income after any allowable deductions under chapter 3 or 3A of the "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq. or 54A:3A-1 et seq.); or, in the case of a trust or estate, gross income after any allowable deductions or exemptions, income commissions and amounts distributed or credited to beneficiaries; and "gross income" for a nonresident means gross income calculated as if such nonresident were a resident.

(e) Deficiency due to fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50% of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subsection (a) or (b).

(f) Nonwillful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this act or the payment thereof, shall fail to make a return and pay a tax withheld by him at the time required by or under the provisions of section 54A:7-4, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subsection (a), and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The director shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this act for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this act who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subsection (b) or (c) shall be imposed for any offense to which this subsection applies.

(h) Failure to file certain information returns. In case of each failure to file a statement of a payment to another person, required under authority of subsection (c) of section 54A:8-6 (relating to information at source, including the duplicate statement of tax withheld on wages) on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the director and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of \$2.00 for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$2,000.00.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return or declaration of estimated tax or to supply any information within the time required by or under this act, shall be liable to a penalty of not more than \$5,000.00, in addition to any other amounts required under this act, to be imposed, assessed and collected by the director. The director shall have the power, in his discretion, to waive, reduce or compromise any penalty under this subsection.

(j) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes and any reference in this act to income tax or tax imposed by this act, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 54A:9-2, this subsection shall not apply to:

(1) Any addition to tax under subsection (a) except as to that portion attributable to a deficiency;

(2) Any addition to tax under subsection (e); and

(3) Any additional penalty under subsection (i).

(k) Determination of deficiency. For purposes of subsections (b) and (c), the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(l) Person defined. For purposes of subsections (f), (g), (h) and (i), the term person or employer includes an individual, corporation or partnership or an officer or employee of any corporation (including a dissolved corporation) or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

4. This act shall take effect immediately and apply to privilege periods beginning on or after January 1 next following enactment.

Approved January 9, 2006.

CHAPTER 289

AN ACT concerning telemarketers and amending P.L.2003, c.76.

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

1. Section 10 of P.L.2003, c.76 (C.56:8-128) is amended to read as follows:

C.56:8-128 Requirements relative to telemarketing sales calls.

10. a. No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of this act, except for a call made within three months of the date the customer's telephone number was first included on the no call list but only if the telemarketer had at the time of the call not yet obtained a no call list which included the customer's telephone number and the no call list used by the telemarketer was issued less than three months prior to the time the call was made.

b. A telemarketer making a telemarketing sales call shall, within the first 30 seconds of the call, accurately identify the telemarketer's name, the person on whose behalf the call is being made, and the purpose of the call.

c. A telemarketer shall not make or cause to be made any unsolicited telemarketing sales call to any customer between the hours of 9 p.m. and 8 a.m., local time, at the customer's location.

d. A telemarketer shall not intentionally use any method that blocks a caller identification service from displaying caller identification information or otherwise circumvents a customer's use of a telephone caller identification service, including, but not limited to, the use of any technology or method which displays a telephone number or name not associated with the telemarketer or intentionally designed to misrepresent the telemarketer's identity.

2. This act shall take effect on the first day of the seventh month following enactment.

Approved January 9, 2006.

CHAPTER 290

AN ACT granting preference to certain applicants for initial appointment as members of paid fire departments, paid members of part-paid fire departments and municipal law enforcement agencies and amending P.L.1976, c.132.

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

1. Section 1 of P.L.1976, c.132 (C.40A:14-10.1a) is amended to read as follows:

C.40A:14-10.1a Fire departments; priority of eligibility for initial appointment; preference, certain.

1. a. In any municipality of this State, before any person shall be appointed as a member of the paid fire department or paid member of a part-paid fire department, the appointing authority may classify all the duly qualified applicants for the position or positions to be filled in the following classes:

- I. Residents of the municipality.
- II. Other residents of the county in which the municipality is situate.
- III. Other residents of the State.
- IV. All other qualified applicants.

Within each such classification duly qualified applicants who are veterans shall be accorded all such veterans' preferences as are provided by law. Persons discharged from the service within 6 months prior to making application to such municipality, who fulfill the requirements of N.J.S.40A:14-10.1, and who, thereby, are entitled to appointment notwithstanding their failure to meet the New Jersey residency requirement at the time of their initial application, shall be placed in Class III.

Preference in appointment second to that accorded to veterans pursuant to current law but superseding that accorded non-veterans shall be accorded all duly qualified applicants whose natural or adoptive parent was killed in the lawful discharge of official duties while serving as a member of any paid fire department or paid member of any part-paid fire department in the State at any time prior to the closing date for the filing of an application, provided that required documentation is submitted with the application by the closing date.

When a veteran and a non-veteran whose parent was killed in the lawful discharge of official duties while serving as a member of any paid fire department, or paid member of any part-paid fire department are duly qualified applicants for a position, first preference shall be given to the veteran.

b. In any municipality which classifies qualified applicants pursuant to subsection a. of this section, the appointing authority shall first appoint all those in Class I and then those in each succeeding class in the order above listed, and shall appoint a person or persons in any such class only to a vacancy or vacancies remaining after all qualified applicants in the preceding class or classes have been appointed or have declined an offer of appointment.

c. In any such municipality operating under the provisions of Title 11A of the New Jersey Statutes, the classes of qualified applicants defined in subsection a. of this section shall be considered as separate and successive lists of eligibles, and the Department of Personnel shall, when requested to certify eligibles for positions specified in this section, make such certifications from said classes separately and successively, and shall certify no persons from any such class until all persons in the preceding class or classes have been appointed or have declined offers of appointment.

d. This section shall apply only to initial appointments and not to promotional appointments of persons already members of the fire department.

e. In making temporary appointments such appointing authority shall utilize the classifications set forth in subsection a. of this section, and shall classify accordingly all duly qualified applicants for the position or positions to be temporarily filled.

2. Section 2 of P.L.1976, c.132 (C.40A:14-123.1a) is amended to read as follows:

C.40A:14-123.1a Police departments; priority of eligibility for initial appointment; preference, certain.

2. a. In any municipality of this State, before any person shall be appointed as a member of the police department and force, the appointing authority may classify all the duly qualified applicants for the position or positions to be filled in the following classes:

- I. Residents of the municipality.
- II. Other residents of the county in which the municipality is situate.
- III. Other residents of the State.
- IV. All other qualified applicants.

Within each such classification duly qualified applicants who are veterans shall be accorded all such veterans' preferences as are provided by law. Persons discharged from the service within 6 months prior to making application to such municipality who fulfill the requirements of N.J.S.40A:14-123.1, and who, thereby, are entitled to appointment notwithstanding their failure to meet the New Jersey residency requirement at the time of their initial application, shall be placed in Class III.

Preference in appointment second to that accorded to veterans pursuant to current law but superceding that accorded non-veterans shall be accorded all duly qualified applicants whose natural or adoptive parent was killed in the lawful discharge of official duties while serving as a law enforcement officer in any law enforcement agency in the State at any time prior to the closing date for the filing of an application, provided that required documen-

tation is submitted with the application by the closing date. This paragraph shall not, however, be applicable if the municipality has entered into a consent decree with the United States Department of Justice concerning the hiring practices of the municipality.

When a veteran and a non-veteran whose parent was killed in the lawful discharge of official duties while serving as a law enforcement officer in any law enforcement agency in the State are duly qualified applicants for a position, first preference shall be given to the veteran.

As used in this section, "law enforcement officer" means any person who is employed as a permanent full-time member of an enforcement agency, who is statutorily empowered to act for the detection, investigation, arrest and conviction of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved, or certified as being substantially equivalent to such an approved course, by the Police Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.); and "law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which has by statute or ordinance the responsibility of detecting and enforcing the general criminal laws of this State.

b. In any municipality which classifies qualified applicants pursuant to subsection a. of this section, the appointing authority shall first appoint all those in Class I and then those in each succeeding class in the order above listed, and shall appoint a person or persons in any such class only to a vacancy or vacancies remaining after all qualified applicants in the preceding class or classes have been appointed or have declined an offer of appointment.

c. In any such municipality operating under the provisions of Title 11A of the New Jersey Statutes, the classes of qualified applicants defined in subsection a. of this section shall be considered as separate and successive lists of eligibles, and the Department of Personnel shall, when requested to certify eligibles for positions specified in this section, make such certifications from said classes separately and successively, and shall certify no persons from any such class until all persons in the preceding class or classes have been appointed or have declined offers of appointment.

d. This section shall apply only to initial appointments and not to promotional appointments of persons already members of the police department.

e. In making temporary appointments the appointing authority may utilize the classifications set forth in subsection a. of this section, and shall classify accordingly all duly qualified applicants for the positions to be temporarily filled.

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

Approved January 9, 2006.

CHAPTER 291

AN ACT concerning the contents of consumer contracts for construction or reconstruction at a residential premises and supplementing P.L.1980, c.125 (C.56:12-1 et seq.).

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

C.56:12-2.1 Cost of residential construction permits, disclosure by contractor; violations, penalties.

1. a. The final invoice regarding a consumer contract for construction or reconstruction at a residential premises shall contain a disclosure by the contractor of the cost of construction permits required to complete the construction or reconstruction of the residential premises, and the amount of any administrative or processing fees that the contractor will charge to obtain the required permits which amount shall not exceed the cost to the contractor to obtain the permit and to record any necessary documents. For the purpose of this section, "construction or reconstruction" means any work on a residence which will require a permit to be obtained under the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), or regulations promulgated thereto, but excluding work on any new home subject to the "New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.) and for which a certificate of occupancy has been issued

b. Upon written complaint filed by a consumer with the Division of Consumer Affairs in the Department of Law and Public Safety, a contractor found to be in violation of this provision shall be subject to a \$500 penalty for each separate violation to be enforced pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

2. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 292

AN ACT concerning boating safety, amending and supplementing various parts of the statutory law, and repealing section 3 of P.L.1997, c.152

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

1. Section 2 of P.L.1987, c.453 (C.12:7-61) is amended to read as follows:

C.12:7-61 Operation of power vessels, personal watercraft; boat safety course requirements; violations.

2. a. A person who is under 16 years of age shall not operate a power vessel on the waters of this State, except that:

(1) a person who is under 16 years of age but at least 13 years of age and possesses a certificate certifying that person's successful completion of a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety may operate:

(a) a power vessel powered solely by an electric motor; or

(b) a power vessel which is 12 feet or greater in length and powered by a motor, or combination of motors, of less than 10 horsepower;

(2) A person who is under 16 years of age and has successfully completed an approved boat safety course prior to July 1, 1996 may operate a power vessel on the tidal waters of this State, provided that the person complies with all other requirements of law, rule and regulation; and

(3) A person who is under 16 years of age and was issued an operator's license pursuant to section 7 of P.L.1954, c.236 (C.12:7-34.7) before July 1, 1996 may operate a power vessel equipped with an outboard motor until the expiration date of that license.

b. As provided in the schedule set forth in section 7 of P.L.2005, c.292, as of June 1, 2008, a person who is 16 years of age or older shall not operate a power vessel, including a personal watercraft, on the waters of this State without having completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety, except that:

(1) (Deleted by amendment, P.L.2005, c.292).

(2) an out-of-State resident, or a resident of a foreign country who is 16 years of age or older and who will be in this State for less than 90 days may operate a power vessel on the waters of this State, without having completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety if the person presents:

(i) written proof of successful completion of a boat safety course endorsed or approved by another state, the National Association of State Boating Law Administrators or its successor organization, or the United States Coast Guard;

(ii) written proof of successful completion of a boat safety course substantially similar to the boat safety course required pursuant to this section as determined by the Superintendent of State Police; or

(iii) a boat safety certificate issued by the state or country in which the person resides;

(3) a person who is 18 years of age or older may operate on the waters of this State, without having completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety, a rented power vessel that is not a personal watercraft, under the following conditions:

(a) the person rents the power vessel from a business engaged in renting power vessels for use on the waters of the State;

(b) the person has successfully completed a State-approved pre-rental instruction course provided by the owner or lessor of the power vessel prior to operating the power vessel on the waters of the State; and

(c) the owner of the power vessel rental business is experienced in the operation of power vessels and has successfully completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety.

(4) A person required to take the boat safety course pursuant to this section and section 7 of P.L.2005, c.292 who purchases a power vessel that is not a personal watercraft at a boat dealership may operate that power vessel for 30 days without having completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety provided that the person successfully completes a State-approved pre-purchase instruction course provided by the owner or operator of the boat dealership prior to operating the power vessel, and the owner or operator of the boat dealership is experienced in the operation of power vessels and has successfully completed a boat safety course approved by the Superintendent of State Police. The State-approved pre-purchase instruction course required by this paragraph shall be a uniform, standardized course developed by the Superintendent of State Police. The State-approved pre-purchase instruction course shall not replace the requirement that a person shall successfully complete an approved boat safety course pursuant to the other provisions of P.L.2005, c.292 (C.12:7-61.1 et al.). The provisions of this paragraph shall not apply to a person purchasing a power vessel from another private party.

(5) A person holding a United States Coast Guard operator's license may operate a power vessel on the waters of this State without having

completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety.

The Superintendent of State Police shall establish appropriate guidelines to implement the provisions of this subsection.

c. Except as provided pursuant to section 18 of P.L.1995, c.401 (C.12:7-86), a person shall not operate a personal watercraft on the waters of this State without having successfully completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety or a written test pursuant to section 8 of P.L.2005, c.292.

d. Whenever a person who is required by this section or by section 7 of P.L.1995, c.401 (C.12:7-76), section 3 or 4 of P.L.1952, c.157 (C.12:7-46 or C.12:7-47), or section 9 of P.L.1986, c.39 (C.12:7-57) to have completed a boat safety course operates a power vessel or personal watercraft, as appropriate, on the waters of this State, that person shall have in possession a certificate certifying that person's successful completion of a boat safety course approved by the superintendent and shall, when requested to do so, exhibit the certificate to a law enforcement or peace officer of this State. Failure of the person to exhibit the certificate is presumptive evidence that the person has not completed an approved boat safety course.

e. A person who violates subsection a., b., c. or d. of this section or who exhibits to a law enforcement or peace officer a certificate of completion of an approved boat safety course of another person is subject to a fine of not less than \$100 nor more than \$500.

f. A person who owns or has control or custody of a power vessel and allows the power vessel to be operated on the waters of this State by a person who is required pursuant to the provisions of this section to possess a certificate certifying successful completion of a boat safety course but who does not possess such certificate is subject to a fine of not more than \$100.

g. A person making application to the Chief Administrator of the New Jersey Motor Vehicle Commission for a power vessel operator's license issued pursuant to section 3 of P.L.1995, c.401 (C.12:7-72) who is required pursuant to the provisions of this section to possess a certificate certifying successful completion of a boat safety course shall submit proof of successful completion of the course or the written examination for experienced boaters with the application. The chief administrator shall not issue a power vessel operator's license to such person who fails to submit this proof. A permanent State of New Jersey boating safety certificate or a temporary boating safety certificate issued on a Division of State Police application for boating safety certificate form shall satisfy this requirement.

2. Section 2 of P.L.1987, c.269 (C.12:7-23.2) is amended to read as follows:

C.12:7-23.2 Muffler requirement.

2. Every power vessel used on the waters of this State shall at all times be equipped with a muffler or muffler system in good working order and in constant operation. A person shall not use a muffler or muffler system cutout, bypass or similar method or device designed to prevent or diminish the operational capacity of a muffler or muffler system installed on a power vessel used on the waters of this State. Decibel levels exceeding the limits established pursuant to rules and regulations as measured by a noise meter operated by a trained Marine Police officer or municipal law enforcement officer shall be evidence of a violation of P.L.1987, c.269 (C.12:7-23.2 et seq.). For the purposes of P.L.1987, c.269 (C.12:7-23.2 et seq.), muffler means a sound dissipative device or system which abates the sound of gases which are emitted from an internal combustion engine and which prevents excessive or unusual noise.

3. Section 11 of P.L.1962, c.73 (C.12:7-34.46) is amended to read as follows:

C.12:7-34.46 Accidents involving vessels.

11. (a) Whenever any vessel upon the waters of this State is involved in an accident, it shall be the duty of the operator, so far as he can do so without serious danger to his own passengers, guests, crew, himself or his vessel, to render to all other persons affected by the accident such assistance as may be necessary in order to save them from or to minimize any danger caused by the accident. He shall also give his name, address, and identifying information regarding his vessel to any person injured and to the owner of any property damaged in the accident.

(b) Whenever an accident involves any vessel subject to this act and results in the death, disappearance, or injury of any person, or in property damage in excess of the federal standard for filing an accident report as established pursuant to 33 C.F.R. s.173.55, the operator or operators thereof shall file, with the Division of State Police, a full description of the accident, including such information as that division may, by regulation, require within the times specified in subsection (c) of this section. The Superintendent of State Police shall notify operators, in a manner deemed appropriate, of a change in the federal standard for filing an accident report.

(c) A boating accident that occurs on the waters of this State shall be reported to the Division of State Police by the quickest means of communication possible, if the accident has caused the death or the disappearance of any person; any other reportable boating accident that may result in personal

injury or property damage shall be reported within 10 days to the Division of State Police.

(d) The report of a boating accident herein required to be made by the operator of the vessel involved in the boating accident shall not, during any judicial proceeding, be referred to in any way; it shall not be subject to subpoena nor admissible as evidence in any proceeding. Subject to these restrictions, information contained in a boating accident report and any statistical information based thereon will be made available upon request for official purposes to the United States Coast Guard or any federal agency successor thereto.

4. Section 14 of P.L.1962, c.73 (C.12:7-34.49) is amended to read as follows:

C.12:7-34.49 Boat Regulation Commission established.

14. (a) There is established within the department a seven-member Boat Regulation Commission which shall consist of the Attorney General as ex officio member and six public members. The public members shall be appointed by the Governor with the advice and consent of the Senate for four-year terms commencing on April 1 of the year of the appointment, except that of those first appointed, two shall be appointed for a term of one year, two for a term of two years, one for a term of three years and one for a term of four years. As far as possible the public members shall be experienced boaters and shall represent the various geographical sections and boating interests of the State. At least one of the public members shall be actively employed in the marine industry.

The chairman shall be designated by the Governor. Each member of the commission shall serve at the pleasure of the Governor during his term and until the successor of the commission member has been appointed and has qualified. Vacancies shall be filled only for the unexpired term.

(b) The members of the commission shall serve without compensation except for the actual expenses incurred while engaged in their duties as members of the commission.

(c) The commission will promulgate rules and regulations, subject to the approval of the Attorney General, not inconsistent with the provisions of this act and including, but not limited to the inspection, operation, equipping, anchorage, racing and safety of vessels upon the waters of this State.

These rules and regulations shall be such as are reasonably necessary for the protection of the health, safety and welfare of the public and for the free and proper use of said waters by any persons or vessels in, on or about such waters. These regulations shall not be inconsistent with regulations issued

by the agency or agencies of the United States having jurisdiction with respect to power vessels upon the waters of this State.

The commission shall meet monthly or at the call of the Attorney General or the chairman of the commission or when requested by any three members of the commission. The Attorney General shall designate a staff from the department to handle administrative matters for the commission. The commission shall maintain minutes of its meetings and, within five working days following the commission's approval of the minutes, submit them to the: Governor; President of the Senate; Minority Leader of the Senate; Speaker of the General Assembly and Minority Leader of the General Assembly.

5. Section 1 of P.L.1987, c.453 (C.12:7-60) is amended to read as follows:

C.12:7-60 Approved boat safety courses.

1. a. The Superintendent of State Police in the Department of Law and Public Safety shall establish a list of approved boat safety courses, offered by public or private persons or agencies for profit or otherwise and taught by approved boat safety instructors. Approved courses shall provide formal instruction in power vessel handling and safety. The superintendent may approve a boat safety course upon the initiative of the superintendent or by application on a form to be created by the superintendent.

For the purposes of this section, "approved boat safety course" means a boat safety course that meets qualifications set forth in regulations promulgated by the Superintendent of State Police, in consultation with the Attorney General; the regulations shall require at least eight hours of instruction, with a minimum of six hours of classroom instruction, or, if the boat safety course is offered via the Internet, require at least the equivalent of eight hours of instruction; whether offered in a classroom or via the Internet, the boat safety course shall conclude with a closed-book written examination administered by an instructor in person and present with the person taking the written examination.

For the purposes of this section, an "approved boat safety instructor" means an individual who is trained and experienced in the art and science of navigation and seamanship and who holds a United States Coast Guard operator's license, or a certification as an instructor as provided by the United States Coast Guard Auxiliary, the United States Power Squadron, the National Safe Boating Council or other certification program that is determined to be acceptable by the Superintendent of State Police. A public or private entity which offers a course that was approved by the superintendent prior

to the effective date of this act may continue to offer that course until that approval has expired.

The superintendent shall, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations to implement this section. While developing these rules and regulations, the Superintendent of State Police shall consult with the National Association of State Boating Law Administrators, or its successor organization, concerning the provisions of the rules and regulations being adopted pursuant to this subsection.

b. A public or private entity authorized to offer a boat safety course pursuant to subsection a. of this section shall not employ an instructor who:

(1) does not possess a valid boat safety certificate required by section 2 of P.L.1987, c.453 (C.12:7-61); or

(2) has been convicted of any of the following crimes and offenses as evidenced by a criminal history record background check:

(a) In New Jersey, any crime or disorderly persons offense:

(i) 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.;

(ii) against the family, children or incompetents, meaning those crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et seq.;

(iii) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes;

(iv) 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;

(v) involving weapons or firearms, meaning those crimes and disorderly persons offenses set forth in chapters 39 and 58 of Title 2C of the New Jersey Statutes;

(vi) involving falsification of records under N.J.S.2C:21-4 or tampering with public records or information under N.J.S.2C:28-7.

(b) 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 subparagraph a. of this paragraph.

The Marine Services Bureau in the Division of State Police shall obtain the instructor's name, address, fingerprints and written consent for a criminal history record background check to be performed pursuant to this paragraph. The Marine Services Bureau is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations. The Marine Services Bureau shall determine whether the person is disqualified from employment as an

instructor based on the person's criminal history record background check and render the decision to the public or private entity.

The instructor shall bear the cost for the criminal history record background check, including all costs of administering and processing the check, but a volunteer instructor shall be afforded a fee reduction as authorized by applicable State and federal law, rule and regulation.

6. Section 18 of P.L.1995, c.401 (C.12:7-86) is amended to read as follows:

C.12:7-86 Conditions for operation of personal watercraft without completion of boat safety course; violations, penalties; rules, regulations.

18. A person who is 16 years of age or older may operate a personal watercraft without having completed a boat safety course required pursuant to subsection c. of section 2 of P.L.1987, c.453 (C.12:7-61) under the following conditions:

a. (1) the person operates the personal watercraft within the boundaries of an area designated solely for the operation of personal watercraft by a business engaged in renting personal watercraft for use on the waters of the State;

(2) the area designated for such operation is supervised by a person who is experienced in the operation of personal watercraft and who has successfully completed a boat safety course approved pursuant to section 1 of P.L.1987, c.453 (C.12:7-60); and

(3) the person has successfully completed an instruction course provided by the owner or lessee of the personal watercraft prior to operating the personal watercraft within the designated area.

b. (Deleted by amendment, P.L.2005, c.292).

c. The person has written proof, while operating the personal watercraft, of successful completion of a boat safety course substantially similar to an approved boat safety course as established pursuant to section 1 of P.L.1987, c.453 (C.12:7-60).

d. (Deleted by amendment, P.L.2005, c.292).

e. Pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Superintendent of State Police shall adopt any rules or regulations necessary to implement the provisions of this section.

C.12:7-61.1 Schedule for completion of mandatory boat safety course.

7. Before operating a power vessel, including a personal watercraft, on the waterways of this State, the mandatory boat safety course required by section 2 of P.L.1987, c.453 (C.12:7-61) shall be successfully completed as follows:

- a. by persons born after December 31, 1978;
- b. before June 1, 2006, by persons born after December 31, 1968 and on or before December 31, 1978;
- c. before June 1, 2007, by persons born after December 31, 1958 and on or before December 31, 1968;
- d. before June 1, 2008, by persons born after December 31, 1948 and on or before December 31, 1958; and
- e. before June 1, 2009 by all other persons.

C.12:7-61.2 Written test in lieu of boat safety course for experienced boaters.

8. a. The Superintendent of State Police shall develop, and the superintendent, or a designee, shall administer, a written test for experienced boaters which shall be issued in lieu of completing the boat safety course required pursuant to section 2 of P.L.1987, c.453 (C.12:7-61). The superintendent shall determine the criteria that shall be met for a person to qualify as an "experienced boater" pursuant to subsection d. of this section. When developing the written test, the superintendent shall consult with groups concerned with the nationwide standardization of such tests. Upon successful completion of the test, the person shall be given a certificate which shall fulfill the certificate requirement under subsection d. of section 2 of P.L.1987, c.453 (C.12:7-61) and shall be required to be in the person's possession as provided in that section. A person may only take one test pursuant to this subsection.

b. A person who takes a test pursuant to subsection a. of this section shall pay a fee as determined by the superintendent to defray the costs of developing and administering the test and issuing certificates to persons who successfully complete the test.

c. In addition to all other penalties provided by law, a person who provides false information on an application for a written test issued pursuant to subsection a. of this section shall be subject to a fine of \$100.

d. The superintendent shall determine the qualifications for application and all other requirements under this section.

e. The superintendent shall be exempt from the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in performing the requirements of this section.

Repealer.

9. Section 3 of P.L.1997, c.152 as it amended section 2 of P.L.1987, c.453 (C.12:7-61) is hereby repealed.

10. This act shall take effect on the first day of the sixth month following enactment except sections 7 and 8 shall take effect immediately and expire on June 1, 2008.

Approved January 9, 2006.

CHAPTER 293

AN ACT concerning certain radio transmissions 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:33-23.1 License required for certain radio transmissions.

1. A person shall not:
 - a. Make, or cause to be made, a radio transmission of energy in this State unless the person obtains a license, or an exemption from licensure, from the Federal Communications Commission pursuant to 47 U.S.C. s.301, or other applicable federal law or regulation; or
 - b. Do any act to cause an unlicensed radio transmission of energy or interference with a public or commercial radio station licensed by the Federal Communications Commission or to enable the radio transmission of energy or interference to occur.
 - c. As used in this section, "radio transmission of energy" has the same meaning given that term under 47 U.S.C. s.153.

C.2C:33-23.2 Violations, fourth degree crime.

2. A person who violates the provisions of this act is guilty of a crime of the fourth degree.
3. This act shall take effect 90 days after enactment.

Approved January 9, 2006.

CHAPTER 294

AN ACT establishing the Safe Haven Awareness Promotion Task Force.

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

1. The Legislature finds and declares that:
 - a. The "New Jersey Safe Haven Infant Protection Act," P.L.2000, c.58 (C.30:4C-15.5 et seq.) is intended to provide for the emergency possession of certain abandoned newborn infants in such a manner as to ensure the anonymity, confidentiality and freedom from prosecution that may encour-

age a parent who may be under severe emotional stress to leave an infant at a safe haven and thereby save that infant's life;

b. This statute requires the Commissioner of Human Services to establish an educational and public information program to promote safe placement alternatives for newborn infants, the confidentiality offered to birth parents and information regarding adoption procedures;

c. Pursuant to the Safe Haven law, the Department of Human Services established a multifaceted media campaign to inform the public about its provisions, and this effort has included: a 24-hour toll-free telephone hotline; public service announcements on radio and cable television; posters for display in social service agencies, high schools, stores and churches; pocket cards and brochures in both English and Spanish; and advertising in local and college newspapers and on billboards and buses;

d. Despite these efforts to promote public awareness of the Safe Haven law, unlawful abandonment of newborn infants continues to be a problem in New Jersey, as evidenced by the finding of three newborn infants who were unlawfully abandoned during a three-week period in January 2004, instead of being dropped off safely as provided under P.L.2000, c.58, with the consequent loss of life for one of those infants; and

e. The indications of this continuing problem raise questions about whether the existing efforts to disseminate information about the provisions of the Safe Haven law can create sufficient public awareness to alleviate the problem of unlawful baby abandonment and thereby achieve the intent of the "New Jersey Safe Haven Infant Protection Act."

2. There is established the Safe Haven Awareness Promotion Task Force in the Department of Human Services. The purpose of the task force shall be to study and evaluate the efficacy of existing efforts to promote awareness among the general public of the provisions of the "New Jersey Safe Haven Infant Protection Act," P.L.2000, c.58 (C.30:4C-15.5 et seq.), and develop recommendations relating to specific actionable measures to support and enhance efforts that would improve the effectiveness of the campaign to promote public awareness of the Safe Haven law.

3. a. The task force shall consist of 19 members as follows:

(1) the Commissioners of Health and Senior Services, Human Services and Education, the Director of the Division on Women in the Department of Community Affairs and the Child Advocate, or their designees, who shall serve ex officio; and

(2) 14 public members, who shall be appointed by the Governor no later than the 30th day after the effective date of this act, as follows: one person upon the recommendation of the Association for Children of New Jersey;

one person upon the recommendation of the New Jersey Chapter of the National Association of Social Workers; one person upon the recommendation of the School of Social Work at Rutgers, The State University of New Jersey; one person upon the recommendation of Foster and Adoptive Family Services; one person upon the recommendation of the American Academy of Pediatrics-New Jersey Chapter; one person upon the recommendation of the New Jersey Education Association; one person upon the recommendation of the New Jersey State School Nurses Association; one person upon the recommendation of the New Jersey Hospital Association; one person upon the recommendation of the Mental Health Association in New Jersey; one person upon the recommendation of the New Jersey Task Force on Child Abuse and Neglect, one person upon the recommendation of the New Jersey Catholic Conference; one person upon the recommendation of New Jersey Right to Life; and two members of the public with a demonstrated expertise in issues relating to the work of the task force.

Vacancies in the membership of the task force shall be filled in the same manner provided for the original appointments.

b. The Commissioner of Human Services or the commissioner's designee shall serve as chairperson of the task force. The task force shall organize as soon as practicable following the appointment of its members and shall select a vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the task force.

c. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the task force.

d. The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

e. The task force may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature.

f. The Department of Human Services shall provide staff support to the task force.

4. The task force shall report its findings and recommendations to the Governor and the Legislature, along with any legislative bills that it desires to recommend for adoption by the Legislature, no later than six months after the initial meeting of the task force.

5. This act shall take effect immediately and shall expire upon the issuance of the task force report.

Approved January 9, 2006.

CHAPTER 295

AN ACT concerning the sale of used ambulances and supplementing chapter 10 of Title 39 of the Revised Statutes.

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

C.39:10-9.4 Used ambulances, removal of markings, certain circumstances; violations, crime.

1. a. Any ambulance sold, transferred, gifted, discarded or abandoned to an entity other than a hospital, licensed ambulance dealership, an emergency service organization as defined in section 2 of P.L.1997, c.388 (C.40A:14-184) or any entity licensed by the Department of Health and Senior Services as an ambulance operator shall, prior to sale or transfer, be stripped of all markings that would identify the vehicle as an ambulance.

b. The Commissioner of the Department of Health and Senior Services shall be responsible for the enforcement of this act.

c. An action for a violation of this act may be brought in any court of competent jurisdiction, and shall be punishable as a crime of the fourth degree.

2. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 296

AN ACT concerning municipal providers of light, heat or power and amending P.L.1971, c. 198.

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

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

C.40A:11-5 Exceptions.

5. Any contract the amount of which exceeds the bid threshold, may be negotiated and awarded by the governing body without public advertising

for bids and bidding therefor and shall be awarded by resolution of the governing body 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 the official newspaper, 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, whenever possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations after consultation with the Commissioner of Education 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 unit may be a party;

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

(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) Those goods and services necessary or required to prepare and conduct an election;

(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 goods or services 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) (Deleted by amendment, P.L.1999, c.440.)

(q) Library and educational goods and services;

(r) (Deleted by amendment, P.L.2005, c.212).

(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) (Deleted by amendment, P.L.1999, c.440.)

(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;

(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.);

(cc) Expenses for travel and conferences;

(dd) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or to acquire or update non-proprietary software;

(ee) The management or operation of an airport owned by the contracting unit pursuant to R.S.40:8-1 et seq.;

(ff) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(gg) A contract for the provision of water supply services or wastewater treatment services entered into pursuant to section 2 of P.L.2002, c.47 (C.40A:11-5.1), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15);

(hh) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contracting unit.

(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 or any other state or subdivision thereof.

(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it 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 may then be negoti-

ated 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; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, 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 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; 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 unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods 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.

(4) The contracting unit has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to section 12 of P.L.1971, c.198 (C.40A:11-12), and the lowest responsible quotation is at least 10% less than the price the contracting unit would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract entered into pursuant to this subsection may be awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the governing body of the contracting unit at a meeting thereof authorizing such

a contract. A copy of the purchase order relating to any such contract, the requisition for purchase order, if applicable, and documentation identifying the price of the materials, supplies or equipment under the State contract and the State contract number shall be filed with the director within five working days of the award of any such contract by the contracting unit. The director shall notify the contracting unit of receipt of the material and shall make the material available to the State Treasurer. The contracting unit shall make available to the director upon request any other documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions. The director periodically shall review material submitted by contracting units to determine the impact of such contracts on local contracting and shall consult with the State Treasurer on the impact of such contracts on the State procurement process. The director may, after consultation with the State Treasurer, adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to limit the use of this subsection, after considering the impact of contracts awarded under this subsection on State and local contracting, or after considering the extent to which the award of contracts pursuant to this subsection is consistent with and in furtherance of the purposes of the public contracting laws.

(5) Notwithstanding any provision of law, rule or regulation to the contrary, the subject matter consists of the combined collection and marketing, or the cooperative combined collection and marketing of recycled material recovered through a recycling program, or 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, provided that in lieu of engaging in such public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing said services. Within 30 days after receipt of the written description the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process as described shall be deemed approved. As used in this section, "collection" means the physical removal of recyclable materials from curbside or any other location selected by the contracting unit.

(6) Notwithstanding any provision of law, rule or regulation to the contrary, the contract is for the provision of electricity by a contracting unit engaged in the distribution of electricity for retail sale, or for the provision of administrative or dispatching services related to the transmission of such electricity, provided that in lieu of engaging in public advertising for bids and the bidding therefor, the contracting unit shall, prior to commencing the procurement process, submit for approval to the Director of the Division of Local Government Services, a written detailed description of the process to be followed in securing such services. Such process shall be designed in a way that is appropriate to and commensurate with industry practices, and the integrity of the government contracting process. Within 30 days after receipt of the written description, the director shall, if the director finds that the process provides for fair competition and integrity in the negotiation process, approve, in writing, the description submitted by the contracting unit. If the director finds that the process does not provide for fair competition and integrity in the negotiation process, the director shall advise the contracting unit of the deficiencies that must be remedied. If the director fails to respond in writing to the contracting unit within 30 days, the procurement process, as submitted to the director pursuant to this section, shall be deemed approved.

2. 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 contracts for the provision or performance of goods or services shall be awarded 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 awarded for a period not to exceed 12 consecutive months. Contracts may be awarded 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 seven years;

(6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), 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 five years; provided, however, such contracts shall be awarded 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 company providing voice, data, transmission or switching services 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 and plan review services 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 provision or performance of goods or services 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 15 years; provided, however, that such contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings;

(13) (Deleted by amendment, P.L.1999, c.440.)

(14) (Deleted by amendment, P.L.1999, c.440.)

(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 that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (30), (31), (34), (35) or (43) 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 that no such approvals shall be required for those contracts otherwise exempted pursuant to subsection (36) or (43) 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 goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services 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 supplier of electricity subject to the jurisdiction of a federal regulatory agency, from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C.s.796, or from any supplier of electricity within any regional transmission organization or independent system operator or from such organization or operator or their successors, 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, or by a contracting unit engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that a contract with a contracting unit, engaged solely in the distribution of electricity for retail sale, in excess of ten years, shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing to the contracting unit within 10 business days, the contract shall be deemed approved;

(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 stabiliza-

tion, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;

(26) (Deleted by amendment, P.L.1999, c.440.)

(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 a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract 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) A contract 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;

(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 ten 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;

(38) Municipal solid waste collection from facilities owned by a contracting unit, for any term of not more than three years;

(39) Fuel for heating purposes, for any term of not more than three years;

(40) Fuel or oil for use in motor vehicles for any term of not more than three years;

(41) Plowing and removal of snow and ice for any term of not more than three years;

(42) Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract;

(43) A contract between the governing body of a city of the first class and a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of this section, or wastewater treatment services as defined in subsection (19) of this section, may be entered into for a period not to exceed 40 years;

(44) The purchase of electricity generated from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding 25 years.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No such contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services 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), (37) or (43) 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), (37) or (43) 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 and contracts for the purchase of electricity generated from a power production facility that is fueled by methane gas authorized pursuant to subsection (44) 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 in the Department of Community Affairs shall adopt and promulgate rules and regulations con-

cerning the methods of accounting for all contracts that do not coincide with the fiscal year.

All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

3. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 297

AN ACT permitting the Director of the Division of Taxation to extend filing and payment deadlines under the New Jersey gross income tax to conform with similar actions of the Internal Revenue Service under the federal personal income tax, amending N.J.S.54A:8-1.

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

1. N.J.S.54A:8-1 is amended to read as follows:

Payment of tax; returns; extension of time.

54A:8-1. Payment of tax; returns; extension of time. With respect to each taxpayer, the tax imposed by this act shall be due and payable annually, hereafter, in the manner provided in this section:

a. Every taxpayer shall annually pay the tax imposed by this act with respect to all or any part of each of his fiscal or calendar accounting years beginning on and after July 1, 1976, to be computed as in this act provided, for such fiscal or calendar accounting year or part thereof, on a return which shall be filed, in the case of a taxpayer reporting on a calendar year basis, on or before April 15 following the close of such calendar year, or, in the case of a taxpayer reporting on a fiscal year basis, on or before the fifteenth day of the fourth month following the close of such fiscal year, and the full amount of the tax shall be due and payable on or before the date prescribed herein for the filing of the return.

In the case of a taxable year which ends on or after July 1, 1976, and prior to December 31, 1976, an income tax return for such taxable year shall be filed on or before April 15, 1977.

Notwithstanding any law to the contrary, the director may extend either the filing or payment due date, or both, for any return under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., to coincide with a similar extended filing or payment due date established for federal personal income tax returns and may adopt the same terms or conditions specified by federal law or regulation for any such filing extension or payment due date.

b. Each return shall carry a signature by the taxpayer certifying that all statements contained therein are true, under the same penalties as for perjury committed. The director is authorized to promulgate regulations and procedures setting forth the manner in which a taxpayer may satisfy the signature requirement. Blank forms of return shall be furnished on application, but failure to secure the form shall not relieve any taxpayer of the obligation of making any return herein required. Subject to regulations under this act and in such form as may be indicated thereby, taxpayers whose net income taxable under this act is or may be subject to tax under a similar law of another jurisdiction may be permitted to file a simple, short form return attached to a copy of his return as filed or about to be filed by him in such other jurisdiction.

Subject to regulations under this act, reasonable extensions of time for good cause shown, may be granted for not more than six months unless exceptional circumstances justify a longer period, within which returns may be filed.

In addition, persons in active service with the Armed Forces of the United States, who may be prevented by distance or injury or hospitalization arising out of such service, may be allowed such extension of time for the filing of returns, without interest or penalty, as may be fixed by regulations under this act.

2. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 298

AN ACT concerning voluntary contributions through gross income tax returns for the NJ World Trade Center Scholarship Fund, supplementing chapter 9 of Title 54A of the New Jersey Statutes.

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

C.54A:9-25.23 Income tax returns, option for contribution to NJ World Trade Center Scholarship Fund.

1. a. Each taxpayer shall have the opportunity to indicate on the taxpayer's New Jersey gross income tax return that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in the New Jersey World Trade Center Scholarship Fund established pursuant to section 3 of P.L.2001, c.442 (C.18A:71B-23.3).

b. Any costs incurred by the Division of Taxation for collection or administration attributable to this act may be deducted from receipts collected pursuant to this act, as determined by the Director of the Division of Budget and Accounting. The State Treasurer shall deposit net contributions collected pursuant to this act into the New Jersey World Trade Center Scholarship Fund.

c. The Legislature shall annually appropriate all funds deposited in the New Jersey World Trade Center Scholarship Fund to the New Jersey Higher Education Student Assistance Authority for the New Jersey World Trade Center Scholarship Board for the purposes of providing support to scholarship recipients for higher education.

2. This act shall take effect immediately and apply to taxable years beginning on or after January 1, 2006.

Approved January 9, 2006.

CHAPTER 299

AN ACT concerning boards of education of certain county vocational school districts, amending N.J.S.18A:54-16, and supplementing chapter 54 of Title 18A of the New Jersey Statutes.

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

1. N.J.S.18A:54-16 is amended to read as follows:

Boards of education of county vocational schools.

18A:54-16. For each county system of vocational schools established in accordance with this chapter, there shall be a board of education consisting of the county superintendent of schools and four persons to be appointed;

provided, however, that a county of the first class which has adopted a form of government pursuant to the provisions of the "Optional County Charter Law" (P.L.1972, c.154; C.40:41A-1 et seq.) may, by ordinance, establish a board of education consisting of six, seven, or nine persons to be appointed and any other county may, by ordinance, establish a board of education consisting of six persons to be appointed.

In counties of the first class which, by ordinance, have established a board consisting of six, seven, or nine persons to be appointed, the appointive members shall be appointed by the chief elected executive officer of the county with the advice and consent of the board of chosen freeholders. In all other counties, the appointive members of the board shall be appointed by the chief elected executive officer of the county, or the director of the board of chosen freeholders, with the advice and consent of that board, as appropriate to the appointment procedures established by the form of government of the county. On a board with four appointive members, not more than two members, or in the case of a board with six appointive members, not more than three members, appointed in any such county of the second, third, fifth or sixth class shall be members of the same political party, but no changes for adjustment of party representation shall be made in a board except as vacancies occur.

In making the first appointments to a board with four appointive members, one person shall be appointed to serve for one year, one for two years, one for three years and one for four years from November 1 next succeeding the date of their respective appointments. In a county of the first class which, by ordinance, has established a board with seven appointive members, the chief elected executive officer shall make the first appointments to the board in the following manner: two shall be appointed to serve for one year, two for two years, two for three years, and one for four years from November 1 next succeeding the date of their respective appointments. The persons so appointed shall also serve from the date of their respective appointments until November 1 next ensuing.

In the case of a board of education with four appointive members on the effective date of P.L.2005, c.299 (C.18A:54-16.14 et al.) in a county of the first class or any other county which determines by ordinance to appoint a board with six appointive members, in making the initial appointment of the two additional members, one person shall be appointed to serve for two years and one person shall be appointed to serve for four years from November 1 next succeeding the date of their respective appointments.

In the case of a board of education with four appointive members on the effective date of P.L.2005, c.299 (C.18A:54-16.14 et al.) in a county of the first class which determines by ordinance to appoint a board with seven appointive members, in making the initial appointment of the three addi-

tional members, one person shall be appointed to serve for two years, one person shall be appointed to serve for three years, and one person shall be appointed to serve for four years from November 1 next succeeding the date of their respective appointments.

In the case of a board of education with four appointive members on the effective date of P.L.2005, c.299 (C.18A:54-16.14 et al.) in a county of the first class which determines by ordinance to appoint a board with nine appointive members, in making the initial appointment of the five additional members, one person shall be appointed to serve for one year, one person shall be appointed to serve for two years, one person shall be appointed to serve for three years, and two persons shall be appointed to serve for four years from November 1 next succeeding the date of their respective appointments.

In the case of a board of education with seven appointive members on the effective date of P.L.2005, c.299 (C.18A:54-16.14 et al.) in a county of the first class which determines by ordinance to appoint a board with nine appointive members, in making the initial appointment of the two additional members, one person shall be appointed to serve for two years and one person shall be appointed to serve for four years from November 1 next succeeding the date of their respective appointments.

Annually during the month of October a member or members, as the case may be, of the board shall be appointed to serve for a term of four years, and thereafter until the appointment and qualification of his respective successor, to take the place of the member or members, as the case may be, whose term or terms shall expire on November 1 then next ensuing.

A vacancy in the board shall be deemed to exist, and shall be filled, in the manner prescribed in P.L.1979, c.302 (C.40A:9-12.1).

C.18A:54-16.14 Appointment of additional board members, county vocational schools, certain.

2. Notwithstanding the provisions of P.L.2005, c.299 (C.18A:54-16.14 et al.) to the contrary, if a county of the first class which has a county vocational school board of education with seven members on the effective date of this act determines by ordinance within six months of the effective date of this act to appoint a board with nine members, one person shall be appointed to serve for two years and one person shall be appointed to serve for four years, which terms shall begin immediately upon appointment and shall expire on November 1 next succeeding the completion of the terms.

3. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 300

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, 2006 and regulating the disbursement thereof," approved July 2, 2005 (P.L.2005, c.132).

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.2005, c.132, there are appropriated out of the General Fund the following sums for the purposes specified:

54 DEPARTMENT OF HUMAN SERVICES
50 Economic Planning, Development and Security
53 Economic Assistance and Security
7550 Division of Family Development
GRANTS-IN-AID

15-7550 Income Maintenance Management \$4,000,000
Total Grants-in-Aid Appropriation,
Division of Family Development \$4,000,000

Grants-in-Aid:

15 New Jersey Low Income
Home Energy Assistance
Program (NJ LIHEAP) (\$3,000,000)
15 Social Services for the Homeless . . . (1,000,000)

The amount appropriated above for the New Jersey Low Income Home Energy Assistance Program shall be allocated in proportion to the State benefit amounts otherwise distributed to eligible families through the State LIHEAP program to meet winter 2005-2006 home heating costs. The amount above appropriated for Social Services for the Homeless shall be used exclusively to offset the increase in the cost of home heating.

Total Appropriation, Department of Human Services . . \$4,000,000

82 DEPARTMENT OF THE TREASURY
50 Economic Planning, Development and Security
52 Economic Regulation
GRANTS-IN-AID

88-2058 Energy Assistance Programs \$9,000,000

Total Grants-in-Aid Appropriation, Economic Regulation	<u>\$9,000,000</u>
<i>Grants-in-Aid:</i>	
88 New Jersey Statewide Heating Assistance and Referral for Energy Services (New Jersey SHARES) . . .	(\$7,000,000)
88 New Jersey Comfort Partners	(2,000,000)
Total Appropriation, Department of the Treasury	<u>\$9,000,000</u>
Total Appropriation, General Fund	<u>\$13,000,000</u>

2. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 301

AN ACT appropriating moneys from the "Wastewater Treatment Fund" for grants to project sponsors to finance a portion of the costs of construction of wastewater treatment system projects.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329, the sum of \$24,180,000 for the purpose of providing grants to or on behalf of local government units (hereinafter referred to as "project sponsors") to finance up to 20% of the project costs for wastewater treatment system projects as follows:

Project Sponsor	Project Description	Estimated Project Cost	Grant Amount
Asbury Park City	Street and storm drain cleaning equipment acquisition	\$500,000	\$66,515
Atlantic County UA	Street and storm drain cleaning equipment acquisition	\$552,500	\$73,498
Bayonne MUA	Combined sewer system partial separation	\$400,000	\$53,211

Bergen County UA	Wastewater treatment plant wet weather system improvements	\$14,411,770	\$1,917,165
Bergen County UA	Sewer main construction	\$50,000,000	\$6,401,387
Cranford Twp	Storm sewer trunk lines/pump station construction	\$5,308,000	\$706,111
Dumont Boro	Stormwater management equipment and stream bank rehabilitation/flood control project	\$1,879,900	\$250,000
East Newark Boro	Solids/Floatables control measures	\$1,200,000	\$159,633
Edgewater MUA	Combined sewer system separation	\$2,250,000	\$299,312
Gloucester County	Procurement of street sweeping equipment and construction of salt storage facility; planning, engineering and implementation of County-Wide Stormwater Management Program	\$7,601,500	\$1,011,210
Hackensack City	Combined sewer system partial separation	\$5,000,000	\$665,140
Hudson County	Truck wash facility and Pump station improvements	\$1,000,000	\$133,028
Kearny MUA		\$2,250,000	\$299,312
Kearny Town	Sewer separation and Solids/Floatables Control Measures	\$2,116,200	\$281,513
Mercer County	Stormwater drainage improvements and cleaning equipment	\$1,000,000	\$133,028
Monmouth County	Wreck Pond stormwater restoration project	\$1,871,500	\$248,961
Newark City	Solids/Floatables control measures	\$13,813,000	\$1,837,512
Newark City	Stormwater drainage Improvements	\$1,877,000	\$249,693
North Bergen MUA	Sewage conveyance and reduction of Combined Sewer Overflow discharges	\$15,955,000	\$2,122,458
North Hudson SA	Pump Station Rehabilitation and replacement of force mains	\$1,368,000	\$181,982
North Hudson SA	Pump Station Rehabilitation and replacement of force mains	\$9,009,000	\$1,198,447
Nutley Twp	Street sweeping equipment procurement	\$500,000	\$66,514
Ocean County	Long Swamp Creek stormwater restoration project	\$126,000	\$16,761
Paterson City	Netting & Romag screen construction and sewer separation	\$21,918,400	\$2,915,755

Perth Amboy City	Combined sewer system partial separation and Solids/floatables control netting facility	\$3,000,000	\$399,083
Rahway Valley SA	Gravity relief sewer construction	\$13,958,733	\$1,856,899
Wall Twp	Salt storage facility construction	\$250,000	\$33,257
West Milford Twp MUA	Sewer system replacement and rehabilitation	\$2,430,000	\$323,257
West Orange Twp	Storm sewer construction	\$2,100,000	\$279,358

b. There is appropriated to the Department of Environmental Protection from the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329, the sum of \$3,000,000 for the purpose of providing grants to or on behalf of Bayonne MUA, Bergen County Utilities Authority, Camden City, Camden County MUA, Cliffside Park Borough, East Newark Borough, Edgewater MUA, Elizabeth City, Fort Lee Borough, Gloucester City, Guttenberg Town, Hackensack City, Harrison Town, Jersey City MUA, Joint Meeting of Essex & Unions Counties, Kearny Town, Middlesex County Utilities Authority, Newark City, North Bergen MUA, North Hudson SA, Passaic Valley Sewerage Commissioners, Paterson City, Perth Amboy City and Ridgefield Park Village (hereinafter referred to as "project sponsors") to finance up to 20% of costs for preliminary engineering projects for the development and evaluation of pathogen control alternatives and cost performance analyses for combined sewer systems as required pursuant to a New Jersey Pollutant Discharge Elimination System permit issued by the department.

c. There is appropriated to the Department of Environmental Protection from the "Wastewater Treatment Fund" established pursuant to section 15 of the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329, the sum of \$2,820,000 for the purpose of providing grants to the following local government units (hereinafter referred to as "project sponsors") to finance up to 20% of the project costs for the following wastewater effluent reuse/recharge projects:

<u>Project Sponsor</u>	<u>Wastewater Project Description</u>	<u>Total Estimated Project Cost</u>	<u>Grant Amount</u>
Atlantic County UA	Wastewater effluent reuse/recharge project	\$6,300,000	\$1,260,000
Cape May County MUA	Wastewater effluent reuse/recharge project	\$7,800,000	\$1,560,000

d. To the extent that the balance of the moneys available in the "Wastewater Treatment Fund" that have not been previously appropriated

pursuant to law is insufficient to support the sums appropriated pursuant to subsections a. and b. of this section, the following moneys shall be made available from the "Wastewater Treatment Fund" to support the remainder of the appropriations made in those subsections as required:

(1) moneys returned to the "Wastewater Treatment Fund" due to project withdrawals, cancellations, or cost savings involving projects previously funded by law; or

(2) moneys previously appropriated pursuant to law from the "Wastewater Treatment Fund" to finance projects deemed by the department to be no longer active as of the effective date of this act.

e. The grant amount to be provided each project sponsor listed in subsection b. of this section shall be awarded only upon the receipt and approval by the Department of Environmental Protection of an engineering project proposal submitted by the project sponsor. Grant amounts to be provided each project sponsor listed in subsection b. of this section shall be determined and allocated after a review by the department of the engineering study cost estimates submitted by these project sponsors to the department. The total amount of grants awarded pursuant to subsection b. of this section shall not exceed \$3,000,000 and no grant shall exceed 20% of the cost for the required engineering studies.

f. Any moneys from projects listed in subsection a., b. or c. of this section that have not been obligated as of June 30, 2006 may be applied to any other project listed in subsection a., b. or c. of this section, provided that the grant amount awarded to a project sponsor for a particular project shall not exceed 20% of the project cost and that the total amount of grants awarded to project sponsors pursuant to this section shall not exceed \$30,000,000.

g. The Department of Environmental Protection is authorized to make grants to or on behalf of the project sponsors for the wastewater treatment system projects listed in subsection a. of this section, up to the individual amounts indicated, except as any such amount may be reduced or increased by the Commissioner of Environmental Protection pursuant to section 2 of this act, or if a project fails to meet the requirements of section 3 of this act.

h. If the Commissioner of Environmental Protection, after the review of project-specific documentation submitted by the project sponsor in support of a grant authorized pursuant to subsection a., b. or c. of this section, determines that the project will not result in a significant water quality benefit during wet weather conditions or its purpose is inconsistent with the provisions of P.L.1985, c.329, the commissioner may disapprove the project or any portion thereof.

2. The Commissioner of Environmental Protection is authorized to reduce or increase the individual amount of grants made available to or on behalf of project sponsors pursuant to subsection a. of section 1 of this act based upon final costs defined in and determined in accordance with rules and regulations adopted by the commissioner pursuant to section 4 of P.L.1985, c.329, provided that the total amount of the grants awarded pursuant to this act shall not exceed \$30,000,000.

3. Any grant made by the Department of Environmental Protection pursuant to this act shall be subject to the following requirements:

- a. The Commissioner of Environmental Protection has certified that the project is in compliance with the provisions of P.L.1985, c.329 and any rules and regulations adopted pursuant thereto;
- b. The grant amount shall not exceed 20% of the estimated project cost;
- c. The grant shall be subject to any other terms and conditions as may be established by the commissioner.

4. The authorization for the making of grants pursuant to subsection a. of section 1 of this act shall expire on December 31, 2006, and any project sponsor which has not executed and delivered an agreement with the department for a grant authorized in this act shall no longer be entitled to that grant.

5. The Department of Environmental Protection shall provide general technical assistance to any project sponsor requesting assistance regarding project development or applications for funds for a project.

6. This act shall take effect immediately.

Approved January 9, 2006.

CHAPTER 302

AN ACT expanding the powers of the New Jersey Sports and Exposition Authority concerning projects and amending P.L.1971, c.137 and P.L.1991, c.375.

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

1. 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, race-tracks for the holding of horse race meetings, fairgrounds, other exposition facilities, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to a complex suitable for the holding of horse race meetings, other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, equipment, furnishings, and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of any of those projects or any facility thereof.

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

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

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

interest therein, vending facilities, restaurants, transportation structures, systems, and equipment, furnishings and all other structures and appurtenances related to, incidental to, necessary for, or complementary to the purposes of those projects.

(8) To establish, develop, acquire, construct, reconstruct, improve and otherwise effectuate for transfer to, and for use and operation by, Rutgers, the State University, either directly or indirectly through lessees, licensees or agents, facilities located or to be located on property owned, leased, or otherwise used by Rutgers, the State University, consisting of an upgraded and expanded football stadium and a new track and field, soccer and lacrosse facility and the buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to the football stadium and track and field, soccer and lacrosse facility, such facilities to include driveways, access roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities; provided however that construction shall not begin on the expansion of the seating capacity of Rutgers Stadium until the Commissioner of Transportation certifies that all funding necessary to complete the Route 18 project in Piscataway Township has been appropriated and construction has begun on the Route 18 project in Piscataway Township under the Department of Transportation's capital program.

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

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

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

(c) Convert the existing convention hall or any facilities, structures or properties thereof, or any part thereof, not disposed of by the authority, to any

sports, exposition, exhibition, or entertainment use or to use as a forum for public events or meetings, or to any other use which the authority shall determine to be consistent with its operation of the Atlantic City convention center project.

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

(11) To provide funding to public or private institutions of higher education in the State to establish, develop, acquire, construct, reconstruct or improve facilities located or to be located on property owned, leased, or otherwise used by an institution, consisting of sports facilities and the buildings, structures, properties and appurtenances related thereto, or incidental to, necessary for, or complementary to those sports facilities, such facilities to include driveways, access roads, approaches, parking areas, parks, recreation areas, vending facilities, restaurants, transportation structures, systems and equipment, furnishings and all other structures and appurtenances related or incidental to, necessary for, or complementary to the purposes of those facilities.

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

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

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

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

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

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

(13) To acquire by purchase, lease or otherwise, and to develop, construct, own, lease, manage, repair, reconstruct, restore, improve, enlarge or otherwise effectuate, either directly or through lessees, licenses, or agents, all right, title, or interest in the Garden State Arts Center in Holmdel, Monmouth County, and any related or auxiliary facilities and to transfer its interest in the Garden State Arts Center and any related or auxiliary facilities to such other public body that is authorized to own and operate such a facility, or other entity, according to such terms and process as the authority may establish in its discretion.

(14) (a) 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 the meadowlands complex, provided that the authority first obtains the consent of the municipality or municipalities in which the projects are to be located, consisting of football training facilities that are comparable in quality to National Football League professional football training facilities and the buildings, structures, facilities, uses, properties and appurtenances related thereto, or identical to, necessary for, or complementary to those National Football League-quality professional football league training facilities, such projects to include driveways, roads, approaches, parking areas, parks, recreation areas, 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 such projects or any facility thereof.

(b) For projects developed pursuant to subparagraph (a) of paragraph (14) of this subsection, the authority shall make in-lieu-of tax payments in each municipality affected in amounts negotiated by the authority and each municipality.

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.

2. 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;

(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); and

(9) To provide for the financing or refinancing of the professional football training facility project and associated facilities authorized pursuant to paragraph (14) 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.

3. This act shall take effect immediately.

Approved January 10, 2006.

CHAPTER 303

AN ACT concerning the practice of medicine and surgery 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.45:9-5.2 Needle electromyography, performance, interpretation restricted to physicians, surgeons; definitions.

1. a. A person shall not perform needle electromyography unless that person is licensed to practice medicine and surgery in this State pursuant to chapter 9 of Title 45 of the Revised Statutes.

A person shall not interpret evoked potentials or perform nerve conduction studies unless that person is licensed to practice: medicine and surgery in this State pursuant to chapter 9 of Title 45 of the Revised Statutes; audiology in this State pursuant to chapter 3B of Title 45 of the Revised Statutes; or chiropractic in this State pursuant to chapter 9 of Title 45 of the Revised Statutes.

b. As used in this act:

"Evoked potential" means the analysis of an electrical potential produced by introducing stimuli into the central nervous system for the diagnosis of diseases of the brain, spinal cord and nerves contiguous with them and includes brainstem auditory evoked responses, visual evoked responses and somatosensory evoked potentials;

"Needle electromyography" means the study of spontaneous and voluntary electrical activity of muscle, which is performed by insertion of a needle electrode into a muscle and recording the electrical activity at rest and during voluntary contraction; and

"Nerve conduction study" means the application of electrical stimulation at various points along or near a nerve and usually requires the use of surface electrodes for stimulation and recording.

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

Approved January 11, 2006.

CHAPTER 304

AN ACT concerning guardianship, amending and supplementing various sections of Title 3B of the New Jersey Statutes.

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

1. N.J.S.3B:12-1 is amended to read as follows:

Power of the court to order a protective arrangement.

3B:12-1. Power of the court to order a protective arrangement.

If it is established that a minor, an incapacitated person or an alleged incapacitated person or a person not yet in being has property or an interest therein which may be wasted or dissipated or that a basis exists for affecting the property or interest and affairs of a minor, an incapacitated person or an alleged incapacitated person or person not yet in being, or that funds are

needed for the support, care and welfare of the minor, incapacitated person or alleged incapacitated person or those entitled to be supported by him, the court may, subject to the appointment of a guardian ad litem and upon notice to the guardian ad litem, without appointing a guardian of the estate, authorize, direct or ratify any single or more than one transaction necessary or desirable to achieve any security, service, care or protective arrangement meeting the foreseeable needs of the minor, incapacitated person or alleged incapacitated person or those dependent upon him.

2. N.J.S.3B:12-2 is amended to read as follows:

Matters within a protective arrangement.

3B:12-2. Matters within a protective arrangement.

Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, addition to, or establishment of, a suitable trust. The court may authorize, direct or ratify any contract, trust or other transaction relating to the minor's, incapacitated person's, alleged incapacitated person's or person's not yet in being financial affairs or involving the estate if the court determines that the transaction is in the best interests of the minor, incapacitated person, alleged incapacitated person or person not yet in being or those dependent upon him.

3. N.J.S.3B:12-3 is amended to read as follows:

Factors to be considered before approving a protective arrangement.

3B:12-3. Factors to be considered before approving a protective arrangement.

Before approving a protective arrangement or other transaction the court shall consider the interests of creditors and dependents of the minor, incapacitated person or alleged incapacitated person and, in view of his disability, whether the minor, incapacitated person or alleged incapacitated person needs the continuing protection of a guardian.

4. N.J.S.3B:12-4 is amended to read as follows:

Appointment of special guardian.

3B:12-4. Appointment of special guardian.

The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this article who shall have authority conferred by the order and shall serve until discharged by the order after reporting to the court of all matters done pursuant to the order of appointment.

If the court has appointed a special guardian to assist in the accomplishment of a protective arrangement pursuant to this section, the special guardian shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, upon application to the court, payable by the estate of the minor, incapacitated person or alleged incapacitated person.

5. N.J.S.3B:12-5 is amended to read as follows:

Right of alleged incapacitated person to trial on issue of incapacity.

3B:12-5. Right of alleged incapacitated person to trial on issue of incapacity.

Where application is made to the court for proceedings to affect the property and affairs of an alleged incapacitated person, and the alleged incapacitated person has not been adjudicated as such, the alleged incapacitated person or someone acting in his behalf may apply for a trial of the issue of incapacity in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of the State of New Jersey.

6. N.J.S.3B:12-6 is amended to read as follows:

Circumstances under which money may be paid or personal property delivered.

3B:12-6. Circumstances under which money may be paid or personal property delivered.

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding \$5,000.00 per annum, by paying or delivering the money or property to:

- a. The minor, if married;
- b. A parent or parents of the minor;
- c. Any person having the care and custody of the minor with whom the minor resides;
- d. A guardian of the person of the minor; or
- e. A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving written notice of the deposit to the minor.

7. N.J.S.3B:12-11 is amended to read as follows:

Affidavit of receipt; contents; filing.

3B:12-11. Affidavit of receipt; contents; filing.

The persons making payment of money or delivery of personal property as provided in this article shall obtain from the recipient thereof, if other than a financial institution or a married minor, an affidavit signed by the recipient acknowledging receipt of the money or personal property which shall set forth the recipient's status in relation to the minor and the purpose for which the money or personal property will be used. The affidavit shall be filed in the office of the Surrogate of the county in which the minor resides or if the minor resides outside the State, the county which has jurisdiction of the property.

8. N.J.S.3B:12-13 is amended to read as follows:

Power to designate testamentary guardian.

3B:12-13. Power to designate testamentary guardian.

Subject to the provisions of N.J.S.3B:12-14, either parent may, by his will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including children en ventre sa mere, who are under the age of 18 years and unmarried at the death of the parent.

9. N.J.S.3B:12-15 is amended to read as follows:

Appointment of testamentary guardian by surviving parent.

3B:12-15. Appointment of testamentary guardian by surviving parent.

If no guardian has been appointed pursuant to N.J.S.3B:12-13 and N.J.S.3B:12-14, or if the surviving parent was so appointed, the surviving parent may, by his will, appoint a guardian of the person and a guardian of the estate, or a guardian of the person and estate, of any of the parent's children, including children en ventre sa mere, who are under the age of 18 years and unmarried at the death of the surviving parent.

10. N.J.S.3B:12-16 is amended to read as follows:

Bond of testamentary guardian.

3B:12-16. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of a minor shall give bond in accordance with N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by direction of the will of the parent appointing the guardian or by order of the court. However, regardless of the direction, the guardian shall, with respect to property to which the ward is or shall be entitled from any source, other than the parent or other than any policy of life

insurance upon the life of the parent, give bond in accordance with that section before exercising any authority or control over the property.

11. N.J.S.3B:12-24 is amended to read as follows:

Issue of incapacity triable without jury unless jury is demanded.

3B:12-24. Issue of incapacity triable without jury unless jury is demanded.

In civil actions or proceedings for the determination of incapacity or for the appointment of a guardian for an alleged incapacitated person, the trial of the issue of incapacity may be had without a jury pursuant to Rules Governing the Courts of the State of New Jersey, unless a trial by jury is demanded by the alleged incapacitated person or someone on his behalf.

C.3B:12-24.1 Determination by the court of need for guardianship services, specific services.

12. Determination by the court of need for guardianship services, specific services.

a. General Guardian. If the court finds that an individual is incapacitated as defined in N.J.S.3B:1-2 and is without capacity to govern himself or manage his affairs, the court may appoint a general guardian who shall exercise all rights and powers of the incapacitated person. The general guardian of the estate shall furnish a bond conditioned as required by the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

b. Limited Guardian. If the court finds that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate. A court, when establishing a limited guardianship shall make specific findings regarding the individual's capacity, including, but not limited to which areas, such as residential, educational, medical, legal, vocational and financial decision making, the incapacitated person retains sufficient capacity to manage. A judgment of limited guardianship may specify the limitations upon the authority of the guardian or alternatively the areas of decision making retained by the person. The limited guardian of the estate shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

c. Pendente lite; Temporary Guardian.

(1) Whenever a complaint is filed in the Superior Court to declare a person incapacitated and appoint a guardian, the complaint may also request the appointment of a temporary guardian of the person or estate, or both, pendente lite. Notice of a pendente lite temporary guardian application shall

be given to the alleged incapacitated person or alleged incapacitated person's attorney or the attorney appointed by the court to represent the alleged incapacitated person.

(2) Pending a hearing for the appointment of a guardian, the court may for good cause shown and upon a finding that there is a critical need or risk of substantial harm, including, but not limited to:

(a) the physical or mental health, safety and well-being of the person may be harmed or jeopardized;

(b) the property or business affairs of the person may be repossessed, wasted, misappropriated, dissipated, lost, damaged or diminished or not appropriately managed;

(c) it is in the best interest of the alleged incapacitated person to have a temporary guardian appointed and such may be dealt with before the hearing to determine incapacity can be held, after any notice as the court shall direct, appoint a temporary guardian pendente lite of the person or estate, or both, of the alleged incapacitated person.

(3) A pendente lite temporary guardian appointed pursuant to this section may be granted authority to arrange interim financial, social, medical or mental health services or temporary accommodations for the alleged incapacitated person determined to be necessary to deal with critical needs of or risk of substantial harm to the alleged incapacitated person or the alleged incapacitated person's property or assets. The pendente lite temporary guardian may be authorized to make arrangements for payment for such services from the estate of the alleged incapacitated person.

(4) A pendente lite temporary guardian appointed hereunder shall be limited to act for the alleged incapacitated person only for those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the alleged incapacitated person.

(5) The alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person shall be given notice of the appointment of the pendente lite temporary guardian. The pendente lite temporary guardian shall communicate all actions taken on behalf of the alleged incapacitated individual to the alleged incapacitated person's attorney or attorney appointed by the court to represent the alleged incapacitated person who shall have the right to object to such actions.

(6) A pendente lite temporary guardian appointment shall not have the effect of an adjudication of incapacity or effect of limitation on the legal rights of the individual other than those specified in the court order.

(7) If the court enters an order appointing a pendente lite temporary guardian without notice, the alleged incapacitated person may appear and move for its dissolution or modification on two days' notice to the plaintiff

and to the temporary guardian or on such shorter notice as the court prescribes.

(8) Every order appointing a pendente lite temporary guardian granted without notice expires as prescribed by the court, but within a period of not more than 45 days, unless within that time the court extends it for good cause shown for the same period.

(9) The pendente lite temporary guardian, upon application to the court, shall be entitled to receive reasonable fees for his services, as well as reimbursement of his reasonable expenses, which shall be payable by the estate of the alleged incapacitated person or minor.

(10) The pendente lite temporary guardian shall furnish a bond in accordance with the provisions of N.J.S.3B:15-1 et seq., unless the guardian is relieved from doing so by the court.

d. Disclosure of information. Physicians and psychologists licensed by the State are authorized to disclose medical information, including but not limited to medical, mental health and substance abuse information as permitted by State and federal law, regarding the alleged incapacitated person in affidavits filed pursuant to the Rules Governing the Courts of the State of New Jersey.

e. Court appearance. The alleged incapacitated person shall appear in court unless the plaintiff and the court-appointed attorney certify that the alleged incapacitated person is unable to appear because of physical or mental incapacity.

f. Communication. When a person who is allegedly in need of guardianship services appears to have a receptive or expressive communication deficit, all reasonable means of communication with the person shall be attempted for the purposes of this section, including written, spoken, sign or non-formal language, which includes translation of the person's spoken or written word when the person is unable to communicate in English, and the use of adaptive equipment.

g. Additional subject areas. At the request of the limited guardian, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties, the court may determine that a person is in need of guardian services regarding additional subject areas and may enlarge the powers of the guardian to protect the person from significant harm.

h. Limitations of guardian powers. At the request of the guardian, the incapacitated person or another interested person, and if the incapacitated person is not represented, after appointment of an attorney for the incapacitated person and with notice to all interested parties, the court may limit the powers conferred upon a guardian.

13. N.J.S.3B:12-25 is amended to read as follows:

Appointment of guardian.**3B:12-25. Appointment of guardian.**

The Superior Court may determine the incapacity of an alleged incapacitated person and appoint a guardian for the person, guardian for the estate or a guardian for the person and estate. Letters of guardianship shall be granted to the spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), if the spouse is living with the incapacitated person as man and wife or as a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) at the time the incapacitation arose, or to the incapacitated person's heirs, or friends, or thereafter first consideration shall be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the incapacitated person or the estate, then to any other proper person as will accept the same. Consideration may be given to surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney pursuant to section 4 of P.L.2000, c. 109 (C.46:2B-8.4), health care proxy or advance directive.

The Office of the Public Guardian for Elderly Adults shall have the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office.

14. N.J.S.3B:12-26 is amended to read as follows:.**Action against incapacitated person when guardian newly appointed; leave of court required.**

3B:12-26. Action against incapacitated person when guardian newly appointed; leave of court required.

No action shall be brought or maintained against an incapacitated person within one month after appointment of a guardian except by leave of the court wherein the action is to be brought or maintained.

15. N.J.S.3B:12-27 is amended to read as follows:**Distribution of property of an incapacitated person as intestate property.**

3B:12-27. Distribution of property of an incapacitated person as intestate property.

If an incapacitated person dies intestate or without any will except one which was executed after commencement of proceedings which ultimately resulted in adjudicating a person incapacitated and before a judgment has been entered adjudicating a return to competency, the person's property shall descend and be distributed as in the case of intestacy.

16. N.J.S.3B:12-28 is amended to read as follows:

Return to competency; restoration of estate.

3B:12-28. Return to competency; restoration of estate.

The Superior Court may, on summary action filed by the person adjudicated incapacitated or the guardian, adjudicate that the incapacitated person has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency if the court is satisfied that the person has recovered his sound reason and is fit to govern himself and manage his affairs, or, in the case of an incapacitated person determined to be incapacitated by reason of chronic alcoholism, that the person has reformed and become habitually sober and has continued so for one year next preceding the commencement of the action, and in the case of an incapacitated person determined to be incapacitated by reason of chronic use of drugs that the person has reformed and has not been a chronic user of drugs for one year next preceding the commencement of the action.

17. N.J.S.3B:12-29 is amended to read as follows:

Appointment of guardian of the property for nonresident incapacitated person.

3B:12-29. Appointment of guardian of the property for nonresident incapacitated person.

When a nonresident has been or shall be found to be an incapacitated person under the laws of the state or country wherein the nonresident resides, the Superior Court may appoint a guardian for the nonresident's property in this State.

18. N.J.S.3B:12-30 is amended to read as follows:

Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment.

3B:12-30. Appointment of guardian of adult by parents or spouse or domestic partner; judgment confirming appointment.

The parents who have been appointed the guardian of an unmarried incapacitated person or the spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) who has been appointed the guardian of an incapacitated person may, by will, appoint a testamentary guardian of the person, or a guardian of the estate, or of both the person and estate of the incapacitated person. Before the appointment of a testamentary guardian becomes effective, the person designated as the testamentary guardian shall apply to the court in a summary manner, upon notice to the incapacitated person, to any guardian who may have been appointed for the incapacitated person, to the person or institution having the care of the incapacitated person

and to such heirs as the court may direct, for a judgment confirming that appointment under the will.

19. N.J.S.3B:12-31 is amended to read as follows:

Consent by surviving parent to guardian's appointment.

3B:12-31. Consent by surviving parent to guardian's appointment.

Where an appointment of a testamentary guardian is made by a parent under N.J.S.3B:12-30 and the other parent survives the appointing parent, the appointment shall be effective only when the surviving parent, at or before the issuance of letters, consents to the appointment in writing and signs and acknowledges the consent in the presence of two witnesses present at the same time who subscribe their names as witnesses thereto in the presence of the surviving parent, unless the surviving parent has been adjudged an incapacitated person.

20. N.J.S.3B:12-32 is amended to read as follows:

Temporary appointment of guardian if person not adjudicated an incapacitated person.

3B:12-32. Temporary appointment of guardian if person not adjudicated an incapacitated person.

If the person for whom a testamentary guardian has been appointed under the will of a parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) has not been adjudicated as an incapacitated person in accordance with N.J.S.3B:12-24 and the Rules Governing the Courts of New Jersey, the person named as the testamentary guardian may apply to the court in the manner provided in N.J.S.3B:12-30 for a judgment designating that person as the temporary guardian of the person or of the estate, or of both the person and estate of the alleged incapacitated person until the issue of incapacity has been determined. Upon the determination of the issue of incapacity, the court shall either enter a judgment confirming the appointment of the testamentary guardian or vacating the appointment of the temporary guardian.

21. N.J.S.3B:12-33 is amended to read as follows:

Bond of testamentary guardian.

3B:12-33. Bond of testamentary guardian.

Before receiving his letters, a testamentary guardian of an incapacitated person shall give bond in accordance with N.J.S.3B:15-1 unless the guardian is relieved from doing so by direction of the will of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) appointing the guardian. However, regardless of any direction, the guardian shall, with respect to property to which the ward is or shall be entitled from

any source, other than the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) or other than any policy of life insurance upon the life of the parent, spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), give bond in accordance with that section before exercising any authority or control over that property.

22. N.J.S.3B:12-34 is amended to read as follows:

Determination into fitness of a testamentary guardian of the person of an incapacitated person.

3B:12-34. Determination into fitness of a testamentary guardian of the person of an incapacitated person.

If a will appointing a testamentary guardian of the person of an incapacitated person has been or is to be probated in the Surrogate's Court of any county or the Superior Court, the Superior Court may, in an action brought upon notice to the ward and guardian named in the will, inquire into the present custody of the incapacitated person, and make any order touching the testamentary guardianship as may be for the best interest and welfare of the incapacitated person.

23. N.J.S.3B:12-35 is amended to read as follows:

Effect of a testamentary appointment.

3B:12-35. Effect of a testamentary appointment.

The appointment of a testamentary guardian of the person of an incapacitated person or his estate shall be good and effectual against any other person claiming the guardianship over or custody of the incapacitated person or his estate, as the case may be.

24. N.J.S.3B:12-36 is amended to read as follows:

Authority of court with respect to ward's person and estate.

3B:12-36. Authority of court with respect to ward's person and estate.

If a guardian has been appointed as to the person of a minor or an incapacitated person, the court shall have authority over the ward's person and all matters relating thereto; and if a guardian has been appointed to the estate of a minor or an incapacitated person, the court shall have authority over the ward's estate, and all matters relating thereto.

25. N.J.S.3B:12-37 is amended to read as follows:

Letters of guardianship to state any limitations at the time of appointment or later.

3B:12-37. Letters of guardianship to state any limitations at the time of appointment or later.

If the court limits any power conferred on the guardian, the limitation shall be so stated in certificates of letters of guardianship thereafter issued.

26. N.J.S.3B:12-38 is amended to read as follows:

Title to ward's property vested in guardian as trustee.

3B:12-38. Title to ward's property vested in guardian as trustee.

The appointment of a guardian of the estate of a minor or an incapacitated person vests in him title as trustee to all property of his ward, presently held or thereafter acquired, including title to any property theretofore held for the ward by attorneys in fact. The appointment of a guardian is not a transfer or alienation within the meaning of general provisions of any Federal or State statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the ward of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a guardian.

27. N.J.S.3B:12-39 is amended to read as follows:

Delegation of parent's or guardian's powers regarding ward's care, custody or property; limitations.

3B:12-39. Delegation of parent's or guardian's powers regarding ward's care, custody or property; limitations.

A parent, other than where custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not an incapacitated person or a guardian of the person of a minor or an incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

28. N.J.S.3B:12-41 is amended to read as follows:

Guardian of ward's person entitled to reimbursement for expenses; payments to third persons.

3B:12-41. Guardian of ward's person entitled to reimbursement for expenses; payments to third persons.

If another person has been appointed guardian of the ward's estate, the guardian of the ward's person is entitled to receive reasonable reimbursement and fees for his services and for room and board furnished to the ward, provided the same has been agreed upon between the guardian of the person and the guardian of the estate; and provided, further, that the amounts agreed

upon are reasonable under the circumstances. The guardian of the person may request the guardian of the estate to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

29. N.J.S.3B:12-42 is amended to read as follows:

Reporting condition of ward's person and property to court.

3B:12-42. Reporting condition of ward's person and property to court.

A guardian shall report at time intervals as ordered by the court, unless otherwise waived by the court, the condition of the ward and the condition of the ward's estate which has been subject to the guardian's possession or control as ordered by the court.

a. A report by the guardian of the person shall state or contain:

- (1) the current mental, physical and social condition of the ward;
- (2) the living arrangements for all addresses of the ward during the reporting period;
- (3) the medical, educational, vocational and other services provided to the ward and the guardian's opinions as to the adequacy of the ward's care;
- (4) a summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
- (5) if the ward is institutionalized, whether or not the guardian considers the current plan for care, treatment or habilitation to be in the ward's best interest;

(6) plans for future care; and

(7) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

b. The court may appoint an individual to review a report, interview the ward or guardian and make any other investigation the court directs.

c. Agencies authorized to act pursuant to P.L.1985, c. 298 (C.52:27G-20 et seq.), P.L.1985, c. 145 (C.30:6D-23 et seq.), P.L.1965, c. 59 (C.30:4-165.1 et seq.) and P.L.1970, c. 289 (C.30:4-165.7 et seq.) and public officials appointed as limited guardians of the person for medical purposes for individuals in psychiatric facilities listed in R.S.30:1-7 shall be exempt from this section.

30. N.J.S.3B:12-43 is amended to read as follows:

Expenditures to be made by guardian out of ward's estate.

3B:12-43. Expenditures to be made by guardian out of ward's estate.

A guardian of the estate of a minor or incapacitated person may expend or distribute so much or all of the income or principal of his ward for the support, maintenance, education, general use and benefit of the ward and his

dependents, in the manner, at the time or times and to the extent that the guardian, in an exercise of a reasonable discretion, deems suitable and proper, taking into account the requirements of the "Prudent Investor Act," P.L.1997, c.36 (C.3B:20-11.1 et seq.), with or without court order, with due regard to the duty and ability of any person to support or provide for the ward if the ward is a minor, and without due regard to the duty and ability of any person to support or provide for the ward if the ward is an incapacitated person, and with or without regard to any other funds, income or property which may be available for that purpose.

31. N.J.S.3B:12-44 is amended to read as follows:

Recommendations to be considered by guardian of ward's estate in making expenditures.

3B:12-44. Recommendations to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall consider recommendations relating to the appropriate standard of support, education and benefit for the ward made by a parent or guardian of the person, if any. The guardian of the estate may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the ward pursuant to the recommendations of a parent or guardian of the person unless the guardian knows that the parent or the guardian is deriving personal financial benefit therefrom, or unless the recommendations are clearly not in the best interests of the ward.

32. N.J.S.3B:12-45 is amended to read as follows:

Other factors to be considered by guardian of ward's estate in making expenditures.

3B:12-45. Other factors to be considered by guardian of ward's estate in making expenditures.

In making expenditures under N.J.S.3B:12-43, the guardian of the estate of a minor or incapacitated person shall expend or distribute sums reasonably necessary for the support, education, care or benefit of the ward with due regard to:

- a. The size of the ward's estate;
- b. The probable duration of the guardianship and the likelihood that the ward, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; and
- c. The accustomed standard of living of the ward and members of the ward's household.

33. N.J.S.3B:12-46 is amended to read as follows:

Persons for whose benefit expenditures may be made by guardian of ward's estate.

3B:12-46. Persons for whose benefit expenditures may be made by guardian of ward's estate.

The guardian of the estate of a minor or incapacitated person may expend funds of the ward's estate under N.J.S.3B:12-43 for the support of persons legally dependent on the ward and others who are members of the ward's household who are unable to support themselves, and who are in need of support.

34. N.J.S.3B:12-47 is amended to read as follows:

Persons to whom funds may be paid.

3B:12-47. Persons to whom funds may be paid.

Funds expended by the guardian of the estate of a minor or an incapacitated person under N.J.S.3B:12-43 may be paid by the guardian to any person, including the ward, to reimburse for expenditures which the guardian might have made, or in advance for services to be rendered to the ward when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

35. N.J.S.3B:12-48 is amended to read as follows:

Powers conferred upon a guardian.

3B:12-48. Powers conferred upon a guardian.

A guardian of the estate of a minor or an incapacitated person has all of the powers conferred upon the guardian by law and the provisions of this chapter except as limited by the judgment. These powers shall specifically include the right to file or defend any litigation on behalf of the ward, including but not limited to, the right to bring an action for divorce or annulment on any grounds authorized by law.

36. N.J.S.3B:12-49 is amended to read as follows:

Powers conferred upon the court.

3B:12-49. Powers conferred upon the court.

The court has, for the benefit of the ward, the ward's dependents and members of his household, all the powers over the ward's estate and affairs which he could exercise, if present and not under a disability, except the power to make a will, and may confer those powers upon a guardian of the estate. These powers include, but are not limited to, the power to convey or release the ward's present and contingent and expectant interests in real and personal property, including dower and courtesy and any right of survivor-

ship incident to joint tenancy or tenancy by the entirety, to exercise or release the ward's powers as trustee, personal representative, custodian for minor, guardian, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond the ward's disability or life, to exercise the ward's options to purchase securities or other property, to exercise the ward's rights to elect options and change beneficiaries under insurance annuity policies and to surrender the policies for their cash value, to exercise the ward's right to an elective share in the estate of the ward's deceased spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3) to the extent permitted by law and to renounce any interest by testate or intestate succession or by inter vivos transfer and to engage in planning utilizing public assistance programs consistent with current law.

37. N.J.S.3B:12-54 is amended to read as follows:

Duty of guardian to deliver property when minor attains 18 years of age.

3B:12-54. Duty of guardian to deliver property when minor attains 18 years of age.

Except as provided in section 2 of P.L.2003, c.258 (C.3B:12-54.1), when a minor who has not been adjudged an incapacitated person attains 18 years of age, his guardian, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former ward as soon as possible.

38. N.J.S.3B:12-56 is amended to read as follows:

Powers, rights and duties of a guardian of the person of a ward generally.

3B:12-56. Powers, rights and duties of a guardian of the person of a ward generally.

a. A guardian of the person of a ward is not legally obligated to provide for the ward from his own funds.

b. A guardian of the person of a ward is not liable to a third person for acts of the ward solely by reason of the relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian of the ward failed to exercise reasonable care in choosing the provider.

c. If a ward has previously executed a valid power of attorney for health care or advance directive under P.L.1991, c.201 (C.26:2H-53 et seq.), or revocation pursuant to section 5 of P.L.1991, c.201 (C.26:2H-57), a guardian of the ward shall act consistent with the terms of such document unless revoked or altered by the court.

d. To the extent specifically ordered by the court for good cause shown, the guardian of the person of the ward may initiate the voluntary admission, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), of a ward to a State psychiatric facility, as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), or a private psychiatric facility. A ward so admitted shall be entitled to all of the rights of a voluntarily admitted patient, which rights shall be exercised on behalf of the ward by the guardian. The guardian of the ward shall exercise the ward's rights in a manner consistent with the wishes of the ward except to the extent that compliance with those wishes would create a significant risk to the health or safety of the ward. If the wishes of the ward are not ascertainable with reasonable efforts, the guardian of the ward shall exercise the ward's rights in a manner consistent with the best interests of the ward. Notwithstanding the provisions of this section to the contrary, if the ward objects to the initiation of voluntary admission for psychiatric treatment or to the continuation of that voluntary admission, the State's procedures for involuntary commitment pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) shall apply. If the ward objects to any other decision of the guardian of the ward pursuant to this section, this objection shall be brought to the attention of the Superior Court, Chancery Division, Probate Part, which may, in its discretion, appoint an attorney or guardian ad litem for the ward, hold a hearing or enter such orders as may be appropriate in the circumstances.

39. N.J.S.3B:12-57 is amended to read as follows:

Powers and duties of a guardian of the person of a ward.

3B:12-57. Powers and duties of a guardian of the person of a ward.

a. (Deleted by amendment, P.L.2005, c.304.)

b. (Deleted by amendment, P.L.2005, c.304.)

c. (Deleted by amendment, P.L.2005, c.304.)

d. (Deleted by amendment, P.L.2005, c.304.)

e. (Deleted by amendment, P.L.2005, c.304.)

f. In accordance with section 12 of P.L.2005, c.304 (C.3B:12-24.1), a guardian of the person of a ward shall exercise authority over matters relating to the rights and best interest of the ward's personal needs, only to the extent adjudicated by a court of competent jurisdiction. In taking or forbearing from any action affecting the personal needs of a ward, a guardian shall give due regard to the preferences of the ward, if known to the guardian or otherwise ascertainable upon reasonable inquiry. To the extent that it is consistent with the terms of any order by a court of competent jurisdiction, the guardian shall:

(1) take custody of the ward and establish the ward's place of abode in or outside of this State;

(2) personally visit the ward or if a public agency which is authorized to act pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.) and P.L.1970, c.289 (C.30:4-165.7 et seq.) or the Office of the Public Guardian pursuant to P.L.1985, c.298 (C.52:27G-20 et seq.) or their representatives which may include a private or public agency, visits the ward not less than once every three months, or as deemed appropriate by the court, and otherwise maintain sufficient contact with the ward to know his capacities, limitations, needs, opportunities and physical and mental health;

(3) provide for the care, comfort and maintenance and, whenever appropriate, the education and training of the ward;

(4) subject to the provisions of subsection c. of N.J.S.3B:12-56, give or withhold any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service;

(5) take reasonable care of the ward's clothing, furniture, vehicles and other personal effects and, where appropriate, sell or dispose of such effects to meet the current needs of the ward;

(6) institute an action for the appointment of a guardian of the property of the ward, if necessary for the protection of the property;

(7) develop a plan of supportive services for the needs of the ward and a plan to obtain the supportive services;

(8) if necessary, institute an action against a person having a duty to support the ward or to pay any sum for the ward's welfare in order to compel the performance of the duties;

(9) receive money, payable from any source for the current support of the ward, and tangible personal property deliverable to the ward. Any sums so received shall be applied to the ward's current needs for support, health care, education and training in the exercise of the guardian's reasonable discretion, with or without court order, with or without regard to the duty or ability of any person to support or provide for the ward and with or without regard to any other funds, income or property that may be available for that purpose, unless an application is made to the court to establish a supplemental needs trust or other trust arrangement. However, the guardian may not use funds from the ward's estate for room and board, which the guardian, the guardian's spouse or domestic partner as defined in section 3 of P.L.2003, c. 246 (C.26:8A-3), parent or child have furnished the ward, unless agreed to by a guardian of the ward's estate pursuant to N.J.S.3B:12-41, or unless a charge for the service is approved by order of the court made upon notice to at least one of the heirs of the ward, if possible. The guardian shall exercise care to conserve any excess funds for the ward's needs; and

(10) If necessary, institute an action that could be maintained by the ward including but not limited to, actions alleging fraud, abuse, undue influence and exploitation.

g. In the exercise of the foregoing powers, the guardian shall encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the ward to act on his own behalf whenever he is able to do so, and to develop or regain higher capacity to make decisions in those areas in which he is in need of guardianship services, to the maximum extent possible.

40. N.J.S. 3B:12-58 is amended to read as follows:

Gifts to charities and other objects.

3B:12-58. Gifts to charities and other objects.

If the estate is ample to provide for the purposes implicit in the distributions authorized by this article, a guardian for the estate of an incapacitated person may apply to the court for authority to make gifts to charity and other objects as the ward might have been expected to make.

41. N.J.S. 3B:12-59 is amended to read as follows:

Purchase of real property for use of an incapacitated person and his dependents.

3B:12-59. Purchase of real property for use of an incapacitated person and his dependents.

When it shall appear to the court that it would be advantageous to the incapacitated person and to those legally dependent upon him for their support or are members of the incapacitated person's household, or any of them, if a dwelling house and a lot of land were purchased or a lot of land were purchased and a dwelling house built thereon, for the use of the incapacitated person and to those legally dependent upon him for their support or who are members of the incapacitated person's household, or any of them, the court may direct the guardian of his estate to purchase a house and lot or to purchase a lot and build a dwelling house thereon and to enter into contracts therefor as the court shall deem advisable, and to expend all necessary funds from the ward's estate for that purpose.

42. N.J.S. 3B:12-60 is amended to read as follows:

Guardian's duty with respect to will of deceased incapacitated person.

3B:12-60. Guardian's duty with respect to will of deceased incapacitated person.

Upon the death of an incapacitated person, the guardian shall deliver to the Surrogate of the county where the incapacitated person resided prior to death for safekeeping any will of the deceased person which may have come into the guardian's possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly ap-

pointed personal representative of the decedent or other persons entitled thereto.

43. N.J.S.3B:12-61 is amended to read as follows:

Power of guardian to act as personal representative of the estate of a deceased incapacitated person.

3B:12-61. Power of guardian to act as personal representative of the estate of a deceased incapacitated person.

If within 40 days after the death of an incapacitated person, no other person has been appointed personal representative and no action for an appointment is pending in the Superior Court or Surrogate's court of the county where the incapacitated person resided at his death, the guardian may apply to the Superior Court for authority to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a guardian, after notice to all persons interested in the incapacitated person's estate either as heirs or devisees and including any person nominated executor in any will of which the applicant is aware, the court may order the conferral of those powers, upon determining that there is no objection, and may enter judgment that the guardian has all of the powers and duties of a personal representative. The making and entry of a judgment under this section shall have the effect of an order of appointment of a personal representative, except that the estate in the name of the guardian, after administration, may be distributed to persons entitled to the decedent's estate under his will or the laws of intestacy without prior retransfer to the guardian as personal representative.

44. N.J.S.3B:12-63 is amended to read as follows:

Guardian's final account and delivery of property upon termination of guardianship.

3B:12-63. Guardian's final account and delivery of property upon termination of guardianship.

Upon termination of the guardianship, pursuant to N.J.S.3B:12-64 the guardian, after the allowance of his final account, shall pay over and distribute all funds and properties of the former ward or to the estate of the former ward in accordance with the order of the court.

45. N.J.S.3B:12-64 is amended to read as follows:

When authority and responsibility of guardian terminate.

3B:12-64. When authority and responsibility of guardian terminate.

- a. The authority and responsibility of a guardian of the person or estate of an incapacitated person terminate upon:
 - (1) the death, resignation or removal of the guardian;
 - (2) upon the death of the incapacitated person; or
 - (3) upon the entry of a judgment adjudicating the restoration of competency or termination of guardianship for other reasons.
- b. However, termination does not affect the guardian's liability for prior acts, nor the guardian's obligation to account for funds and assets of the ward.
- c. Notwithstanding the termination of the guardianship, the guardian may make final burial and funeral arrangements if the body remains unclaimed for five days and may pay for burial and funeral costs, Surrogate fees of administration, probate and bond from the guardianship account. Resignation of a guardian does not terminate the guardianship unless it has been approved by a judgment of the court.
- d. Upon the death of an incapacitated person the guardian shall provide written notification to the Surrogate and shall provide the Surrogate with a copy of the death certificate within seven days of the guardian's receipt of the death certificate.

46. N.J.S.3B:12-66 is amended to read as follows:

Filling vacancy in guardianship.

3B:12-66. Filling vacancy in guardianship.

The Superior Court, or the Surrogate's court in the case of a minor, shall have jurisdiction to fill the vacancy by the appointment of a substituted guardian. The Superior Court may fill the vacancy in case of a guardian of a minor or where letters of guardianship were granted by the Superior Court or when removing or discharging the guardian. The Surrogate's court may fill the vacancy in the case of a guardian of a minor where letters were granted by the Surrogate's Court.

47. N.J.S.3B:22-2 is amended to read as follows:

Order of priority of claims when assets insufficient.

3B:22-2. If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- a. Reasonable funeral expenses;
- b. Costs and expenses of administration;
- c. Debts for the reasonable value of services rendered to the decedent by the Office of the Public Guardian for Elderly Adults;

- d. Debts and taxes with preference under federal law or the laws of this State;
- e. Reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- f. Judgments entered against the decedent according to the priorities of their entries respectively;
- g. All other claims.

No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due. The commencement of an action against the personal representative for the recovery of a debt or claim or the entry of a judgment thereon against the personal representative shall not entitle such debt or claim to preference over others of the same class.

C.3B:12-66.1 Removal from New Jersey after appointment of guardian.

48. Removal from New Jersey after Appointment of Guardian.

a. A guardian appointed in this State desiring to move to another state with his ward shall obtain an order from the Superior Court of this State consenting to the ward's removal and if applicable, the guardian's discharge. The Superior Court may transfer the guardianship to another state if the court is satisfied that a transfer will serve the best interest of the ward.

b. The ward's removal and discharge of the guardian shall be on such terms as the Superior Court deems necessary, including requiring filing and settlement of the guardian's account and filing of an exemplified copy of the order evidencing the other state court's acceptance of jurisdiction over the guardianship and the guardian.

C.3B:12-66.2 Transfer into New Jersey of guardianship established in another state.

49. Transfer into New Jersey of Guardianship Established in Another State.

a. A guardian or like fiduciary appointed in another state may file a summary action in the Superior Court for the transfer of the guardianship and the appointment as a guardian in this State if domicile in this State is or will be established.

b. Notice of hearing shall be given to the ward and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian under the New Jersey Rules of Court were applicable.

c. The Superior Court shall grant an application for the transfer of a guardianship established in another state unless the court determines that the proposed guardianship is a collateral attack on an existing or proposed guardianship or the transfer and appointment would not be in the best interest of the ward.

d. An exemplified record of a court of competent jurisdiction evidencing the original proceeding adjudicating the ward's incapacity and any amendment or modification orders entered subsequent to the original judgment shall be filed with the Superior Court. Subject to due process principles, full faith and credit may be accorded to a court in another state's determination of the ward's incapacity. The Superior Court may fix the rights, powers, and duties of the guardian that the court determines are necessary to administer the ward's person or estate, or both person and estate, in this State.

e. The guardian shall give notice of the application to transfer guardianship to the court in the other state.

50. This act shall take effect immediately.

Approved January 11, 2006.

CHAPTER 305

AN ACT establishing the "New Jersey Health Care Access Study Commission."

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

1. The Legislature finds and declares that:
 - a. The number of people in this State who do not have health insurance has increased significantly over a period of several years;
 - b. Nearly 1.2 million New Jerseyans, or almost 14% of the State population, were without health care coverage in 2001;
 - c. The uninsurance rate in New Jersey among both non-elderly adults and children is still high for those whose annual incomes are less than 100% of the federal poverty level even with the Legislature's recent expansion of the NJ FamilyCare Program, which will provide health care coverage to low-income families;
 - d. Racial and ethnic, as well as income, disparities in access to health care threaten communities across the State, as they do across the entire nation;
 - e. Dollars that could be expended on providing health care services are being diverted to meet administrative costs and not patient needs;
 - f. The current health care system too often puts the financial bottom line ahead of patient care and threatens the financial viability of those health.

care providers who attempt to provide a safety net that meets the treatment needs of the uninsured and poorly insured; and

g. There is an urgent need for an independent mechanism by which State policymakers can study and consider various options for achieving the goal of establishing a health care system that provides State residents with access to health care regardless of income, age, employment or health status, and in which health care providers are able to provide patients with the quality health care that they need.

2. a. There is established the "New Jersey Health Care Access Study Commission" in the Department of Health and Senior Services.

The purpose of the commission shall be to study and develop specific recommendations regarding the most effective means of achieving the goal of establishing a health care system in the State that provides access to health care for State residents and which:

(1) is affordable to individuals, families, businesses and taxpayers, and removes financial barriers to needed health care;

(2) is as cost-efficient as practicable by expending the maximum amount available on direct patient care;

(3) provides comprehensive benefits that include benefits for mental health and long-term care services;

(4) promotes prevention and early intervention;

(5) includes parity for mental health and other services;

(6) eliminates disparities in access to quality health care;

(7) addresses the needs of people with special health care needs and underserved populations in both urban and rural areas;

(8) promotes health care quality and better health outcomes;

(9) addresses the need to have an adequate number of qualified health care providers to guarantee timely access to quality health care;

(10) provides adequate and timely payments in order to guarantee access to health care providers;

(11) fosters a strong network of health care facilities, including safety net providers;

(12) ensures continuity of coverage and care;

(13) maximizes consumer choice of health care providers; and

(14) is easy for patients and health care providers to use and reduces the volume of paperwork from its current level.

b. The commission shall consist of 28 members as follows:

(1) the Commissioners of Health and Senior Services, Human Services and Banking and Insurance, and the State Treasurer, or their designees, who shall serve ex officio; and

(2) 24 public members, who shall be appointed by the Governor no later than the 60th day after the effective date of this act, as follows: one person upon the recommendation of the New Jersey Hospital Association; one person upon the recommendation of the Hospital Alliance of New Jersey; one person upon the recommendation of the New Jersey Council of Teaching Hospitals; one person upon the recommendation of the New Jersey Primary Care Association, Inc.; one person upon the recommendation of the Medical Society of New Jersey; one person upon the recommendation of the New Jersey State Nurses Association; one person upon the recommendation of the Health Professionals and Allied Employees; one person upon the recommendation of the New Jersey Academy of Family Physicians; one person upon the recommendation of the American College of Emergency Physicians, New Jersey Chapter; one person upon the recommendation of the University of Medicine and Dentistry of New Jersey, who shall be an expert on multicultural health issues and racial and ethnic health disparities; one person upon the recommendation of the New Jersey Association of Osteopathic Physicians and Surgeons; one person upon the recommendation of the New Jersey Dental Association; one person upon the recommendation of AARP; one person upon the recommendation of the New Jersey Business and Industry Association; one person upon the recommendation of the New Jersey State AFL-CIO; one person upon the recommendation of AAHP-HIAA; one person upon the recommendation of an insurance carrier providing a managed care plan under the Medicaid program; one person upon the recommendation of a health service corporation; one person upon the recommendation of Legal Services of New Jersey; one person upon the recommendation of The Center for State Health Policy at Rutgers, The State University of New Jersey; and four members of the public who have a demonstrated expertise in issues relating to the work of the commission, two of whom shall represent organizations that have a demonstrated record of advocacy on behalf of medically indigent persons and persons with mental illness, respectively.

Vacancies in the membership of the commission shall be filled in the same manner provided for the original appointments.

c. The Commissioner of Health and Senior Services or the commissioner's designee shall serve as chairperson of the commission. The commission shall organize as soon as practicable following the appointment of its members and shall select a vice-chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the commission.

d. The public members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties and within the limits of funds available to the commission.

e. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

f. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature.

g. The Department of Health and Senior Services shall provide staff support to the commission.

3. The commission shall report its findings and recommendations to the Governor and the Legislature, along with any legislative bills that it desires to recommend for adoption by the Legislature, no later than January 1, 2008

4. This act shall take effect immediately and shall expire upon the issuance of the commission report.

Approved January 11, 2006.

CHAPTER 306

AN ACT concerning protective eyewear for certain children and supplementing Title 5 of the Revised Statutes.

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

C.5:18-1 Protective eyewear for certain children participating in sports.

1. Any child who wears corrective eyeglasses while participating in racquetball, squash, tennis, women's lacrosse, basketball, women's field hockey, badminton, paddleball, soccer, volleyball, baseball or softball, sponsored by a school, community or government agency, shall be required to wear protective eyewear that meets the frames standards of the American Society for Testing and Materials (ASTM) F803 and lens standards of the American National Standards Institute (ANSI) Z87.1.

C.5:18-2 Grants to assist low-income families.

2. The New Jersey Council on Physical Fitness and Sports, established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is authorized to provide grants to assist low-income families in purchasing the protective eyewear. As used in this section, a "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 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

C.5:18-3 Immunity from civil liability.

3. No school, community or government agency engaged in organizing, teaching, refereeing or coaching a sports activity described in section 1 of this act shall be liable in a civil action for failure to administer or enforce the provisions of this act.

4. This act shall take effect six months after the date of enactment.

Approved January 11, 2006.

CHAPTER 307

AN ACT expanding the membership of the Water Supply Advisory Council, and amending P.L.1981, c.262.

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

1. Section 18 of P.L.1981, c.262 (C.13:1B-49.2) is amended to read as follows:

C.13:1B-49.2 Water supply advisory council.

18. a. There is established in the department a Water Supply Advisory Council which shall consist of eleven members appointed by the Governor with the advice and consent of the Senate. Each of these members shall be appointed for a term of three years, provided that, of the members first appointed by the Governor, three shall serve for terms of one year, two shall serve for terms of two years, and two shall serve for terms of three years. Of these members, one shall be a representative of the agricultural community, one shall be a representative of industrial and commercial water users, one shall be a representative of residential water users, two shall be representatives of investor-owned water companies, two shall be representatives of municipal or county water companies, one shall be a representative of private watershed protection associations, one shall be a representative of the academic community, one shall be a representative of golf course superintendents located in the State, and one shall be a representative of the nursery or landscape industry or a landscape irrigation contractor in the State as recommended by the Alliance for Water Conservation

b. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council.

c. The council shall meet regularly as it may determine, and shall also meet at the call of the commissioner.

d. The council shall appoint a chairperson from among its members and such other officers as may be necessary. The council may, within the limits of any funds appropriated or otherwise made available to it for this purpose, appoint such staff or hire such experts as it may require.

e. Members of the council shall serve without compensation, but the council may, within the limits of funds appropriated or otherwise made available for such purposes, reimburse its members for necessary expenses incurred in the discharge of their official duties.

2. This act shall take effect immediately.

Approved January 11, 2006.

CHAPTER 308

AN ACT concerning court reporters, amending and supplementing P.L.1940, c.175, and repealing section 11 of P.L.1940, c.175.

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

1. Section 1 of P.L.1940, c.175 (C.45:15B-1) is amended to read as follows:

C.45:15B-1 State Board of Court Reporting.

1. There is hereby established in the Division of Consumer Affairs in the Department of Law and Public Safety the State Board of Court Reporting (herein referred to as the board) to be composed of six members to be appointed by the Governor, three of whom shall be certified court reporters, two of whom shall be public members 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.). The members of the board, other than the public members and the State executive department member, with the exception of the members first to be appointed, shall be

holders of certificates issued under the provisions of this act. Notwithstanding the foregoing, nothing in this section shall prohibit the members appointed as certified court reporters from owning or having ownership interest in, or being a corporate officer of, a court reporting firm. The members first appointed shall be skilled in the art and practice of court reporting and shall have been actively and continuously engaged as professional court reporters within the State of New Jersey for at least five years preceding their appointments. The members, except for the State executive department member, shall hold office for a term of three years, except that, (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the members first taking office after the date of enactment of this act shall expire, as designated by the Governor at the time of nomination, one at the end of one year, one at the end of two years, and one at the end of three years after such date. The board shall elect one of its members as chairman and one as secretary-treasurer, who shall hold their respective offices for one year. The secretary-treasurer shall give bond to the State in such sum as may be determined by the board. The board shall make all necessary rules and regulations to carry out the provisions of this act. A majority of members appointed to the board shall constitute a quorum for the transaction of business. The board shall keep a complete record of all its proceedings and shall file an annual report with the office of the Secretary of State.

2. Section 2 of P.L.1940, c.175 (C.45:15B-2) is amended to read as follows:

C.45:15B-2 Certified court reporter, use of title or abbreviation.

2. Any person who has received from the board a certificate of his qualifications to practice as a court reporter shall be known and styled as a "certified court reporter," and no other person, and no partnership, all of the members of which have not received such certificate, and no corporation, shall assume such title or the abbreviation "C.S.R.," "C.C.R." or any other words, letters or abbreviations tending to indicate that the person, partnership or corporation so using the same is a certified court reporter.

3. Section 3 of P.L.1940, c.175 (C.45:15B-3) is amended to read as follows:

C.45:15B-3 Persons entitled to certificate.

3. The board shall grant a certificate as a certified court reporter to any citizen of the United States, residing or having a place for the regular

transaction of business in this State, (a) who is over the age of 18 years, of good moral character, and is a graduate of a high school or has had an equivalent education; and (b) who has successfully passed an examination in court reporting under such rules and regulations as the board may prescribe.

4. Section 1 of P.L.1999, c.26 (C.45:15B-3.1) is amended to read as follows:

C.45:15B-3.1 Continuing education requirements for court reporters.

1. The State Board of Court Reporting shall require each court reporter certified pursuant to section 3 of P.L.1940, c.175 (C.45:15B-3) to complete any continuing education requirements imposed by the board pursuant to section 2 of P.L.1999, c.26 (C.45:15B-3.2).

5. Section 2 of P.L.1999, c.26 (C.45:15B-3.2) is amended to read as follows:

C.45:15B-3.2 Responsibilities of board.

2. a. The board shall:

(1) establish standards for continuing court reporting education, including the subject matter and content of courses of study, the selection of instructors, and the number and type of continuing education credits required of a certified court reporter as a condition for biennial license renewal;

(2) approve educational programs offering continuing education credits; and

(3) approve other equivalent educational programs and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs.

b. In the case of court reporting education courses and programs, each hour of instruction shall be equivalent to one credit.

6. Section 9 of P.L.1940, c.175 (C.45:15B-9) is amended to read as follows:

C.45:15B-9 Practice without certificate prohibited; temporary employment.

9. a. No person shall engage in the practice of court reporting in this State unless the person has first obtained a certificate from the board as provided pursuant to P.L.2005, c.308.

b. Nothing in this act shall be construed to prohibit the temporary employment or retention of any person not holding a certificate until a certified court reporter is available, provided that such temporary employ-

ment shall be permitted only in such circumstances as the board may specify through regulation consistent with this section. In no instance shall a person not holding a certificate engage in court reporting without:

(1) registering with the board according to such procedures as the board may adopt through regulation; and

(2) disclosing to the participants at a proceeding and obtaining written acknowledgment from such participants, prior to the commencement of any proceeding, that the person does not hold a certificate and is registered with the board to work on a temporary basis.

Registration with the board shall be for a period of one year, and shall not be renewable unless specifically authorized by the board.

c. A person who is in violation of this section shall be subject to a penalty of not more than \$500 for the first violation, and not more than \$1,000 for each violation thereafter, to be sued for and collected in a summary proceeding by the board pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition, a person who fails to comply with the requirements of this section is subject to the suspension or revocation of that individual's certificate or temporary registration pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

7. Section 10 of P.L.1940, c.175 (C.45:15B-10) is amended to read as follows:

C.45:15B-10 "Certified court reporter," "court reporting" defined.

10. As used in this act:

"Certified court reporter" means a person who is certified pursuant to the provisions of this act.

"Court reporting" means making by use of symbols or abbreviations, of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form.

8. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read as follows:

C.45:1-2.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors,

the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the Orthotics and Prosthetics Board of Examiners, the New Jersey Cemetery Board, the State Board of Polysomnography and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

9. Section 2 of P.L.1971, c.60 (C.45:1-2.2) is amended to read as follows:

C.45:1-2.2 Membership of certain boards and commissions; appointment, removal, quorum.

2. a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Court Reporting, the State Board of Social Work Examiners, and the State Board

of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause.

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination processes.

c. The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c.60 (C.45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or

commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

10. Section 1 of P.L.1974, c.46 (C.45:1-3.1) is amended to read as follows:

C.45:1-3.1 Applicability of act.

1. The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the New Jersey Cemetery Board, the State Board of Social Work Examiners and the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Orthotics and Prosthetics Board of Examiners and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

11. Section 2 of P.L.1978, c.73 (C.45:1-15) is amended to read as follows:

C.45:1-15 Application of act.

2. The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New

Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Court Reporting, the State Board of Veterinary Medical Examiners, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy Examiners, the State Board of Polysomnography, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Acupuncture Advisory Committee, the Alcohol and Drug Counselor Committee, the Athletic Training Advisory Committee, the Certified Psychoanalysts Advisory Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Interior Design Examination and Evaluation Committee, the Hearing Aid Dispensers Examining Committee, the Landscape Architect Examination and Evaluation Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, the Perfusionists Advisory Committee, the Physician Assistant Advisory Committee, the Audiology and Speech-Language Pathology Advisory Committee and any other entity hereafter created under Title 45 to license or otherwise regulate a profession or occupation.

C.45:15B-13 "Shorthand reporting" refers to "court reporting."

12. Whenever the term "State Board of Shorthand Reporting" or "shorthand reporter" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to refer to the "State Board of Court Reporting" and "court reporter," respectively.

C.45:15B-14 Certified shorthand reporter to be certified court reporter.

13. Any person who is a certified shorthand reporter pursuant to section 3 of P.L.1940, c.175 (C.45:15B-3) on the effective date of this amendatory and supplementary act shall be a certified court reporter under and subject to the provisions of P.L.1940, c.175 (C.45:15B-1 et seq.) and this amendatory and supplementary act.

Repealer.

14. Section 11 of P.L.1940, c.175 (C.45:15B-11) is repealed.

15. The State Board of Court Reporting shall adopt such rules and regulations as are necessary for its implementation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) within one year of the date of enactment of P.L.2005, c.308.

16. This act shall take effect one year following the date of enactment, except that section 15 shall take effect immediately

Approved January 11, 2006.

CHAPTER 309

AN ACT concerning services provided to victims of domestic violence by the State's workforce development system, amending and supplementing P.L.1979, c.337 and supplementing Title 34 of the Revised Statutes.

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

C.34:1A-1.7 Short title.

1. This act shall be known as "The Domestic Violence and Workforce Development Initiative Act."

C.34:1A-1.8 Requirements for job training counselors for victims of domestic violence.

2. Each counselor who provides counseling pursuant to section 4 of P.L.1992, c.48 (C.34:15B-38), section 7 of P.L.1992, c.43 (C.34:15D-7), or section 3 of P.L.1992, c.47 (C.43:21-59), and any other staff member of the Department of Labor and Workforce Development or of a One Stop Career Center as defined in subsection d. of section 5 of P.L.2004, c.39 (C.34:1A-1.6) who processes unemployment compensation claims and has direct, in person, contact with claimants or who provides counseling or employment services to claimants, shall:

a. Be trained to implement the provisions of this section applicable to the counselor or staff member and to understand and address employment, training, income security, safety and related issues facing individuals who are victims of domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19);

b. Comply with standards adopted by the Commissioner of Labor and Workforce Development, in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (C.30:14-1 et seq.),

regarding the screening or self-screening of each individual receiving any of the indicated counseling or employment services or applying for unemployment compensation, to ascertain whether the individual is a victim of domestic violence;

c. For each individual who is or appears to be a victim of domestic violence, make referrals to services determined to be appropriate in the case of the individual, including, but not limited to, any appropriate referral to a designated domestic violence agency as defined in subsection (j) of R.S.43:21-5 or a community shelter for victims of domestic violence certified pursuant to standards and procedures established by P.L.1979, c.337 (C.30:14-1 et seq.), and disclose the rights that the individual may have to unemployment compensation pursuant to subsection (j) of R.S.43:21-5, but shall not provide domestic violence counseling or be regarded as a Certified Domestic Violence Specialist;

d. Include in any Employability Development Plan developed for the individual appropriate accommodations for the individual's needs as a victim of domestic violence; and

e. Comply with all requirements regarding the confidentiality of the individual, including, as applicable, the requirements of section 4 of P.L.1992, c.48 (C.34:15B-38), section 7 of P.L.1992, c.43 (C.34:15D-7), section 3 of P.L.1992, c.47 (C.43:21-59) and the "Address Confidentiality Program Act," R.S.47:4-1 et seq.

The training conducted pursuant to subsection a. of this section shall be conducted by a Certified Domestic Violence Specialist or, if a Certified Domestic Violence Specialist is not available to conduct the training, by another person found by the Commissioner of Labor and Workforce Development, in consultation with the Commissioner of Community Affairs, to have equivalent qualifications and expertise regarding domestic violence issues, based on standards of qualification and expertise developed by the commissioner in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (C.30:14-1 et seq.). For the purposes of this section, "Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

C.34:1A-1.9 Rules, regulations.

3. The Commissioner of Labor and Workforce Development shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with the Advisory Council on Domestic Violence created pursuant to P.L.1979, c.337 (C.30:14-1 et seq.)

and the Commissioner of Community Affairs, adopt rules and regulations to effectuate the purposes of section 2 of this act.

4. Section 4 of P.L.1979, c. 337 (C.30:14-4) is amended to read as follows:

C.30:14-4 Advisory Council on Domestic Violence.

4. a. There is created an Advisory Council on Domestic Violence which shall consist of 20 members: the Director of the Division on Women in the Department of Community Affairs, the Director of the Division of Youth and Family Services and the Director of the Division of Family Development in the Department of Human Services, the Director of the Administrative Office of the Courts, the Commissioner of the Department of Education, the Commissioner of Labor and Workforce Development, the Attorney General, or their designees, and one representative of Legal Services of New Jersey, one former domestic violence shelter resident, one representative of the Police Chiefs Association, one representative of the County Prosecutors Association, one representative of the New Jersey State Nurses Association, one representative of the Mental Health Association in New Jersey, one representative of the New Jersey Crime Prevention Officers Association, one representative of the New Jersey Hospital Association, one representative of the Violent Crimes Compensation Board, and four representatives of the New Jersey Coalition for Battered Women to be appointed by the Governor.

b. The advisory council shall:

(1) Monitor the effectiveness of the laws concerning domestic violence and make recommendations for their improvement;

(2) Review proposed legislation governing domestic violence and make recommendations to the Governor and the Legislature;

(3) Study the needs, priorities, programs, and policies relating to domestic violence throughout the State; and

(4) Ensure that all service providers and citizens are aware of the needs of and services available to victims of domestic violence and make recommendations for community education and training programs.

c. The advisory council shall periodically advise the Director of the Division of Youth and Family Services in the Department of Human Services and the Director of the Division on Women in the Department of Community Affairs on its activities, findings and recommendations.

C.30:14-6.1 Plan to increase awareness for providers of services for victims of domestic violence of workforce development initiative.

5. The Commissioner of Human Services, in consultation with the Advisory Council on Domestic Violence and the Commissioner of

Community Affairs, shall develop a plan for public agencies and other providers of services to victims of domestic violence, including designated domestic violence agencies as defined in subsection (j) of R.S.43:21-5 and community shelters for victims of domestic violence certified pursuant to standards and procedures established by P.L.1979, c.337 (C.30:14-1 et seq.), to increase agency and provider awareness and use of the State's workforce development system to assist victims of domestic violence.

6. This act shall take effect immediately.

Approved January 11, 2006.

CHAPTER 310

AN ACT concerning instruction in suicide prevention for public school pupils and teaching staff members and supplementing chapter 6 of Title 18A of the New Jersey Statutes.

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

C.18A:6-111 Findings, declarations relative to instruction in suicide prevention in public schools.

1. The Legislature finds and declares that:

a. Suicide is a leading cause of death for young people in this State. According to the Center for Health Statistics in the New Jersey Department of Health and Senior Services, between 1999 and 2001 more than 1,500 young people ages 13 to 18 made suicide attempts which resulted in hospitalization. More than 50 of these attempts were fatal. When young people up to 24 years of age are added to the equation, the number of attempted suicides rises to 3,000 and the number of fatalities rises to nearly 200.

b. A suicide can devastate a community. According to the National Alliance for the Mentally Ill (NAMI), suicide severely impacts the families and friends left behind, who often wrongly live with extreme shame and guilt over not having prevented the death of their loved one. Moreover, many attempts which do not result in death nonetheless end in serious injury to the victims and lifelong trauma to their families and those who know them.

c. A person who is considering suicide may exhibit behavioral warning signs. If someone notices the warning signs of suicide, it may be possible to avert a tragedy. With the possible exception of a parent, no one

is better situated than a teacher to detect these signs and to initiate appropriate steps to prevent a suicide attempt. Proper training for teaching staff members can thus save pupils' lives and save the families and friends of would-be victims the trauma of a suicide or suicide attempt. Moreover, early identification of depression and other problems may help to reduce the number of young people who commit or attempt to commit suicide once they have left school and entered adulthood.

d. It is therefore appropriate for the Legislature to require: the State Board of Education to require instruction in suicide prevention as part of any continuing education which public school teaching staff members must complete to maintain their certification; and inclusion of suicide prevention awareness in the Core Curriculum Content Standards in Comprehensive Health and Physical Education.

C.18A:6-112 Instruction in suicide prevention for public school teaching staff.

2. The State Board of Education, in consultation with the New Jersey Youth Suicide Prevention Advisory Council established in the Department of Human Services pursuant to P.L.2003, c.214 (C.30:9A-22 et seq.), shall, as part of the professional development requirement established by the State board for public school teaching staff members, require each public school teaching staff member to complete at least two hours of instruction in suicide prevention, to be provided by a licensed health care professional with training and experience in mental health issues, in each professional development period.

C.18A:6-113 Provision for instruction in suicide prevention in school curriculum.

3. Within 180 days of the effective date of this act, the State Board of Education shall revise the Core Curriculum Content Standards in Comprehensive Health and Physical Education to provide for instruction in suicide prevention in an appropriate place in the curriculum of elementary school, middle school, and high school pupils.

4. This act shall take effect immediately.

Approved January 11, 2006.

CHAPTER 311

AN ACT concerning additional motor vehicle registration fees to fund the New Jersey Emergency Medical Service Helicopter Response Program and State Police trooper classes and amending P.L.1992, c.87.

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

1. Section 1 of P.L.1992, c.87 (C.39:3-8.2) is amended to read as follows:

C.39:3-8.2 Additional fees.

1. a. In addition to the motor vehicle registration fees imposed pursuant to the provisions of chapter 3 of Title 39 of the Revised Statutes, the chief administrator shall impose and collect an additional fee of \$3 to be deposited in the New Jersey Emergency Medical Service Helicopter Response Program Fund created pursuant to section 2 of P.L.1992, c.87 (C.26:2K-36.1).

b. In addition to the motor vehicle registration fees imposed pursuant to the provisions of chapter 3 of Title 39 of the Revised Statutes, the chief administrator shall impose and collect an additional fee of \$.50 to be deposited in the Traumatic Brain Injury Fund established pursuant to section 5 of P.L.2001, c.332 (C.30:6F-5).

c. In addition to the motor vehicle registration fees imposed pursuant to the provisions of chapter 3 of Title 39 of the Revised Statutes, the chief administrator shall impose and collect an additional fee of \$1, which shall be deposited to a separate account dedicated for the funding of new State Police trooper classes. The Legislature shall annually appropriate the balance of the separate account to the Department of Law and Public Safety for the Division of State Police for the funding of new State Police trooper classes.

2. This act shall take effect on July 1, 2006

Approved January 11, 2006.

CHAPTER 312

AN ACT establishing an Inmate Education and Vocational Training Study Commission.

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

1. a. There is established an Inmate Education and Vocational Training Study Commission. The commission shall consist of nineteen members as

follows: two members of the Senate, no more than one of whom shall be of the same political party, appointed by the President of the Senate; two members of the General Assembly, no more than one of whom shall be of the same political party, appointed by the Speaker of the General Assembly; the Commissioner of Corrections, ex-officio, or his designee; the Commissioner of Education, ex-officio, or his designee; the Commissioner of Human Services, ex-officio, or his designee; the Commissioner of Labor and Workforce Development, ex-officio, or his designee; the Executive Director of the Juvenile Justice Commission, ex-officio, or his designee; the Chairman of the State Parole Board, ex-officio, or his designee; representative of the judicial branch, appointed by the Chief Justice of the Supreme Court; a representative of the county prosecutors, appointed by the Attorney General; and seven public members appointed by the Governor, who shall include: an ordained clergyman; two members appointed from nominees proposed by Statewide business organizations; three members appointed from nominees proposed by Statewide education organizations; and one member representing vocational or trade schools.

b. Appointments shall be made within 90 days after the effective date of this act. The appointed members of the commission shall serve until their commission's expire. Vacancies in the membership of the appointed members of the commission shall be filled in the same manner as the original appointments.

c. The members shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties as members of the commission from such funds as may be provided for this purpose.

d. The commission shall organize as soon as practicable after the appointments are made and select a chairperson from among its members. The commission shall meet at least quarterly and may hold meetings and hearings at such places and times as it designates. No action shall be taken by the commission except by an affirmative vote of a majority of the full membership of the commission.

2. The commission shall inventory and evaluate educational and vocational training programs offered to inmates in the State's adult correctional facilities and secure juvenile facilities administered by the Juvenile Justice Commission. The commission shall seek to determine the effect of these programs on inmate rehabilitation and the rate of inmate recidivism. The commission shall study the relationship between crimes committed, educational and vocational training opportunities, and recidivism. The commission also shall identify characteristics which contribute to the success of corrections education and vocational training programs.

The commission shall make recommendations for statutory or administrative changes in education and vocational training policy based on its findings.

3. a. The commission shall report its findings and recommendations to the Governor and the Legislature not later than 24 months after the date of its organization. The report shall include any draft legislation needed to implement recommendations of the report.

b. The commission may hold public hearings and shall have access to relevant files and records of the Department of Corrections, the Juvenile Justice Commission and other relevant State agencies, and may call to its assistance and avail itself of the services of the employees of those agencies to provide whatever information the commission considers relevant and necessary in the performance of its functions. The commission may employ such professional, stenographic, and clerical assistance as it may deem necessary in order to perform its duties, to the extent that funds may be provided for this purpose. Any information obtained from or about any person or organization by the commission shall be retained solely for the use of the commission in the implementation of this act, and shall not be disclosed except as part of a report made by the commission pursuant to this act. No report of the commission shall include information which is identifiable with any specific person or organization without the written consent of the person or organization.

4. This act shall take effect immediately and shall expire upon the issuance of the commission's final report.

Approved January 12, 2006.

CHAPTER 313

AN ACT to amend and supplement the "Waterfront Commission Act," approved June 30, 1953 (P.L.1953, c.202.).

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

1. Article II of the compact created by P.L.1953, c.202 (C.32:23-6) is amended to read as follows:

C.32:23-6 Definitions.

As used in this compact:

"The Port of New York district" shall mean the district created by Article II of the compact dated April 30, 1921, between the States of New York and New Jersey, authorized by chapter 154 of the laws of New York of 1921 and chapter 151 of the laws of New Jersey of 1921.

"Commission" shall mean the waterfront and airport commission of New York and New Jersey established by Article III hereof.

"Pier" shall include any wharf, pier, dock or quay.

"Other waterfront terminal" shall include any warehouse, depot or other terminal (other than a pier) which is located within 1,000 yards of any pier in the Port of New York district and which is used for waterborne freight in whole or substantial part.

"Person" shall mean not only a natural person but also any partnership, joint venture, association, corporation or any other legal entity but shall not include the United States, any state or territory thereof or any department, division, board, commission or authority of one or more of the foregoing.

"Carrier of freight by water" shall mean any person who may be engaged or who may hold himself out as willing to be engaged, whether as a common carrier, as a contract carrier or otherwise (except for carriage of liquid cargoes in bulk in tank vessels designed for use exclusively in such service or carriage by barge of bulk cargoes consisting of only a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count) in the carriage of freight by water between any point in the Port of New York district and a point outside said district.

"Waterborne freight" shall mean freight carried by or consigned for carriage by carriers of freight by water.

"Longshoreman" shall mean a natural person, other than a hiring agent, who is employed for work at a pier or other waterfront terminal, either by a carrier of freight by water or by a stevedore,

(a) physically to move waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals, or

(b) to engage in direct and immediate checking of any such freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores, or

(c) to supervise directly and immediately others who are employed as in subdivision (a) of this definition.

"Pier superintendent" shall mean any natural person other than a longshoreman who is employed for work at a pier or other waterfront terminal by a carrier of freight by water or a stevedore and whose work at

such pier or other waterfront terminal includes the supervision, directly or indirectly, of the work of longshoremen.

"Port watchman" shall include any watchman, gateman, roundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in such capacity on any pier or other waterfront terminal.

"Longshoremen's register" shall mean the register of eligible longshoremen compiled and maintained by the commission pursuant to Article VIII.

"Stevedore" shall mean a contractor (not including an employee) engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals.

"Hiring agent" shall mean any natural person, who on behalf of a carrier of freight by water or a stevedore shall select any longshoreman for employment.

"Compact" shall mean this compact and rules or regulations lawfully promulgated thereunder.

2. Article IV of the compact created by P.L.1953, c.202 (C.32:23-10) is amended to read as follows:

C.32:23-10 General powers.

In addition to the powers and duties elsewhere prescribed in this compact, the commission shall have the power:

1. To sue and be sued;
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 determine the location, size and suitability of accommodations necessary and desirable for the establishment and maintenance of the employment information centers provided in Article XII hereof and for administrative offices for the commission;
5. To appoint such officers, agents and employees as it may deem necessary, prescribe their powers, duties and qualifications and fix their compensation and retain and employ counsel and private consultants on a contract basis or otherwise;
6. To administer and enforce the provisions of this compact;
7. To make and enforce such rules and regulations as the commission may deem necessary to effectuate the purposes of this compact or to prevent the circumvention or evasion thereof, to be effective upon publication in the

manner which the commission shall prescribe and upon filing in the office of the Secretary of State of each State. A certified copy of any such rules and regulations, attested as true and correct by the commission, shall be presumptive evidence of the regular making, adoption, approval and publication thereof;

8. By its members and its properly designated officers, agents and employees, to administer oaths and issue subpoenas to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

9. To have for its members and its properly designated officers, agents and employees, full and free access, ingress and egress to and from all vessels, piers and other waterfront terminals or other places in the port of New York district, for the purposes of making inspection or enforcing the provisions of this compact; and no person shall obstruct or in any way interfere with any such member, officer, employee or agent in the making of such inspection, or in the enforcement of the provisions of this compact or in the performance of any other power or duty under this compact;

10. To recover possession of any suspended or revoked license issued under this compact;

11. To make investigations, collect and compile information concerning waterfront practices generally within the port of New York district and upon all matters relating to the accomplishment of the objectives of this compact;

12. To advise and consult with representatives of labor and industry and with public officials and agencies concerned with the effectuation of the purposes of this compact, upon all matters which the commission may desire, including but not limited to the form and substance of rules and regulations, the administration of the compact, maintenance of the longshoremen's register, and issuance and revocation of licenses;

13. To make annual and other reports to the Governors and Legislatures of both States containing recommendations for the improvement of the conditions of waterfront labor within the port of New York district, for the alleviation of the evils described in Article I and for the effectuation of the purposes of this compact. Such annual reports shall state the commission's finding and determination as to whether the public necessity still exists for (a) the continued registration of longshoremen, (b) the continued licensing of any occupation or employment required to be licensed hereunder and (c) the continued public operation of the employment information centers provided for in Article XII;

14. To co-operate with and receive from any department, division, bureau, board, commission, or agency of either or both States, or of any county or municipality thereof, such assistance and data as will enable it properly to carry out its powers and duties hereunder; and to request any

such department, division, bureau, board, commission, or agency, with the consent thereof, to execute such of its functions and powers, as the public interest may require.

3. Section 3 of Article V of the compact created by P.L.1953, c.202 (C.32:23-14) is amended to read as follows:

C.32:23-14 Qualifications for license; persons convicted of certain crimes ineligible.

3. No such license shall be granted:

(a) Unless the commission shall be satisfied that the prospective licensee possesses good character and integrity;

(b) If the prospective licensee has, without subsequent pardon, been convicted by a court of the United States, or any State or territory thereof, of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any felony or high misdemeanor or any of the following misdemeanors or offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog; or violation of this compact. Any such prospective licensee ineligible for a license by reason of any such conviction may submit satisfactory evidence to the commission that he has for a period of not less than five years, measured as hereinafter provided, and up to the time of application, so conducted himself as to warrant the grant of such license, in which event the commission may, in its discretion, issue an order removing such ineligibility. The aforesaid period of five years shall be measured either from the date of payment of any fine imposed upon such person or the suspension of sentence or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence;

(c) If the prospective licensee knowingly or wilfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates such desirability, knowing the purposes of such group include such advocacy.

4. Section 7 of Article V of the compact created by P.L.1953, c.202 (C.32:23-18) is amended to read as follows:

C.32:23-18 Revocation or suspension of license.

7. Any license issued pursuant to this article may be revoked or suspended for such period as the commission deems in the public interest

or the licensee thereunder may be reprimanded for any of the following offenses:

(a) Conviction of a crime or act by the licensee or other cause which would require or permit his disqualification from receiving a license upon original application;

(b) Fraud, deceit or misrepresentation in securing the license, or in the conduct of the licensed activity;

(c) Violation of any of the provisions of this compact;

(d) Unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog;

(e) Employing, hiring or procuring any person in violation of this compact or inducing or otherwise aiding or abetting any person to violate the terms of this compact;

(f) Paying, giving, causing to be paid or given or offering to pay or give to any person any valuable consideration to induce such other person to violate any provision of this compact or to induce any public officer, agent or employee to fail to perform his duty hereunder;

(g) Consorting with known criminals for an unlawful purpose;

(h) Transfer or surrender of possession of the license to any person either temporarily or permanently without satisfactory explanation;

(i) False impersonation of another licensee under this compact;

(j) Receipt or solicitation of anything of value from any person other than the licensee's employer as consideration for the selection or retention for employment of any longshoreman;

(k) Coercion of a longshoreman by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person;

(l) Lending any money to or borrowing any money from a longshoreman for which there is a charge of interest or other consideration; or

(m) Membership in a labor organization which represents longshoremen or port watchmen; but nothing in this section shall be deemed to prohibit pier superintendents or hiring agents from being represented by a labor organization or organizations which do not also represent longshoremen or port watchmen. The American Federation of Labor, the Congress of Industrial Organizations and any other similar federation, congress or other organization of national or international occupational or industrial labor organizations shall not be considered an organization which represents longshoremen or port watchmen within the meaning of this section although one of the federated or constituent labor organizations thereof may represent longshoremen or port watchmen.

5. Section 5 of Article XI of the compact created by P.L.1953, c.202 (C.32:23-49) is amended to read as follows:

C.32:23-49 Subpoenas, issuance of; evidence; procedure.

5. The commission, or such member, officer, employee or agent of the commission as may be designated by the commission for such purpose, shall have the power to issue subpoenas to compel the attendance of witnesses and the giving of testimony or production of other evidence and to administer oaths in connection with any such hearing. It shall be the duty of the commission or of any such member, officer, employee or agent of the commission designated by the commission for such purpose to issue subpoenas at the request of and upon behalf of the licensee, registrant or applicant. The commission or such person conducting the hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in the conduct of such hearing.

6. Section 8 of P.L.1954, c.14 (C.32:23-92) is amended to read as follows:

C.32:23-92 Denial of applications.

8. 5-h. In addition to the grounds elsewhere set forth in this act, the commission may deny an application for a license or registration for any of the following:

(1) Conviction by a court of the United States or any State or territory thereof of coercion;

(2) Conviction by any such court, after having been previously convicted by any such court of any crime or of the offenses hereinafter set forth, of a misdemeanor or any of the following offenses: assault, malicious injury to property, malicious mischief, unlawful taking of a motor vehicle, corruption of employees or possession of lottery or number slips;

(3) Fraud, deceit or misrepresentation in connection with any application or petition submitted to, or any interview, hearing or proceeding conducted by the commission;

(4) Violation of any provision of this act or commission of any offense thereunder;

(5) Refusal on the part of any applicant, or prospective licensee, or of any member, officer or stockholder required by section 2 of article VI of the compact to sign or be identified in an application for a stevedore license, to answer any material question or produce any material evidence in connection with his application or any application made on his behalf for a license or registration pursuant to this compact;

(6) Association with a person whom the applicant knows or should know is a member or associate of an organized crime group or of a terrorist

group or a career offender cartel or is a member or associate of an organized crime group, a terrorist group or a career offender cartel or is a career offender. A person who has been identified by a federal, State or local law enforcement agency as a member or associate of an organized crime group or a terrorist group or career offender cartel shall be presumed to be a member or associate of an organized crime group, or terrorist group, or a career offender cartel.

For purposes of this subsection, "career offender" shall be defined as 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 a "career offender cartel" shall be defined as any group of persons who operate together as career offenders; or

(7) Commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any state or territory thereof.

7. Section 9 of P.L.1954, c.14 (C.32:23-93) is amended to read as follows:

C.32:23-93 Revocation of licenses and registrations.

9. 5-i. In addition to the grounds elsewhere set forth in this act any license or registration issued or made pursuant thereto may be revoked or suspended for such period as the commission deems in the public interest or the licensee or registrant may be reprimanded, for:

(1) Conviction of any crime or offense in relation to gambling, bookmaking, pool selling, lotteries or similar crimes or offenses if the crime or offense was committed at or on a pier or other waterfront terminal or within 500 feet thereof; or

(2) Willful commission of, or willful attempt to commit at or on a waterfront terminal or adjacent highway, any act of physical injury to any other person or of willful damage to or misappropriation of any other person's property, unless justified or excused by law; or

(3) Receipt or solicitation of anything of value from any person other than a licensee's or registrant's employer as consideration for the selection or retention for employment of such licensee or registrant; or

(4) Coercion of a licensee or registrant by threat of discrimination or violence or economic reprisal, to make purchases from or to utilize the services of any person; or

(5) Refusal to answer any material question or produce any evidence lawfully required to be answered or produced at any investigation, interview or other proceeding conducted by the commission pursuant to the provisions

of this act, or, if such refusal is accompanied by a valid plea of privilege against self-incrimination, refusal to obey an order to answer such question or produce such evidence made by the commission pursuant to the provisions of subdivision 5 of section 5-b of P.L.1954, c.14 (C.32:23-86); or

(6) Association with a person whom the licensee or registrant knows or should know is a member or associate of an organized crime group or cartel or of a terrorist group or cartel. That person, who has been identified by a federal, state or local law enforcement agency as a member or associate of an organized crime group or cartel or of a terrorist group or cartel, shall be presumed to be a member or associate of an organized crime group or cartel or of a terrorist group or cartel; or

(7) Commission of a racketeering activity or knowing association with a person who has been convicted of a racketeering activity by a court of the United States, or any state or territory thereof.

8. Section 6 of P.L.1956, c.194 (C.32:23-105) is amended to read as follows:

C.32:23-105 Checkers.

6. 5-n. Checkers. (1) The commission shall establish within the longshoremen's register a list of all qualified longshoremen eligible, as hereinafter provided, for employment as checkers in the Port of New York District. No person shall act as a checker within the Port of New York District unless at the time he is included in the longshoremen's register as a checker, and no person shall employ another to work as a checker within the Port of New York District unless at the time such other person is included in the longshoremen's register as a checker.

(2) Any person applying for inclusion in the longshoremen's register as a checker shall file at any such place and in such manner as the commission shall designate a written statement, signed and verified by such person, setting forth the following:

(a) The full name, residence, place and date of birth and social security number of the applicant;

(b) The present and previous occupations of the applicant, including the places where he was employed and the names of his employers;

(c) Such further facts and evidence as may be required by the commission to ascertain the character, integrity and identity of the applicant.

(3) No person shall be included in the longshoremen's register as a checker

(a) Unless the commission shall be satisfied that the applicant possesses good character and integrity;

(b) If the applicant has, without subsequent pardon, been convicted by a court of the United States or any State or territory thereof, of the commission of, or the attempt or conspiracy to commit treason, murder, manslaughter or any felony or high misdemeanor or any of the following misdemeanors or offenses: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding an escape from prison; unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog; petty larceny, where the evidence shows the property was stolen from a vessel, pier or other waterfront terminal; or violation of the compact. Any such applicant ineligible for inclusion in the longshoremen's register as a checker by reason of any such conviction may submit satisfactory evidence to the commission that he has for a period of not less than 5 years, measured as hereinafter provided, and up to the time of application, so conducted himself as to warrant inclusion in the longshoremen's register as a checker, in which event the commission may, in its discretion, issue an order removing such ineligibility. The aforesaid period of 5 years shall be measured either from the date of payment of any fine imposed upon such person or the suspension of sentence or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence;

(c) If the applicant knowingly or willfully advocates the desirability of overthrowing or destroying the government of the United States by force or violence or shall be a member of a group which advocates such desirability, knowing the purposes of such group include such advocacy.

(4) When the application shall have been examined and such further inquiry and investigation made as the commission shall deem proper and when the commission shall be satisfied therefrom that the applicant possesses the qualifications and requirements prescribed by this section, the commission shall include the applicant in the longshoremen's register as a checker. The commission may permit temporary registration as a checker to any applicant under this section pending final action on an application made for such registration, under such terms and conditions as the commission may prescribe, which shall be valid for a period to be fixed by the commission, not in excess of 6 months.

(5) The commission shall have power to reprimand any checker registered under this section or to remove him from the longshoremen's register as a checker for such period of time as it deems in the public interest for any of the following offenses:

(a) Conviction of a crime or other cause which would permit disqualification of such person from inclusion in the longshoremen's register as a checker upon original application;

(b) Fraud, deceit or misrepresentation in securing inclusion in the longshoremen's register as a checker or in the conduct of the registered activity;

(c) Violation of any of the provisions of the compact;

(d) Unlawfully possessing, possessing with intent to distribute, sale or distribution of a controlled dangerous substance or a controlled dangerous substance analog;

(e) Inducing or otherwise aiding or abetting any person to violate the terms of the compact;

(f) Paying, giving, causing to be paid or given or offering to pay or give to any person any valuable consideration to induce such other person to violate any provision of the compact or to induce any public officer, agent or employee to fail to perform his duty under the compact;

(g) Consorting with known criminals for an unlawful purpose;

(h) Transfer or surrender of possession to any person either temporarily or permanently of any card or other means of identification issued by the commission as evidence of inclusion in the longshoremen's register without satisfactory explanation; or

(i) False impersonation of another longshoreman or of another person licensed under the compact.

(6) The commission shall have the right to recover possession of any card or other means of identification issued as evidence of inclusion in the longshoremen's register as a checker in the event that the holder thereof has been removed from the longshoremen's register as a checker.

(7) Nothing contained in this section shall be construed to limit in any way any rights of labor reserved by article XV of the compact.

9. Section 1 of P.L.1976, c.102 (C.32:23-118) is amended to read as follows:

C.32:23-118 Temporary suspension of permits, licenses and registrations for indictment or other charge of crime.

1. 5.q. (1) The commission may temporarily suspend a temporary permit or a permanent license or a temporary or permanent registration pursuant to the provisions of section 4 of Article XI of this act until further order of the commission or final disposition of the underlying case, only where the permittee, licensee or registrant has been indicted for, or otherwise charged with, a crime which is equivalent to a felony in the State of New York or to a crime of the third, second, or first degree in the State

of New Jersey or only where the permittee or licensee is a port watchman who is charged by the commission pursuant to Article XI of this act with misappropriating any other person's property at or on a pier or other waterfront terminal.

(2) In the case of a permittee, licensee or registrant who has been indicted for, or otherwise charged with, a crime, the temporary suspension shall terminate immediately upon acquittal or upon dismissal of the criminal charge. A person whose permit, license or registration has been temporarily suspended may, at any time, demand that the commission conduct a hearing as provided for in Article XI of this act. Within 60 days of such demand, the commission, if feasible, and within the commission's discretion, shall commence the hearing and, within 30 days of receipt of the administrative law judge's report and recommendation, the commission shall render a final determination thereon; provided, however, that these time requirements, shall not apply for any period of delay caused or requested by the permittee, licensee or registrant. A person whose permit, license or registration has been temporarily suspended by the order of the commission may, no more than four times per year subsequent to the date of temporary suspension, petition the commission to vacate the temporary suspension.

(3) The commission may, within its discretion, bar any permittee, licensee or registrant who has been suspended pursuant to the provisions of subsection (1) above, from any employment by a licensed stevedore or a carrier of freight by water, if that individual has been indicted or otherwise charged in any federal, state or territorial proceeding with any crime involving the possession with intent to distribute, sale or distribution of a controlled dangerous substance or controlled dangerous substance analog, racketeering or theft from a pier or waterfront terminal.

10. If any part 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 provision or application thereof been apparent.

11. 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 commis-

sion 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.

12. This act shall take effect upon the enactment of substantially similar legislation by the State of New York or, if the State of New York should enact legislation of a similar substance and effect of any section of this act, that section of this act shall take effect upon that enactment; but if legislation substantially similar to this act or any section thereof already has been enacted, this act or the section in question shall take effect immediately.

Approved January 12, 2006.

CHAPTER 314

AN ACT concerning commercial nonagricultural activities and personal wireless service facilities on preserved farmland, and supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).

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

C.4:1C-32.1 Special permit to allow a commercial nonagricultural activity on certain land; conditions; definitions.

1. a. Any person who owns qualifying land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40) may apply for a special permit pursuant to this section to allow a commercial nonagricultural activity to occur on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organization, in their joint discretion, may authorize the committee to issue a special

permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one commercial nonagricultural activity only;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, a structure or structures existing on the date of enactment of this act, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, provided that, for any such expansion, the applicant demonstrates to the satisfaction of the committee that:

(a) the purpose or use of the expansion is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) the area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(c) the location, design, height, and aesthetic attributes of the expansion reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(8) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(9) the commercial nonagricultural activity utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(10) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources

of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved;

(11) the commercial nonagricultural activity is not a high traffic volume business; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit, shall also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. For the purposes of this section:

"Commercial nonagricultural activity" shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of this act;

"Qualifying land" means a farm that was preserved for farmland preservation purposes prior to the date of enactment of this act under any of the laws cited in subsection a. of this section and for which no portion of the farm was excluded in the deed of easement from preservation; and

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3).

C.4:1C-32.2 Special permit to allow a personal wireless service facility on certain land; conditions; definitions.

2. a. Any person who owns land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes may apply for a special permit pursuant to this section to allow a personal wireless service facility to be erected on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organiza-

tion, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one personal wireless service facility only, although this paragraph shall not prohibit the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, from approving the sharing of the single permitted facility by more than one personal wireless service company, or the use of the facility for other compatible wireless communication uses deemed by the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, to not be violative of the intent or the goals, purposes, or requirements of this section;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the personal wireless service facility utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, or the construction of a new structure not to exceed 500 square feet in footprint area which is independent of any existing structure, provided that in either case the applicant demonstrates to the satisfaction of the committee that:

(a) the expansion or the new structure is necessary to the operation or functioning of the personal wireless service facility;

(b) for a new structure, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion; and

(c) the area of the proposed footprint of the expansion or the new structure is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

(8) the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(9) the personal wireless service facility does not interfere with the use of the land for agricultural production;

(10) the personal wireless service facility utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(11) the personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the personal wireless service facility.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit for a personal wireless service facility, shall also consider such additional factors as traffic generated and the number of employees required by the proposed personal wireless service facility so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service company whose proposed facility is the subject of a permit application pursuant to this section shall be required to obtain all applicable local zoning and land use approvals and any other applicable approvals that may be required by State or local law, rule, regulation, or ordinance even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise allow the proposed facility to be exempt from obtaining any such approvals.

f. As a condition of the issuance of a permit pursuant to this section, a personal wireless service facility shall agree to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for

any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, approved by the committee.

g. For the purposes of this section:

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3); and

"Personal wireless service facility" means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to federal law.

C.4:1C-32.3 Special permit, application fee, grounds for suspension, revocation.

3. a. The application fee for a special permit authorized pursuant to either section 1 or section 2 of this act shall be \$1,000, payable to the committee regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the committee pursuant to this act shall be utilized by the committee for farmland preservation purposes.

b. The committee may suspend or revoke a special permit issued pursuant to either section 1 or section 2 of this act for a violation of any term or condition of the permit or any provision of the respective section.

c. The committee shall, within 60 days after the date of enactment of this act, develop guidelines for the implementation and administration of this act, including, but not limited to, procedures and standards for the filing, evaluation, and approval of permit applications, which seek to balance, as equally important concepts, the public interest in protecting farmland from further development as a means of preserving agriculture and agricultural structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved with the public interest in providing support to sustain and strengthen the agricultural industry in the State.

d. Every two years, the committee shall prepare a report on the implementation of this act. The report shall include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with this act; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the committee deems useful. The report prepared pursuant to this subsection shall be transmitted to the Governor, the President of the Senate,

the Speaker of the General Assembly, the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors. Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the website of the State Agriculture Development Committee.

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

4. This act shall take effect on the 60th day after the date of enactment.

Approved January 12, 2006.

CHAPTER 315

AN ACT concerning underground storage tank grants, and amending P.L.1997, c.235.

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

1. Section 10 of P.L.1997, c.235 (C.58:10A-37.10) is amended to read as follows:

C.58:10A-37.10 Terms 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 except as provided below. No repayment of a conditional hardship grant shall be required upon transfer of ownership of the property for which the grant was made, pursuant to a condemnation proceeding or by the exercise of the power of eminent domain. No repayment of a condi-

tional 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 shall be required.

2. Section 16 of P.L.1997, c.235 (C.58:10A-37.16) is amended to read as follows:

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 except for any 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, 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 assistance 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. Except as provided below, 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.

A lien that is filed on real property pursuant to a grant shall be removed by the authority upon condemnation of the property or upon the exercise of the power of eminent domain, and the conditional hardship grant shall be deemed satisfied.

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.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 316

AN ACT concerning the criminal penalties for criminal mischief and amending N.J.S.2C:17-3.

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

1. N.J.S.2C:17-3 is amended to read as follows:

Criminal mischief.

2C:17-3. Criminal Mischief. a. Offense defined. A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed in subsection a. of N.J.S.2C:17-2; or

(2) Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property.

b. Grading. (1) Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes pecuniary loss of \$2,000.00 or more.

(2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of \$500.00 but less than \$2000.00. It is a disorderly persons offense if the actor causes pecuniary loss of \$500.00 or less.

(3) Criminal mischief is a crime of the third degree if the actor damages, defaces, eradicates, alters, receives, releases or causes the loss of any research property used by the research facility, or otherwise causes physical disruption to the functioning of the research facility. The term "physical disruption" does not include any lawful activity that results from public, governmental, or research facility employee reaction to the disclosure of information about the research facility.

(4) Criminal mischief is a crime of the fourth degree if the actor damages, removes or impairs the operation of any device, including, but not limited to, a sign, signal, light or other equipment, which serves to regulate or ensure the safety of air traffic at any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however, if the damage, removal or impediment of the device recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(5) Criminal mischief is a crime of the fourth degree if the actor interferes or tampers with any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however if the interference or tampering with the airport, landing field, landing strip, heliport, helistop or other aviation facility recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(6) Criminal mischief is a crime of the third degree if the actor tampers with a grave, crypt, mausoleum or other site where human remains are stored or interred, with the purpose to desecrate, destroy or steal such human remains or any part thereof.

(7) Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes a substantial interruption or impairment of public communication, transportation, supply of water, oil, gas or power, or other public service. Criminal mischief is a crime of the second degree if the substantial interruption or impairment recklessly causes death.

(8) Criminal mischief is a crime of the fourth degree if the actor purposely or knowingly breaks, digs up, obstructs or otherwise tampers with any pipes or mains for conducting gas, oil or water, or any works erected for supplying buildings with gas, oil or water, or any appurtenances or appendages therewith connected, or injures, cuts, breaks down, destroys or otherwise tampers with any electric light wires, poles or appurtenances, or any telephone, telecommunications, cable television or telegraph wires, lines, cable or appurtenances.

c. A person convicted of an offense of criminal mischief that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property.

d. As used in this section:

(1) "Act of graffiti" means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

(2) "Spray paint" means any paint or pigmented substance that is in an aerosol or similar spray container.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 317

AN ACT concerning tuition benefits for members of the New Jersey National Guard 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:62-24.1 Nonresident tuition rate for NJ National Guard members prohibited.

1. No public institution of higher education in this State shall impose a nonresident tuition rate or differential fee on a member of the New Jersey National Guard, if the member meets the criteria set forth in section 21 of P.L.1999, c.46 (C.18A:62-24).

C.18A:62-25.1 Nonresident tuition for certain survivors of members of NJ National Guard prohibited.

2. No public institution of higher education in this State shall impose a nonresident tuition rate or differential fee on a child or surviving spouse of a member of the New Jersey National Guard, if the child or surviving spouse meets the criteria set forth in section 22 of P.L.1999, c.46 (C.18A:62-25).

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 318

AN ACT allowing a credit against the corporation business tax and the New Jersey gross income tax to businesses giving employment to certain severely handicapped persons, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

C.54:10A-5.38 Tax credit for employment of certain handicapped persons.

1. 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 20% of the salary and wages paid by the taxpayer during the privilege period for the employment of a qualified person, but not to exceed \$1,000 for each qualified person for the privilege period.

b. As used in this section:

"Qualified person" means an extended employee, within the meaning of that term as set forth in section 2 of P.L.1971, c.272 (C.34:16-40), to whom the Commissioner of Labor and Workforce Development, under subsection (b) of section 18 of P.L.1966, c.113 (C.34:11-56a17), shall have issued a special license authorizing employment at wages less than the minimum wage rate, and who, for at least 26 weeks during the privilege period, shall have performed at least 25 hours per week of work at or under

the supervision of a sheltered workshop pursuant to a contract between the taxpayer and the sheltered workshop.

"Sheltered workshop" means an occupation-oriented facility operated by a nonprofit agency with which the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development shall have entered into a contract under section 4 of P.L.1971, c.272 (C.34:16-42) to furnish extended employment programs to eligible individuals.

c. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the Director of the Division of Taxation. The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

C.54A:4-11 Gross income tax credit for employment of certain handicapped persons.

2. a. A taxpayer shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20% of the salary and wages paid by the taxpayer during the taxable year for the employment of a qualified person during the taxable year but not to exceed \$1,000 for each qualified person for the taxable year.

b. As used in this section:

"Qualified person" means an extended employee, within the meaning of that term as set forth in section 2 of P.L.1971, c.272 (C.34:16-40), to whom the Commissioner of the Department of Labor and Workforce Development, under subsection (b) of section 18 of P.L.1966, c.113 (C.34:11-56a17), shall have issued a special license authorizing employment at wages less than the minimum wage rate, and who, for at least 26 weeks during the taxable year, shall have performed at least 25 hours per week of work at or under the supervision of a sheltered workshop pursuant to a contract between the taxpayer and the sheltered workshop.

"Sheltered workshop" means an occupation-oriented facility operated by a non-profit agency with which the Division of Vocational Rehabilitation Services in the New Jersey Department of Labor and Workforce Development shall have entered into a contract under section 4 of P.L.1971, c.272

(C.34:16-42) to furnish extended employment programs to eligible individuals.

c. The amount of the credits applied under this section for a taxable year, when taken together with any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not exceed 50% of the taxpayer's liability for tax for the taxable year that bears the same proportional relationship to the total amount of such liability as the amount of the taxpayer's gross income, derived from New Jersey sources and attributable to the business or professional activity in which the taxpayer employs the qualified person during that taxable year, bears to the taxpayer's entire gross income for that year. Credits allowed pursuant to this section shall be taken only after the taxpayer has taken all credits allowed under section 2 of P.L.2000, c.80 (C.54A:4-7). The amount of the credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection may be carried over, if necessary to the seven taxable years following the taxable year for which the credit was allowed.

d. A partnership shall not be allowed a credit under this section directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

3. This act shall take effect immediately, and sections 1 and 2 shall apply respectively to privilege periods and taxable years beginning after enactment.

Approved January 12, 2006.

CHAPTER 319

AN ACT concerning eviction, amending N.J.S.2A:39-1, P.L.1974, c.47 and N.J.S.2C:17-3, and supplementing chapter 33 of Title 2C of the New Jersey Statutes.

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

1. N.J.S.2A:39-1 is amended to read as follows:

Unlawful entry prohibited.

2A:39-1. No person shall enter upon or into any real property or estate therein and detain and hold the same, except where entry is given by law, and then only in a peaceable manner. With regard to any real property occupied solely as a residence by the party in possession, such entry shall not be made in any manner without the consent of the party in possession unless the entry and detention is made pursuant to legal process as set out in N.J.S.2A:18-53 et seq., as amended and supplemented; P.L.1974, c.49 (C.2A:18-61.1 et al.), as amended and supplemented; P.L.1975, c.311 (C.2A:18-61.6 et al.), as amended and supplemented; P.L.1978, c.139 (C.2A:18-61.6 et al.), as amended and supplemented; the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.); or N.J.S.2A:35-1 et seq. and "The Fair Eviction Notice Act," P.L.1974, c.47 (C.2A:42-10.15 et al.). A person violating this section regarding entry of rental property occupied solely as a residence by a party in possession shall be a disorderly person.

2. Section 2 of P.L.1974, c.47 (C.2A:42-10.16) is amended to read as follows:

C.2A:42-10.16 Warrant for possession; execution.

2. In any proceeding for the summary dispossession of a tenant, warrant for possession issued by a court of appropriate jurisdiction:

a. Shall include a notice to the tenant of any right to apply to the court for a stay of execution of the warrant, together with a notice advising that the tenant may be eligible for temporary housing assistance or other social services and that the tenant should contact the appropriate county welfare agency, at the address and telephone number given in the notice, to determine eligibility;

b. Shall be executed not earlier than the third day following the day of personal service upon the tenant by the appropriate court officer. In calculating the number of days hereby required, Saturday, Sunday and court holidays shall be excluded;

c. Shall be executed during the hours of 8 a.m. to 6 p.m., unless the court, for good cause shown, otherwise provides in its judgment for possession;

d. Shall state the earliest date and time that the warrant may be executed, and also shall state that the warrant shall only be executed by an officer of the court; and

e. Shall include a notice that it is illegal as a disorderly person's offense for a landlord to padlock or otherwise block entry to a rental premises while a tenant is still in possession of the premises unless such action is done in

accordance with a distraint action involving a non-residential premises as permitted by law; shall state that removal of a tenant's belongings from a premises by a landlord after the eviction of a tenant may be done only in accordance with the provisions of P.L.1999, c.340 (C.2A:18-72 et al.); shall contain a concise summary of the provisions of this section and section 3 of P.L.2005, c.319 (C.2C:33-11.1) with special emphasis placed on the duties and obligations of law enforcement officers under those sections of law; and shall advise the occupant of the right to file a court proceeding pursuant to N.J.S.2A:39-1 et seq.

Whenever a written notice, in accordance with the provisions of subsection a. of this section, is given to the tenant by the court, this shall constitute personal service in accordance with the provisions of subsection b. of this section.

At the time a warrant for possession is lawfully executed, the court officer involved shall prepare a statement of "Execution of Warrant for Possession" and shall immediately deliver the statement to the landlord or the landlord's representative by personal service. The court officer shall deliver a copy of the statement to the tenant by personal service, however, if it cannot be personally served, it may be delivered in the manner provided under N.J.S.2A:18-54. The statement shall also be affixed to the door to the unit to which the warrant applies. The statement shall identify the warrant, the date of issuance of the warrant, the court and judge who issued the warrant, the date and time of execution of the warrant, and the name, signature and position of the person executing the warrant.

The Superior Court, Law Division, Special Civil Part shall retain jurisdiction for a period of 10 days subsequent to the actual execution of the warrant for possession for the purpose of hearing applications by the tenant for lawful relief.

C.2C:33-11.1 Certain actions relevant to evictions, disorderly persons offense.

3. a. A person commits a disorderly persons offense if, after being warned by a law enforcement or other public official of the illegality of that action, the person (1) takes possession of residential real property or effectuates a forcible entry or detainer of residential real property without lawful execution of a warrant for possession in accordance with the provisions of section 2 of P.L.1974, c.47 (C.2A:42-10.16) or without the consent of the occupant solely in possession of the residential real property; or (2) refuses to restore immediately to exclusive possession and occupancy any such occupant so displaced. Legal occupants unlawfully displaced shall be entitled without delay to reenter and reoccupy the premises, and shall not be considered trespassers or chargeable with any offense, provided that a law enforcement officer is present at the time of reentry. It shall be the duty

of such officer to prevent the landlord or any other persons from obstructing or hindering the reentry and reoccupancy of the dwelling by the displaced occupant.

As used in this section, "forcible entry and detainer" means to enter upon or into any real property and detain and hold that property by:

(1) any kind of violence including threatening to kill or injure the party in possession;

(2) words, circumstances or actions which have a clear intention to incite fear or apprehension or danger in the party in possession;

(3) putting outside of the residential premises the personal effects or furniture of the party in possession;

(4) entering peaceably and then, by force or threats, turning the party out of possession;

(5) padlocking or otherwise changing locks to the property;

(6) shutting off, or causing to be shut off, vital services such as, but not limited to, heat, electricity or water, in an effort to regain possession; or by

(7) any means other than compliance with lawful eviction procedures pursuant to section 2 of P.L.1974, c.47 (C.2A:42-10.16), as established through possession of a lawfully prepared and valid "Execution of Warrant."

b. A person who is convicted of an offense under this section more than once within a five-year period is guilty of a crime of the fourth degree.

C.52:17B-4.6 Notice to law enforcement explaining provisions of act on unlawful evictions.

4. Within 30 days of the effective date of P.L.2005, c.319 (C.2C:33-11.1 et al.), the Attorney General shall prepare a notice explaining the provisions of P.L.2005, c.319 (C.2C:33-11.1 et al.), with particular emphasis on the responsibilities of law enforcement officers and other public officials, and transmit the notice to the chief or director of every municipal police department, every municipal prosecutor, every county prosecutor, and the Superintendent of the New Jersey State Police. The notice shall be disseminated to every law enforcement officer and shall be reenforced at roll calls and academy service training and continuing education programs so to ensure that all officers and prosecutors are educated of their responsibilities under P.L.2005, c.319 (C.2C:33-11.1 et al.).

5. N.J.S.2C:17-3 is amended to read as follows:

Criminal mischief.

2C:17-3. a. Offense defined. A person is guilty of criminal mischief if he:

(1) Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the

employment of fire, explosives or other dangerous means listed in subsection a. of N.J.S.2C:17-2; or

(2) Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property, including the damaging or destroying of a rental premises by a tenant in retaliation for institution of eviction proceedings.

b. Grading. (1) Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes pecuniary loss of \$2,000.00 or more.

(2) Criminal mischief is a crime of the fourth degree if the actor causes pecuniary loss in excess of \$500.00 but less than \$2000.00. It is a disorderly persons offense if the actor causes pecuniary loss of \$500.00 or less.

(3) Criminal mischief is a crime of the third degree if the actor damages, defaces, eradicates, alters, receives, releases or causes the loss of any research property used by the research facility, or otherwise causes physical disruption to the functioning of the research facility. The term "physical disruption" does not include any lawful activity that results from public, governmental, or research facility employee reaction to the disclosure of information about the research facility.

(4) Criminal mischief is a crime of the fourth degree if the actor damages, removes or impairs the operation of any device, including, but not limited to, a sign, signal, light or other equipment, which serves to regulate or ensure the safety of air traffic at any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however, if the damage, removal or impediment of the device recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(5) Criminal mischief is a crime of the fourth degree if the actor interferes or tampers with any airport, landing field, landing strip, heliport, helistop or any other aviation facility; however if the interference or tampering with the airport, landing field, landing strip, heliport, helistop or other aviation facility recklessly causes bodily injury or damage to property, the actor is guilty of a crime of the third degree, or if it recklessly causes a death, the actor is guilty of a crime of the second degree.

(6) Criminal mischief is a crime of the third degree if the actor tampers with a grave, crypt, mausoleum or other site where human remains are stored or interred, with the purpose to desecrate, destroy or steal such human remains or any part thereof.

(7) Criminal mischief is a crime of the third degree if the actor purposely or knowingly causes a substantial interruption or impairment of public communication, transportation, supply of water, oil, gas or power, or other public service. Criminal mischief is a crime of the second degree if the substantial interruption or impairment recklessly causes death.

(8) Criminal mischief is a crime of the fourth degree if the actor purposely or knowingly breaks, digs up, obstructs or otherwise tampers with any pipes or mains for conducting gas, oil or water, or any works erected for supplying buildings with gas, oil or water, or any appurtenances or appendages therewith connected, or injures, cuts, breaks down, destroys or otherwise tampers with any electric light wires, poles or appurtenances, or any telephone, telecommunications, cable television or telegraph wires, lines, cable or appurtenances.

c. A person convicted of an offense of criminal mischief that involves an act of graffiti may, in addition to any other penalty imposed by the court, be required to pay to the owner of the damaged property monetary restitution in the amount of the pecuniary damage caused by the act of graffiti and to perform community service, which shall include removing the graffiti from the property, if appropriate. If community service is ordered, it shall be for either not less than 20 days or not less than the number of days necessary to remove the graffiti from the property.

d. As used in this section:

(1) "Act of graffiti" means the drawing, painting or making of any mark or inscription on public or private real or personal property without the permission of the owner.

(2) "Spray paint" means any paint or pigmented substance that is in an aerosol or similar spray container.

e. A person convicted of an offense of criminal mischief that involves the damaging or destroying of a rental premises by a tenant in retaliation for institution of eviction proceedings, may, in addition to any other penalty imposed by the court, be required to pay to the owner of the property monetary restitution in the amount of the pecuniary damage caused by the damage or destruction.

6. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 320

AN ACT establishing the right of persons engaged in military service for more than 90 days to cancel certain leases without penalty and amending P.L.1979, c.317.

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

1. Section 14 of P.L.1979, c.317 (C.38:23C-14) is amended to read as follows:

C.38:23C-14 Termination of leases; conditions; notice; penalty for detention of personal effects.

14. a. The provisions of this section shall apply to any lease covering personal property, or premises occupied for dwelling, professional, business, agricultural, or similar purposes, in any case in which such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and the property so leased has been used, or premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

The provisions of this section which apply to any lease covering personal property become effective after military service of more than 90 consecutive days.

b. (1) Any such lease, entered into with or without a view to purchase, may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service or in the case of a lease covering personal property, at any time after the 90th consecutive day of service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until 30 days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this paragraph shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(2) Upon termination of the lease, the former lessee and any co-signer shall have no further liability to the lessor or the lessor's assignee, except that the lessee and any co-signer shall be obligated to the lessor or assignee for any damages to the leased property. The lessor or lessor's assignee shall not impose any penalty or charge upon the lessee or any co-signer on the

lease for early termination of the lease. This paragraph shall apply whether or not the person is the sole signatory of the lease.

c. Any person who shall knowingly seize, hold or detain the personal effects, clothing, furniture or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be adjudged a disorderly person and shall be punished by imprisonment not to exceed 6 months or by fine not to exceed \$1,000.00, or both.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 321

AN ACT creating a study commission on the death penalty and imposing a moratorium on executions and amending P.L.1983, c.245.

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

1. The Legislature finds and declares that:

a. Life is the most valuable possession of a human being; the State should exercise utmost care to protect its residents' lives from homicide, accident, or arbitrary or wrongful taking by the State;

b. The experience of this State with the death penalty has been characterized by significant expenditures of money and time;

c. The financial costs of attempting to implement the death penalty statutes may not be justifiable in light of the other needs of this State;

d. There is a lack of any meaningful procedure to ensure uniform application of the death penalty in each county throughout the State;

e. There is public concern that racial and socio-economic factors influence the decisions to seek or impose the death penalty;

f. There has been increasing public awareness of cases of individuals wrongfully convicted of murder, in New Jersey and elsewhere in the nation;

g. The Legislature is troubled that the possibility of mistake in the death penalty process may undermine public confidence in our criminal justice system;

h. The execution of an innocent person by the State of New Jersey would be a grave and irreversible injustice;

i. Many citizens may favor life in prison without parole or life in prison without parole with restitution to the victims as alternatives to the death penalty; and

j. In order for the State to protect its moral and ethical integrity, the State must ensure a justice system which is impartial, uncorrupted, equitable, competent, and in line with evolving standards of decency.

2. a. There is established the New Jersey Death Penalty Study Commission.

b. The commission shall study all aspects of the death penalty as currently administered in the State of New Jersey, including but not limited to the following issues:

(1) whether the death penalty rationally serves a legitimate penological intent such as deterrence;

(2) whether there is a significant difference between the cost of the death penalty from indictment to execution and the cost of life in prison without parole; in considering the overall cost of the death penalty in New Jersey, the cost of all the capital trials that result in life sentences as well as the death sentences that are reversed on appeal must be factored into the equation;

(3) whether the death penalty is consistent with evolving standards of decency;

(4) whether the selection of defendants in New Jersey for capital trials is arbitrary, unfair, or discriminatory in any way and there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process;

(5) whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison;

(6) whether the penological interest in executing some of those guilty of murder is sufficiently compelling that the risk of an irreversible mistake is acceptable; and

(7) whether alternatives to the death penalty exist that would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of families of victims.

c. The commission will propose new legislation, if appropriate.

d. The commission shall be composed of 13 members. Appointments should reflect the diversity of the population of New Jersey. Members will be appointed as follows:

(1) five members appointed by the Governor, at least one of whom shall be appointed from each of the following groups: Murder Victims Families for Reconciliation and the New Jersey Crime Victims' Law Center; and at least two of whom shall be appointed from the religious/ethical community in New Jersey;

(2) two members appointed by the President of the Senate, one of whom shall be a Republican, and one of whom shall be a Democrat;

(3) two members appointed by the Speaker of the General Assembly, one of whom shall be a Republican, and one of whom shall be a Democrat;

(4) the Public Defender or his designee;

(5) the Attorney General or his designee;

(6) the President of the New Jersey State Bar Association or his designee; and

(7) a representative of the County Prosecutors Association of New Jersey.

e. Members shall be appointed within 45 days of enactment.

f. The Office of Legislative Services shall provide staffing for the work of the commission.

g. The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.

h. The commission shall choose a chairperson from among its members.

i. Any vacancy in the membership shall be filled in the same manner as the original appointment.

j. The commission is entitled to the assistance and service of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and to incur traveling or other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

k. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Governor and the Legislature, along with any legislation it desires to recommend for adoption by the Legislature, no later than November 15, 2006.

3. Beginning on the effective date of this act, if a defendant has been sentenced to death pursuant to subsection c. of N.J.S.2C:11-3, the sentence

of death will not be executed prior to 60 days after the issuance of the commission's report and recommendations.

4. Section 5 of P.L.1983, c.245 (C.2C:49-5) is amended to read as follows:

C.2C:49-5 Warrant of execution; date.

5. a. When a person is sentenced to the punishment of death, the judge who presided at the sentencing proceeding or if that judge is unavailable for any reason, then the assignment judge of the vicinage and, if not available, then any Superior Court judge of the vicinage, shall make out, sign and deliver to the sheriff of the county, a warrant directed to the commissioner, stating the conviction and sentence, appointing a date on which the sentence shall be executed, and commanding the commissioner to execute the sentence on that date except as provided in section 3 of P.L.2005, c.321.

b. If the execution of the sentence on the date appointed shall be delayed while the conviction or sentence is being appealed, the judge authorized to act pursuant to subsection a. of this section, at the conclusion of the appellate process, if the conviction or sentence is not set aside, shall make out, sign and deliver another warrant as provided in subsection a. of this section. If the execution of the sentence on the date appointed is delayed by any other cause, the judge shall, as soon as such cause ceases to exist, make out, sign and deliver another warrant as provided in subsection a. of this section.

c. The date appointed in the warrant shall be not less than 30 days and not more than 60 days after the issuance of the warrant. The commissioner may fix the time of execution on that date.

5. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 322

AN ACT concerning background investigations of certain university police officer applicants and supplementing chapter 6 of Title 18A of the New Jersey Statutes.

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

C.18A:6-4.3a Background investigations of university police officer candidates.

1. Notwithstanding the provisions of section 2 of P.L.1970, c.211 (C.18A:6-4.3) to the contrary, a college or university with an established police agency may conduct the complete investigation of an applicant's criminal history, character, competency, integrity and fitness required by that section.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 323

AN ACT concerning punitive damages and amending P.L.1995, c.142.

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

1. Section 6 of P.L.1995, c.142 (C.2A:15-5.14) is amended to read as follows:

C.2A:15-5.14 Determination of award; limitations; exceptions.

6. a. Before entering judgment for an award of punitive damages, the trial judge shall ascertain that the award is reasonable in its amount and justified in the circumstances of the case, in light of the purpose to punish the defendant and to deter that defendant from repeating such conduct. If necessary to satisfy the requirements of this section, the judge may reduce the amount of or eliminate the award of punitive damages.

b. No defendant shall be liable for punitive damages in any action in an amount in excess of five times the liability of that defendant for compensatory damages or \$350,000, whichever is greater.

c. The provisions of subsection b. of this section shall not apply to causes of action brought pursuant to P.L.1993, c.137 (C.2A:53A-21 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1989, c.303 (C.26:5C-5 et seq.) or P.L.1992, c.109 (C.2A:61B-1), or in cases in which a defendant has been convicted pursuant to N.J.S.2C:11-3, N.J.S.2C:11-4, R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) or the equivalent under the laws of any other jurisdiction.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 324

AN ACT concerning the regulation of certain cemeteries, amending P.L.2003, c.261 and repealing various provisions 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.2003, c.261 (C.45:27-22) is amended to read as follows:

C.45:27-22 Control of funeral, disposition of remains.

22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c.261 (C.3B:10-21.1). If the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

- (1) The surviving spouse of the decedent.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.
- (5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

- (1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

Repealer.

2. Section 42 of P.L.2003, c.261 is amended to read as follows:

42. N.J.S.3B:10-21, N.J.S.8A:1-1 et seq., sections 20 and 21 of P.L.1973, c.219 (C.8A:5-23 and 8A:5-24), section 25 of P.L.1973, c.219 (C.8A:6-1.1), section 28 of P.L.1973, c.219 (C.8A:7-3.1), sections 1 and 2 of P.L.1979, c.200 (C.8A:5-18.1 and 8A:5-18.2), section 2 of P.L.1979, c.255 (C.8A:3-14.1) and P.L.2001, c.439 (C.8A:3-14.2) are repealed.

3. This act shall take effect on April 13, 2004 and if approved after that date, the act shall be retroactive to April 13, 2004.

Approved January 12, 2006.

CHAPTER 325

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

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

1. Section 2 of P.L.1987, c.227 (C.24:12-9) is amended to read as follows:

C.24:12-9 State regulations, standards for bottled water.

2. a. Bottled water which is manufactured, distributed or sold within this State, in addition to complying with the standards governing the manufac-

turing, storage and distribution of bottled water promulgated by the Department of Health and Senior Services pursuant to R.S. 24:2-1, shall comply with the regulations concerning drinking water quality standards adopted by the Department of Environmental Protection pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.).

b. (Deleted by amendment, P.L.2005, c.325.)

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 326

AN ACT concerning membership in the Police and Firemen's Retirement System of New Jersey and supplementing P.L.1944, c.255.

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

C.43:16A-3.15 Certain firemen eligible for enrollment in PFRS; credit for PERS service, certain.

1. a. Upon the approval by the municipal governing body, any fireman employed by a municipality on the effective date of this act who (1) was not eligible for membership in the Police and Firemen's Retirement System (PFRS), established pursuant to P.L.1944, c.255 (C.43:16A-1 et seq.), at the time of appointment to a paid position pursuant to N.J.S.40A:14-42 through 40A:14-44, (2) meets the requirements for membership in the retirement system as set forth in the definition of "fireman" in section 1 of P.L.1944, c.255 (C.43:16A-1) and (3) is enrolled in the Public Employees' Retirement System of New Jersey (PERS), established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), on the effective date of this act, is eligible to become a member of PFRS, regardless of age, and may transfer membership from PERS to PFRS in accordance with the provisions of the law and regulations governing the retirement system relative to interfund transfers by waiving, within 90 days of the effective date of this act, all rights and benefits which would otherwise be provided by PERS. If an eligible person does not file a timely waiver of PERS benefits, the person's pension status shall remain unchanged and the person's membership shall not be transferred to PFRS. Transfers under this section shall take effect on the first day of the first full calendar month following the effective date of this act by at least 180 days. PERS shall transmit to PFRS an amount equal to the present value of the

benefit under PERS accrued to the date of transfer by each person transferring to PFRS. The service credit accrued in PERS to the date of transfer shall be transferred to PFRS and may be used to meet any service credit requirement for benefits under PFRS. Any benefit of a member who transfers membership from PERS to PFRS under this act based upon service credit shall be the amount of benefit determined as provided under PFRS based upon the total amount of service credit multiplied by the ratio of the service credit under PFRS from the date of transfer to the total amount of service credit, plus a benefit comparable to a PERS deferred, early or regular service retirement benefit, as appropriate, based upon the age of the member at the time of retirement and the amount of PERS service credit transferred to PFRS, determined as provided under the law and regulations governing PERS for the benefit. The total amount of service credit in PFRS, including the transferred PERS service credit, may be used to meet the service credit requirement for the benefit comparable to a PERS deferred or early retirement benefit, but the benefit shall be calculated only on the transferred PERS service credit.

Active and retired death benefits, accidental death benefits, and ordinary and accidental disability retirement benefits for members transferring to PFRS under this act shall be the benefits provided under PFRS.

For members transferring to PFRS under this act, the widows' or widowers' pensions provided under section 26 of P.L.1967, c.250 (C.43:16A-12.1) shall be the amount of the benefit determined as provided in section 26 multiplied by the ratio of the service credit under PFRS from the date of transfer to the total amount of service credit. Transferring members shall be entitled to elect optional retirement allowances for the portions of their retirement benefits based upon their PERS service credit as provided under the laws and regulations governing selection of optional retirement allowances under PERS.

b. Notwithstanding the provisions of subsection a. of this section, a fireman who transfers membership from PERS to PFRS may receive full credit toward benefits under PFRS for the transferred PERS service credit if the member agrees to pay the full cost of the accrued liability for the transferred PERS service credit in the same manner and subject to the same terms and conditions provided for the purchase of credit for military service under section 3 of P.L.1991, c.153 (C.43:16A-11.11).

c. The State shall not be liable for additional costs incurred by a local employer as a result of the transfers permitted by this section.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 327

AN ACT directing the Commissioner of the Department of Environmental Protection to officially name the brook adjacent to the Wildcat Rock Shelter, and supplementing Title 13 of the Revised Statutes.

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

C.13:8-44.1 "Chingwe Brook" in Wildcat Rock Shelter designated.

1. The Commissioner of the Department of Environmental Protection shall officially name the brook which is part of the Wildcat Rock Shelter, located on a parcel along the Wallkill Valley Mineral Heritage Trail in Franklin Borough, Sussex County, the "Chingwe Brook."

C.13:8-44.2 Notification of name of brook.

2. The Commissioner shall take appropriate action to notify the public and the community of the naming of the brook by erecting appropriate signs bearing that name and updating the State internet website with the name of the brook.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 328

AN ACT changing the membership of a board of trustees for a pension fund of school district employees in counties of the first class and amending N.J.S.18A:66-97, N.J.S.18A:66-98, N.J.S.18A:66-109 and N.J.S.18A:66-110.

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

1. N.J.S.18A:66-97 is amended to read as follows:

Board of trustees, membership, terms, vacancies.

18A:66-97. Until the effective date of P.L.2005, c.328, any pension fund created or to be created as provided in this article shall be under the control and management of the board of seven trustees, no more than three of whom shall be employees of the same board of education. The two trustees

of the board added pursuant to this act, P.L.2001, c.454, shall be retirees of the pension fund elected by the retirees of the pension fund, and each such member shall serve for a term of two years. The first board selected as provided in section 18A:66-96 shall serve until the month of January following the incorporation of such association. At such time four members of the association shall be elected as trustees, in place of the four first selected, by a majority vote of the members of the association as follows: one for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years, who shall serve for the respective terms for which they are each chosen. Thereafter in the month of January of each year a member shall be chosen for a full term of four years to serve in place of the trustee whose term shall have expired.

After the effective date of P.L.2005, c.328, any pension fund created as provided in this article shall be under the control and management of the board of seven trustees, at least one of whom shall be an active member until the last active member of the fund retires and one of whom shall be a retiree. The remaining trustees may be either active members or retirees as the number of each may be determined by the bylaws of the board of trustees prior to an election. Commencing with the first January following the enactment of this act, P.L.2005, c.328, and continuing each January thereafter, two individuals shall be elected as trustees in the place of two sitting trustees by a majority vote, for a term of three years. Active member trustees shall be elected by a majority vote of the active members of the association, and retiree trustees shall be elected by a majority vote of the retirees of the pension fund. The transition in trustee terms and the number of trustees elected shall be accomplished as determined by the board.

In any election for a trustee in which there is only one candidate for a position, a vote of retirees or active members shall not be held and the candidate shall be designated a trustee by a majority vote of the sitting board of trustees.

Any vacancy occurring among the board of trustees or in the office of chairperson, vice-chairperson, secretary, treasurer, or other officers of such corporation shall be filled in the manner provided in bylaws, and in the absence of such provision shall be filled by the board of trustees.

2. N.J.S.18A:66-98 is amended to read as follows:

Trustees to elect officers; compensation.

18A:66-98. The board of trustees shall at the first annual meeting thereof, and at each annual meeting, elect a chairperson, vice-chairperson, secretary, and treasurer, and such other officers as they may deem necessary. The secretary may be one of their own members. The board of trustees shall

fix the compensation of the secretary and treasurer. The chairperson shall serve without compensation.

3. N.J.S.18A:66-109 is amended to read as follows:

Disbursements; deposits and investments.

18A:66-109. No money shall be paid out of the pension fund except by the treasurer of the corporation upon warrants signed by the chairperson of the board of trustees and countersigned by the secretary thereof. No warrant shall be drawn except by the order of the board upon a ye and nay vote recorded in the minutes of the board.

The board of trustees may deposit the moneys of the fund in any bank or trust company which is a member of the Federal Reserve System, and may invest those moneys in bonds secured by mortgages, or in mortgages guaranteed or insured by agencies or instrumentalities of the United States of America, provided that those mortgages are legal investments for savings banks in this State. The board of trustees may invest and reinvest the moneys in other evidences of indebtedness, or capital stock or other securities issued by any company incorporated within the United States or within the Dominion of Canada, and in the bonds and other evidences of indebtedness of the United States of America, any state, city, county, school district or of the instrumentality of any state or of the United States of America. All income, interest or dividends paid or agreed to be paid on account of any loan or deposit shall constitute a part of the fund.

4. N.J.S.18A:66-110 is amended to read as follows:

Manner of payment of pensions; options.

18A:66-110. Pensions shall be paid from the fund in the manner following:

a. A member of the pension fund who was a member on or before June 26, 1962 and who has or shall hereafter have credit in the pension fund for 30 years or more as an employee of a board of education in a county wherein the fund has been established and maintained shall, upon application to the board of trustees of the pension fund, be retired by such board of trustees and shall thereupon receive annually from the fund, for and during the remainder of his or her life, by way of pension, an amount equal to one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board.

b. Upon the retirement of a member who has reached the age of 60 years, the person so retired shall be entitled to receive during his or her life,

by way of pension, one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board. Upon the receipt of proper proof of death of a member who has retired on a service retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate an amount equal to one-half of the highest annual compensation received by the member in any year of creditable service.

c. A member of the fund who has credit therein for 10 years, who shall become incapacitated, either mentally or physically, and who cannot perform the regular duties of employment, or who is found unfit for the performance of his or her duties, upon the application of his employer or upon his own application or the application of someone acting in his behalf, shall be retired by the board of trustees of the pension fund and thereupon shall receive annually from the fund a retirement allowance as described in subsection b. of this section if he has reached or passed age 60 and if he is under age 60, an amount equal to nine-tenths of one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years of creditable service; provided, however, that in no event shall the pension be based upon less than 17 years nor more than 30 years of service unless the member would have had less than 17 years of service at age 60, in which event he shall be given credit for the years to age 60; however, a member who has not attained age 70 who shall become incapacitated, either mentally or physically, as a direct result of a traumatic event occurring in the performance of his or her duties of such employee, shall, upon the application of his employer or upon his own application or the application of someone acting in his behalf, be retired by the board of trustees of the pension fund, and, thereupon, if a report of the accident, in a form acceptable to the board of trustees of the pension fund, is filed with the said board of trustees within 60 days next following the accident and the application for retirement is filed with the said board of trustees within two years of the date of the accident, shall receive annually from the fund an amount equal to two-thirds of the annual salary being received by such employee on the date of the accident. The board of trustees may waive strict compliance with the time limits within which a report of the accident and an application for retirement must be filed with the board if it is satisfied: (1) that a report of the accident from which the disability is claimed to have resulted was filed with the employing board of education with reasonable promptitude and in no event later than 60 days after the accident, and (2) the applicant shall

show that his failure to file a report with the board of trustees or to file his application for retirement within the time limited by law was due to mistake, inadvertence, ignorance of fact or law, inability, or to the fraud, misrepresentation or deceit of any person, or to a delay in the manifestation of the incapacity, or to any other reasonable cause or excuse, and (3) that the application for retirement was filed in good faith and the circumstances justify its favorable consideration.

The trustees of the pension fund shall have the power to determine whether or not any employee is permanently and totally disabled, and whether or not a disability of an employee is the direct result of a traumatic event occurring at some definite time and place in the performance of his or her duties as such employee. The claimant shall have the right to present physicians, witnesses or other testimony in his or her behalf before the board of trustees. The chairperson, or any other member of the board of trustees, may administer oaths to any physician or other persons called before the trustees regarding the employee's disability. The board of trustees shall decide, by resolution, whether the applicant is entitled to the benefit of this article.

Permanent and total disability resulting from a cardiovascular, pulmonary or muscular-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

Once in each year, the board of trustees may, and upon the member's application shall, require any member retired for a disability, who is under the age of 60, to undergo medical examination by a physician or physicians designated by the board of trustees. The examination shall be made at the residence of the pensioner or any other place mutually agreed upon. If the physician or physicians thereupon report and certify to the board of trustees that the disabled pensioner is not permanently and totally incapacitated, either mentally or physically, for the performance of duty, and the board finds that said member is engaged in a gainful occupation, or could be engaged in a gainful occupation, and if the board concurs in the report, then the amount of the pension shall be reduced to an amount which, when added to the amount then being earned by him or her or an amount which he or she could earn if gainfully employed, shall not exceed the amount of compensation received by him or her at the time of his or her retirement, including any cost of living adjustment. If subsequent examination of such pensioner shows that his or her earnings have changed since the date of his or her last examination, then the amount of the pension shall be further altered, but the new pension shall not exceed the amount of the pension originally granted, nor shall the new pension, when added to the amount then being earned by

the pensioner, exceed the salary or compensation received by him or her at the time of his or her retirement, including any cost of living adjustment.

d. At the time of retirement, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or he or she may, on retirement, elect to convert the benefits, otherwise payable to him or her, into a retirement allowance of the equivalent actuarial value computed on the basis of such mortality tables as shall be adopted by the board of trustees, in accordance with one of the optional forms following:

Option 1. A reduced retirement allowance, payable during life, with a provision that in the case of death, before the total pension payments have equaled the actuarial value computed as aforesaid, the balance shall be paid to his or her surviving designated beneficiary, duly acknowledged and filed with the board of trustees; and if none, then to the executor or administrator of his or her estate.

Option 2. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death it will continue during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 3. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death, an allowance at one-half of the rate of his or her reduced allowance will be continued during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 4. A reduced retirement allowance, payable during the retired member's life, with some other benefit payable after his or her death, provided the benefit is approved by the board of trustees.

Option 5. Some other benefit, which is equivalent to the full amount, three-quarters, one-half or one-quarter of the member's retirement allowance, shall be paid upon the member's death to the beneficiary designated by the member, and if that beneficiary dies before the member, the member's retirement allowance shall increase to the maximum retirement allowance for the member's lifetime, provided that such other benefit together with the member's lesser and maximum retirement allowances shall be certified by the actuary to be of equivalent actuarial value.

Except in the case of members who have elected to receive (1) a deferred retirement allowance pursuant to N.J.S.18A:66-113 or (2) an early retirement allowance pursuant to section 4 of P.L.1971, c.382 (C.18A:66-113.1) after separation from service pursuant to N.J.S.18A:66-113, if a member dies within 30 days after the date of retirement or the date of board approval, whichever is later, the member's retirement allowance shall not become effective and the member shall be considered an active member at the time of death. However, if the member

dies after the date the application for retirement was filed with the system, the retirement will become effective if:

(1) The deceased member had designated a beneficiary under an optional settlement provided by this section; and

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

The board may select an Option 3 settlement on behalf of the beneficiary of a member who applied for and was eligible for retirement but who died prior to the effective date of the retirement allowance if all of the above conditions, with the exception of (1), are met.

The board of trustees shall, from time to time and as often as they deem it necessary, employ an actuary, who shall recommend, and the board shall keep in convenient form, such data as shall be necessary for actuarial valuations of the various funds created by this article. At least once in every five-year period, or more frequently as determined by the board of trustees, the actuary shall make an actuarial investigation into the mortality, service and salary experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the various funds thereof, and upon the basis of such investigation the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary.

(b) Certify the rate of contribution which shall be made by each board of education to the pension fund as provided by this article.

5. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 329

AN ACT concerning the rights and remedies of employees who disclose or refuse to participate in certain fraudulent practices of employers, and amending P.L.1986, c.105 and P.L.1995, c.142.

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

1. Section 3 of P.L.1986, c.105 (C.34:19-3) is amended to read as follows:

C.34:19-3 Retaliatory action prohibited.

3. An employer shall not take any retaliatory action against an employee because the employee does any of the following:

a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;

(2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee,

former employee, retiree or pensioner of the employer or any governmental entity; or

(3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

2. Section 5 of P.L.1986, c.105 (C.34:19-5) is amended to read as follows:

C.34:19-5 Civil action, jury trial; remedies.

5. Upon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under this act specified in the suit. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided by this act or any other statute. The court shall also order, where appropriate and to the fullest extent possible:

- a. An injunction to restrain any violation of this act which is continuing at the time that the court issues its order;
- b. The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
- c. The reinstatement of full fringe benefits and seniority rights;
- d. The compensation for all lost wages, benefits and other remuneration; and
- e. The payment by the employer of reasonable costs, and attorney's fees.

In addition, the court or jury may order: the assessment of a civil fine of not more than \$10,000 for the first violation of the act and not more than \$20,000 for each subsequent violation, which shall be paid to the State Treasurer for deposit in the General Fund; punitive damages; or both a civil fine and punitive damages. In determining the amount of punitive damages, the court or jury shall consider not only the amount of compensatory damages awarded to the employee, but also the amount of all damages caused to shareholders, investors, clients, patients, customers, employees, former employees, retirees or pensioners of the employer, or to the public or any governmental entity, by the activities, policies or practices of the employer which the employee disclosed, threatened to disclose, provided testimony regarding, objected to, or refused to participate in.

3. Section 6 of P.L.1995, c.142 (C.2A:15-5.14) is amended to read as follows:

C.2A:15-5.14 Determination of award; limitations; exceptions.

6. a. Before entering judgment for an award of punitive damages, the trial judge shall ascertain that the award is reasonable in its amount and justified in the circumstances of the case, in light of the purpose to punish the defendant and to deter that defendant from repeating such conduct. If necessary to satisfy the requirements of this section, the judge may reduce the amount of or eliminate the award of punitive damages.

b. No defendant shall be liable for punitive damages in any action in an amount in excess of five times the liability of that defendant for compensatory damages or \$350,000, whichever is greater.

c. The provisions of subsection b. of this section shall not apply to causes of action brought pursuant to P.L.1993, c.137 (C.2A:53A-21 et seq.), P.L.1945, c.169 (C.10:5-1 et seq.), P.L.1989, c.303 (C.26:5C-5 et seq.), P.L.1992, c.109 (C.2A:61B-1) or P.L.1986, c.105, (C.34:19-1 et seq.), or in cases in which a defendant has been convicted pursuant to N.J.S.2C:11-3, N.J.S.2C:11-4, R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) or the equivalent under the laws of any other jurisdiction.

4. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 330

AN ACT concerning penalties for damaging property and for certain other violations committed on lands administered by the Department of Environmental Protection or the Palisades Interstate Park Commission, and amending P.L.1983, c.324, P.L.1954, c.38, and R.S.32:14-20.

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

1. Section 23 of P.L.1983, c.324 (C.13:1L-23) is amended to read as follows:

C.13:1L-23 Injunctive relief; penalties.

23. a. If a person violates any provision of P.L.1983, c.324 (C.13:1L-1 et seq.), or any rule, regulation, or order adopted or issued pursuant thereto, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation and the court may proceed in a summary manner.

b. A person who knowingly violates, or who solicits or employs any other person to violate, the provisions of subsection a. of section 10 of P.L.1983, c.324 (C.13:1L-10) shall be subject to the following penalties: a fine of not less than \$750 nor more than \$1,500 for the first offense; a fine of not less than \$1,500 nor more than \$3,000 for the second offense; and a fine of not less than \$3,000 nor more than \$5,000 for any subsequent offense. Penalties assessed pursuant to this subsection shall be collected in a civil action by a summary proceeding. Any vessel, vehicle or equipment used in the commission of the violation shall be subject to confiscation and forfeiture to the State, if warranted, as determined by the courts. Further, in addition to any penalty provided pursuant to subsection a. of this section, restitution and damages may be ordered to compensate the State for the cost of remediating any violation of this section and for the value of any lost, damaged, or destroyed archaeological findings. All fines, restitution payments, and damages collected shall be remitted to the department to be used for the preservation, remediation or protection of State archaeological sites. Any archaeological findings obtained as a result of a violation of this section shall be subject to confiscation, forfeiture, and return to the State and, upon recovery, shall be deposited with the New Jersey State Museum.

c. Notwithstanding any provision of this section to the contrary, examination or retrieval of artifacts, or scientific research, conducted by a State department, agency, commission, authority or corporation otherwise required or permitted by federal or State law are exempt from the provisions of this section.

d. A person who violates any provision of P.L.1983, c.324 (C.13:1L-1 et seq.), or any rule, regulation, or order adopted or issued pursuant thereto, shall be liable to a civil penalty of not less than \$50 nor more than \$1,500, plus restitution if applicable, for each offense, except as otherwise provided under subsection b. of this section, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to hear and determine violations of P.L.1983, c.324 (C.13:1L-1 et seq.). If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. If the violation results in pecuniary gain to the violator, or the violator willfully or wantonly causes injury or damage to property, including but not limited to natural resources, the violator shall be liable to an additional civil penalty equal to three times the value of the pecuniary gain or injury or damage to property.

e. Penalties assessed pursuant to this section shall be in addition to any other civil or criminal penalties that may be applicable pursuant to law.

2. Section 1 of P.L.1954, c.38 (C.23:7-9) is amended to read as follows:

C.23:7-9 Actions forbidden on property under State control; penalty.

1. a. With respect to or on property under the control of the Division of Fish and Wildlife, no person may:

- (1) remove or disturb any vegetation, soil, water, minerals, or other property of the State;
- (2) litter, dump, or discard refuse of any kind;
- (3) cause injury or damage to any equipment, structure, building, or other property; or
- (4) use such property contrary to rules or regulations established by the division.

b. (1) If a person violates any provision of subsection a. of this section, the division may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation and the court may proceed in a summary manner.

(2) (a) A person who violates any provision of subsection a. of this section shall be liable to a civil penalty of not less than \$50 nor more than \$1,500, plus restitution if applicable, for each offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to hear and determine violations of subsection a. of this section. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. If the violation results in pecuniary gain to the violator, or the violator willfully or wantonly causes injury or damage to property, including but not limited to natural resources, the violator shall be liable to an additional civil penalty equal to three times the value of the pecuniary gain or injury or damage to property.

(b) In addition, for each subsequent violation, all license certificates required, and all privileges, to take or possess wildlife shall be suspended for a period of five years. A license certificate or privilege suspended pursuant to this subparagraph shall not be reinstated until the holder thereof has first completed, to the satisfaction of the Division of Fish and Wildlife, the approved remedial sportsmen education program established and conducted by the division pursuant to section 12 of P.L.1990, c.29 (C.23:3-22.3).

(3) Penalties assessed pursuant to this subsection shall be in addition to any other civil or criminal penalties that may be applicable pursuant to law.

3. R.S.32:14-20 is amended to read as follows:

Operation and use of facilities of park; licenses, privileges or franchises; rules and regulations; violations.

32:14-20. a. (1) Palisades Interstate Park Commission may erect and operate elevators and escalators at such places in the park as it may deem necessary or expedient. The commission may provide and operate or provide by lease, charter, concession, exclusive or nonexclusive privilege, or otherwise, for the operation of such other facilities, including hotels, restaurants, stands, booths, amusements, docks, wharves, and any and all means of transportation to, from or in the park, for the use and enjoyment of the park by the public and for increasing the accessibility thereof to the public as it may deem to be necessary or expedient. The commission may also provide at its discretion, by proper rules or regulations, the terms upon and the manner in which those facilities may be used. The commission shall not issue or consent to licenses, privileges, or franchises to individuals or corporations for the operation for private profit of any facility, utility, or device within the portions of the park in this State, except upon terms which will limit the operation of those licenses, franchises, or privileges to a period not exceeding 20 years in any event.

(2) No such license, privilege, or franchise shall be authorized or awarded except after proper advertisement and to the responsible person who will, in open competition, offer to pay to the commission the highest return therefor.

(3) All proceeds derived from the operation of those facilities or from any of the operations of the commission in this State shall be used by the commission for the development and management of the portions of the park in this State.

b. (1) The commission shall have power to make, alter, amend, and repeal rules and regulations for the use and government of the park as located within the limits of the State of New Jersey, and of those parts of the State, county, and other public highways as lie within the boundaries of those portions of the park and of all lands, parks, and parkways in this State under the jurisdiction of the commission. No rule or regulation made by the commission relating to traffic on the roads under the jurisdiction of the commission in the State of New Jersey shall require the approval of any other commission or of any board, nor the holding of a public hearing in connection with the adoption of the rule or regulation. No rule or regulation heretofore made by the commission relating to traffic shall be deemed to have required the approval of any other commission or board, or the holding of any public hearing in connection with the adoption of the rule or regulation.

c. (1) If a person violates any rule or regulation adopted or issued by the commission pursuant to subsection b. of this section, the commission may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation and the court may proceed in a summary manner.

(2) (a) A person who violates any rule or regulation adopted or issued by the commission pursuant to subsection b. of this section shall be guilty of a petty disorderly persons offense.

(b) In addition, a person who violates any rule or regulation adopted or issued by the commission pursuant to subsection b. of this section shall be liable to a civil penalty of not less than \$50 nor more than \$1,500, plus restitution if applicable, for each offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to hear and determine violations of subsection a. of this section. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. If the violation results in pecuniary gain to the violator, or the violator willfully or wantonly causes injury or damage to property, including but not limited to natural resources, the violator shall be liable to an additional civil penalty equal to three times the value of the pecuniary gain or injury or damage to property.

(c) Penalties assessed pursuant to this paragraph shall be in addition to any other civil or criminal penalties that may be applicable pursuant to law.

4. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 331

AN ACT concerning rights of surviving domestic partners and amending various sections of the statutory law.

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

1. 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, and 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 individual who is only a stepchild, a resource family 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.

"Descendant" of an individual means all of his progeny of all generations, with the relationship of parent and child at each generation being determined by the definition of child contained in this section and parent contained in N.J.S.3B:1-2.

"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 of a trust described by will, the 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.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"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 individual, 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 estate, 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.

"Governing instrument" means a deed, will, trust, insurance or annuity policy, account with the designation "pay on death" (POD) or "transfer on death" (TOD), security registered in beneficiary form with the designation "pay on death" (POD) or "transfer on death" (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

"Guardian" means a person who has qualified as a guardian of the person or estate of a minor or incapacitated individual pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

"Heirs" means those persons, including, but not limited to, the surviving spouse, the domestic partner and the descendants of the decedent, who are entitled under the statutes of intestate succession to the property of a decedent.

2. N.J.S.3B:5-3 is amended to read as follows:

Intestate share of decedent's surviving spouse or domestic partner.

3B:5-3. Intestate share of decedent's surviving spouse or domestic partner.

The intestate share of the surviving spouse or domestic partner is:

a. The entire intestate estate if:

- (1) No descendant or parent of the decedent survives the decedent; or
- (2) All of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and there is no other descendant of the surviving spouse or domestic partner who survives the decedent;

b. The first 25% of the intestate estate, but not less than \$50,000.00 nor more than \$200,000.00, plus three-fourths of any balance of the intestate

estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

c. The first 25% of the intestate estate, but not less than \$50,000.00 nor more than \$200,000.00, plus one-half of the balance of the intestate estate:

(1) If all of the decedent's surviving descendants are also descendants of the surviving spouse or domestic partner and the surviving spouse or domestic partner has one or more surviving descendants who are not descendants of the decedent; or

(2) If one or more of the decedent's surviving descendants is not a descendant of the surviving spouse or domestic partner.

3. N.J.S.3B:5-4 is amended to read as follows:

Intestate shares of heirs other than surviving spouse or domestic partner.

3B:5-4. Any part of the intestate estate not passing to the decedent's surviving spouse or domestic partner under N.J.S.3B:5-3, or the entire intestate estate if there is no surviving spouse or domestic partner, passes in the following order to the individuals designated below who survive the decedent:

- a. To the decedent's descendants by representation;
- b. If there are no surviving descendants, to the decedent's parents equally if both survive, or to the surviving parent;
- c. If there are no surviving descendants or parent, to the descendants of the decedent's parents or either of them by representation;
- d. If there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent, or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.
- e. If there is no surviving descendant, parent, descendant of a parent, or grandparent, but the decedent is survived by one or more descendants of grandparents, the descendants take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.
- f. If there are no surviving descendants of grandparents, then the decedent's step-children or their descendants by representation.

4. N.J.S.3B:5-14 is amended to read as follows:

Tenancy in common; marriage and domestic partnership settlements.

3B:5-14. Tenancy in common; marriage and domestic partnership settlements.

Property descending and distributable under this article to two or more persons shall devolve upon them as tenants in common. Nothing in this article shall be construed or taken to make void or in any way to affect any marriage settlement or settlement concerning a domestic partnership.

5. N.J.S.3B:5-15 is amended to read as follows:

Entitlement of spouse or domestic partner; premarital will.

3B:5-15. Entitlement of spouse or domestic partner; premarital will.

a. If a testator's surviving spouse married the testator after the testator executed the testator's will, or if a testator's domestic partner formed a domestic partnership with the testator after the testator executed the testator's will, the surviving spouse or domestic partner is entitled to receive, as an intestate share, no less than the value of the share of the estate the surviving spouse or domestic partner would have received if the testator had died intestate, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse or in contemplation of the testator's formation of a domestic partnership with the domestic partner;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage or domestic partnership; or

(3) the testator provided for the spouse or domestic partner by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

b. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse or domestic partner, if any, are applied first, and other devises shall abate ratably and in proportion to their respective interests therein.

c. Notwithstanding any other provision of law to the contrary, this section shall apply only to wills executed on or after September 1, 1978.

6. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to read as follows:

C.3B:7-1.1 Effect of intentional killing on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations.

58. Effect of intentional killing on intestate succession, wills, trusts, joint assets, life insurance and beneficiary designations.

a. An individual who is responsible for the intentional killing of the decedent forfeits all benefits under this title with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's, domestic partner's or child's share, exempt property and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his share.

b. The intentional killing of the decedent:

(1) revokes any revocable (a) disposition or appointment of property made by decedent to the killer in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the killer, (b) provision in a governing instrument conferring a general or special power of appointment on the killer or a relative of the killer, and (c) nomination in a governing instrument of the killer or a relative of the killer, nominating or appointing the killer or a relative of the killer to serve in any fiduciary or representative capacity; and

(2) severs the interests of the decedent and the killer in property held by them at the time of the killing as joint tenants with the right of survivorship or as tenants by the entireties, transforming the interests of the decedent and killer into tenancies in common.

c. For purposes of this chapter: (1) "governing instrument" means a governing instrument executed by the decedent; and (2) "relative of the killer" means an individual who is related to the killer by blood, adoption or affinity and who is not related to the decedent by blood or adoption or affinity.

7. N.J.S.3B:8-1 is amended to read as follows:

Elective share of surviving spouse or domestic partner of person dying domiciled in this State; conditions.

3B:8-1. Elective share of surviving spouse or domestic partner of person dying domiciled in this State; conditions.

If a married person or person in a domestic partnership dies domiciled in this State, on or after May 28, 1980, the surviving spouse or domestic partner has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated, provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death under the laws of this State.

8. N.J.S.3B:8-2 is amended to read as follows:

Elective share of surviving spouse or domestic partner of person dying not domiciled in this State.

3B:8-2. Elective share of surviving spouse or domestic partner of person dying not domiciled in this State.

If a married person or person in a domestic partnership not domiciled in this State dies, the right, if any, of the surviving spouse or domestic partner to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

9. N.J.S.3B:8-3 is amended to read as follows:

Meaning of "augmented estate."

3B:8-3. Meaning of "augmented estate."

The "augmented estate" means the estate reduced by funeral and administration expenses, and enforceable claims, to which is added the value of property transferred by the decedent at any time during marriage, or during a domestic partnership, to or for the benefit of any person other than the surviving spouse or domestic partner, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

a. Any transfer made after May 28, 1980, under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

b. Any transfer made after May 28, 1980, to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

c. Any transfer made after May 28, 1980, whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

d. Any transfer made, after May 28, 1980, if made within 2 years of death of the decedent, to the extent that the aggregate transfers to any one donee in either of the years exceed \$3,000.00.

10. N.J.S.3B:8-5 is amended to read as follows:

Transfers excluded.

3B:8-5. Transfers excluded.

Any transfer of property shall be excluded from the augmented estate under N.J.S.3B:8-3, if made with the written consent or joinder of the surviving spouse or domestic partner. There shall also be excluded from the

augmented estate any life insurance, accident insurance, joint annuity or pension payable to a person other than the surviving spouse or domestic partner.

11. N.J.S.3B:8-6 is amended to read as follows:

Other property to be included in augmented estate.

3B:8-6. Other property to be included in augmented estate.

There shall also be included in the augmented estate:

a. The value of property owned by the surviving spouse or domestic partner at the time of, or as a result of, the decedent's death to the extent that the property is derived from the decedent by means other than by testate or intestate succession without a full consideration in money or money's worth; and

b. The value of the property described in subsection a. hereof which has been transferred by the surviving spouse or domestic partner at any time during marriage or domestic partnership without a full consideration in money or money's worth to any person other than the decedent which would have been includable in the spouse's or domestic partner's augmented estate if the surviving spouse or domestic partner had predeceased the decedent.

Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

12. N.J.S.3B:8-7 is amended to read as follows:

Property derived from decedent.

3B:8-7. Property derived from decedent.

For the purposes of N.J.S. 3B:8-6, property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse or domestic partner in a trust created by the decedent during his lifetime, any property appointed to the spouse or domestic partner by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse or domestic partner, any proceeds of insurance, including accidental death benefits on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, the value of the share of the surviving spouse or domestic partner resulting from rights in community property acquired in any other state formerly owned

with the decedent and the value of any rights of dower and curtesy. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

13. N.J.S.3B:8-8 is amended to read as follows:

Valuation of property derived from decedent.

3B:8-8. Valuation of property derived from decedent.

For the purposes of valuing property derived from the decedent as provided in N.J.S. 3B:8-6:

- a. Property owned by the spouse or domestic partner at the decedent's death is valued as of the date of decedent's death; and
- b. Property transferred by the spouse or domestic partner is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurs first.

14. N.J.S.3B:8-9 is amended to read as follows:

Presumption as to property owned or previously transferred by spouse or domestic partner at decedent's death.

3B:8-9. Presumption as to property owned or previously transferred by spouse or domestic partner at decedent's death.

Property owned by the surviving spouse or domestic partner as of the decedent's death, or previously transferred by the surviving spouse or domestic partner, is presumed to have been derived from the decedent except to the extent that any party in interest establishes that it was derived from another source.

15. N.J.S.3B:8-10 is amended to read as follows:

Waiving right to an elective share.

3B:8-10. Waiving right to an elective share.

The right of election of a surviving spouse or domestic partner and the rights of the surviving spouse or domestic partner may be waived, wholly or partially, before or after marriage before, on or after May 28, 1980, by a written contract, agreement or waiver, signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or domestic partner or a complete property settlement entered into after or in anticipation of separation, divorce or termination of a domestic partnership is a waiver of all rights to an elective share by each spouse or domestic partner in the property of the other and a renunciation by each of

all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

16. N.J.S.3B:8-11 is amended to read as follows:

Who may exercise the right to take an elective share.

3B:8-11. Who may exercise the right to take an elective share.

The right of election to take an elective share by a surviving spouse or domestic partner may be exercised only during his lifetime. In the case of a surviving spouse or domestic partner for whom the court has appointed a guardian to manage his estate, the right of election may be exercised only by order of the court making the appointment after finding that the election is necessary to provide adequate support of the surviving spouse or domestic partner during his probable life expectancy.

17. N.J.S.3B:8-12 is amended to read as follows:

Filing complaint for elective share; extension of time.

3B:8-12. Filing complaint for elective share; extension of time.

The surviving spouse or domestic partner may elect to take his elective share in the augmented estate by filing a complaint in the Superior Court within 6 months after the appointment of a personal representative of the decedent's estate. The court may, before the time for election has expired and upon good cause shown by the surviving spouse or domestic partner, extend the time for election upon notice to persons interested in the estate and to distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

18. N.J.S.3B:8-13 is amended to read as follows:

Notice of hearing.

3B:8-13. Notice of hearing.

The surviving spouse or domestic partner shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

19. N.J.S.3B:8-14 is amended to read as follows:

Withdrawal of demand for an elective share.

3B:8-14. Withdrawal of demand for an elective share.

The surviving spouse or domestic partner may withdraw his demand for an elective share at any time before entry of a final judgment by the court.

20. N.J.S.3B:8-17 is amended to read as follows:

Value of surviving spouse's or domestic partner's interest in any life estate.

3B:8-17. Value of surviving spouse's or domestic partner's interest in any life estate.

In an action for an elective share, the electing spouse's or domestic partner's total or proportional beneficial interest in any life estate in real or personal property or in any trust shall be valued at one-half of the total value of the property or trust or of the portion of the property or trust subject to the life estate.

21. N.J.S.3B:8-18 is amended to read as follows:

Satisfaction of elective share.

3B:8-18. Satisfaction of elective share.

The amount of the surviving spouse's or domestic partner's elective share shall be satisfied by applying:

a. The value of all property, estate or interest therein, owned by the surviving spouse or domestic partner in his own right at the time of the decedent's death from whatever source acquired, or succeeded to by the surviving spouse or domestic partner as a result of decedent's death notwithstanding that the property, estate or interest or part thereof, succeeded to by the surviving spouse or domestic partner as the result of decedent's death has been renounced by the surviving spouse or domestic partner;

b. The value of the property described in subsection b. of N.J.S. 3B:8-6, and

c. The remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse or domestic partner is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

22. N.J.S.3B:8-19 is amended to read as follows:

Persons subject to contribution.

3B:8-19. Persons subject to contribution.

Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse or domestic partner. A person liable to contribution may choose to give up the property transferred to him or to pay its value as fixed in the manner provided in N.J.S.3B:8-4.

23. N.J.S.3B:10-2 is amended to read as follows:

To whom letters of administration granted.

3B:10-2. To whom letters of administration granted.

If any person dies intestate, administration of the intestate's estate shall be granted to the surviving spouse or domestic partner of the intestate, if he or she will accept the administration, and, if not, or if there be no surviving spouse or domestic partner, then to the remaining heirs of the intestate, or some of them, if they or any of them will accept the administration, and, if none of them will accept the administration, then to any other person as will accept the administration.

If the intestate leaves no heirs justly entitled to the administration of his estate, or if his heirs shall not claim the administration within 40 days after the death of the intestate, the Superior Court or surrogate's court may grant letters of administration to any fit person applying therefor.

24. N.J.S.3B:10-3 is amended to read as follows:

When spouse or domestic partner entitled to assets without administration.

3B:10-3. When spouse or domestic partner entitled to assets without administration.

Where the total value of the real and personal assets of the estate of an intestate will not exceed \$20,000.00, the surviving spouse or domestic partner upon the execution of an affidavit before the Surrogate of the county where the intestate resided at his death, or, if then nonresident in this State, where any of the assets are located, or before the Superior Court, shall be entitled absolutely to all the real and personal assets without administration, and the assets of the estate up to \$5,000.00 shall be free from all debts of the intestate. Upon the execution and filing of the affidavit as provided in this section, the surviving spouse or domestic partner shall have all of the rights, powers and duties of an administrator duly appointed for the estate. The surviving spouse or domestic partner may be sued and required to account as if he had been appointed administrator by the Surrogate or the Superior Court. The affidavit shall state that the affiant is the surviving spouse or domestic partner of the intestate and that the value of the intestate's real and personal assets will not exceed \$20,000.00, and shall set forth the residence of the intestate at his death, and specifically the nature, location and value of the intestate's real and personal assets. The affidavit shall be filed and recorded in the office of such Surrogate or, if the proceeding is before the Superior Court, then in the office of the clerk of that court. Where the affiant is domiciled outside this State, the Surrogate may authorize in writing that the affidavit be executed in the affiant's domicile before any of the officers

authorized by R.S.46:14-7 and R.S.46:14-8 to take acknowledgments or proofs.

25. N.J.S.3B:10-4 is amended to read as follows:

When heirs entitled to assets without administration.

3B:10-4. When heirs entitled to assets without administration.

Where the total value of the real and personal assets of the estate of an intestate will not exceed \$10,000.00 and the intestate leaves no surviving spouse or domestic partner, and one of his heirs shall have obtained the consent in writing of the remaining heirs, if any, and shall have executed before the Surrogate of the county where the intestate resided at his death, or, if then nonresident in this State, where any of the intestate's assets are located, or before the Superior Court, the affidavit herein provided for, shall be entitled to receive the assets of the intestate of the benefit of all the heirs and creditors without administration or entering into a bond. Upon executing the affidavit, and upon filing it and the consent, he shall have all the rights, powers and duties of an administrator duly appointed for the estate and may be sued and required to account as if he had been appointed administrator by the Surrogate or the Superior Court.

The affidavit shall set forth the residence of the intestate at his death, the names, residences and relationships of all of the heirs and specifically the nature, location and value of the real and personal assets and also a statement that the value of the intestate's real and personal assets will not exceed \$10,000.00.

The consent and the affidavit shall be filed and recorded, in the office of the Surrogate or, if the proceeding is before the Superior Court, then in the office of the clerk of that court. Where the affiant is domiciled outside this State, the Surrogate may authorize in writing that the affidavit be executed in the affiant's domicile before any of the officers authorized by R.S.46:14-7 and R.S.46:14-8 to take acknowledgments or proofs.

26. Section 2 of P.L.1995, c.130 (C.3B:30-2) is amended to read as follows:

C.3B:30-2 Definitions.

2. As used in the act:

"Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

"Devisee" means any person designated in a will to receive a disposition of real or personal property.

"Heirs" means those persons, including the surviving spouse or domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.

"Person" means an individual, a corporation, an organization or other legal entity.

"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

"Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

"Register" including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

"Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

"Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

"Security account" means: a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

"State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

27. N.J.S.3A:25-12 is amended to read as follows:

Distribution; when and how made.

3A:25-12. When a portion of the proceeds of real estate sold by judgment of the Superior Court to satisfy debts of a decedent is invested for the benefit of the surviving spouse or domestic partner during his or her lifetime, the court directing the sale, shall, upon the death of the life beneficiary, order the portion so invested to be distributed to the heirs or devisees of the person whose real estate was so sold in accordance with the law of descent or the will of the testator, as the case may be, unless the

amount realized from the sale of said real estate remaining after the investment of said portion for the benefit of the surviving spouse was insufficient to pay the debts of the decedent as proved and allowed in the proceedings in which said judgment to sell was made and, in such case, the court shall direct the payment of the balance of such debts out of said principal sum so invested, so far as it shall be adequate for that purpose, in pro rata shares according to the amount of such debts so proved and allowed and shall direct distribution of any balance of said principal sum, remaining after the payment of said debts and interest, among the said heirs and devisees as aforesaid. However, that if any creditor, his personal representative or successor in interest, neglects for six years after the death of such surviving spouse to claim any balance upon his claim so proved and allowed as aforesaid, the share of said principal sum which would have been paid to such creditor hereunder, shall be distributed, by order of the court, among the said heirs and devisees as aforesaid.

28. Section 1 of P.L.1979, c.484 (C.3A:25-39) is amended to read as follows:

C.3A:25-39 Definitions.

1. As used in this act:
 - a. A "present interest" is one to take effect in immediate possession, use or enjoyment without the intervention of a preceding estate or interest or without being dependent upon the happening of any event or thing.
 - b. A "future interest" is one to take effect in possession, use or enjoyment dependent upon the termination of an intervening estate or interest or the happening of any event or thing.
 - c. An "heir" means a person, including the surviving spouse or domestic partner, entitled under the statutes of intestate succession to the property of a decedent.
 - d. A "devisee" means any person designated in a will to receive a devise, but does not mean a trustee or trust designated in a will to receive a devise.
 - e. A "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.

29. Section 22 of P.L.2003, c.261 (C.45:27-22) is amended to read as follows:

C.45:27-22 Control of funeral, disposition of remains.

22. a. If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the

funeral and disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c.261 (C.3B:10-21.1). If the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other directions have been given by a court of competent jurisdiction:

- (1) The surviving spouse of the decedent or the surviving domestic partner.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.
- (5) Other next of kin of the decedent according to the degree of consanguinity.

(6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.

For purposes of this subsection "domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

(1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or

(2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. A person who signs an authorization for the funeral and disposition of human remains warrants the truth of the facts stated, the identity of the person whose remains are disposed and the authority to order the disposition. The person shall be liable for damages caused by a false statement or breach of warranty. A cemetery or funeral director shall not be liable for disposition in accordance with the authorization unless it had reasonable notice that the representations were untrue or that the person lacked the right to control the disposition.

e. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than one year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

30. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 332

AN ACT concerning criminal street gangs, amending P.L.1966, c.37, supplementing chapter 1 of Title 53 of the Revised Statutes 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.1966, c.37 (C.52:17B-5.3) is amended to read as follows:

C.52:17B-5.3 Quarterly crime report by local and county police; contents, incidence of street gang activity.

3. a. All local and county police authorities shall submit a quarterly report to the Attorney General, on forms prescribed by the Attorney General, which report shall contain the number and nature of offenses committed within their respective jurisdictions, the disposition of such matters, information relating to criminal street gang activities within their respective jurisdictions, and such other information as the Attorney General may require, respecting information relating to the cause and prevention of crime, recidivism, the rehabilitation of criminals and the proper administration of criminal justice.

b. A law enforcement officer who responds to an offense involving criminal street gang activity shall complete a gang related incident offense report on a form prescribed by the Superintendent of State Police. All information contained in the gang related incident offense report shall be forwarded to the appropriate county bureau of identification and to the Superintendent of State Police.

C.53:1-15.1 Designation of crime related to street gang activity; offense for which fingerprinting required.

2. a. Upon the arrest of any person for a crime or offense for which fingerprinting is required, the arresting officer shall designate whether the

crime or offense was related to criminal street gang activity on the form used for the collection of fingerprints pursuant to R.S.53:1-15. For the purposes of this section, a crime is related to criminal street gang activity if the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang as defined in subsection h. of N.J.S.2C:44-3.

b. The form used for the collection of fingerprints pursuant to R.S.53:1-15 shall include a place for the arresting officer to designate whether the crime or offense was related to criminal street gang activity.

3. There is appropriated \$70,000 from the General Fund to the Department of Law and Public Safety to effectuate the purposes of this act.

4. This act shall take effect on the first day of the seventh month following enactment.

Approved January 12, 2006.

CHAPTER 333

AN ACT concerning domestic violence and amending N.J.S.2C:29-9.

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

1. N.J.S.2C:29-9 is amended to read as follows:

Contempt.

2C:29-9. Contempt. a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

b. Except as provided below, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a disorderly persons offense if that person

knowingly violates an order entered under the provisions of this act or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this subsection.

As used in this subsection, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by a federal law or formally acknowledged by a state.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 334

AN ACT concerning health benefits for certain dependents of certain employees and amending P.L.1979, c.391 and N.J.S.40A:10-16.

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

1. Section 1 of P.L.1979, c.391 (C.18A:16-12) is amended to read as follows:

C.18A:16-12 Definitions relative to group insurance.

1. As used in this act:

a. "Dependents" means an employee's spouse and the employee's unmarried children, including stepchildren, legally adopted children, and, at the option of the local board of education and the carrier, children placed by the Department of Human Services with a resource family, under the age of 19 who live with the employee in a regular parent-child relationship, and may also include, at the option of the local board of education and the carrier, other unmarried children of the employee under the age of 23 who are dependent upon the employee for support and maintenance, but shall not include a spouse or child while serving in the military service. At the option of the local board of education, "dependent" may include an employee's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3);

b. "Employees" may, at the option of the local board of education, include elected officials, but shall not include persons employed on a short-term, seasonal, intermittent or emergency basis, persons compensated on a fee basis, or persons whose compensation from the local board of education is limited to reimbursement of necessary expenses actually incurred in the discharge of their duties;

c. "Federal Medicare Program" means the coverage provided under Title XVIII of the Social Security Act as amended in 1965, or its successor plan or plans.

2. N.J.S.40A:10-16 is amended to read as follows:

Definitions.

40A:10-16. As used in this subarticle:

a. "Dependents" means an employee's spouse and the employee's unmarried children, including stepchildren, legally adopted children, and, at the option of the employer and the carrier, children placed by the Division of Youth and Family Services, under the age of 19 who live with the employee in a regular parent-child relationship, and may also include, at the option of the employer and the carrier, other unmarried children of the employee under the age of 23 who are dependent upon the employee for support and maintenance, but shall not include a spouse or child while serving in the military service. At the option of the employer, "dependent" may include an employee's domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3);

b. "Employees" may, at the option of the employer, include elected officials, but shall not include persons employed on a short-term, seasonal, intermittent or emergency basis, persons compensated on a fee basis, or persons whose compensation from the employer is limited to reimbursement of necessary expenses actually incurred in the discharge of their duties;

c. "Federal Medicare Program" means the coverage provided under Title XVIII of the Social Security Act as amended in 1965, or its successor plan or plans.

C.26:8A-13 Dependent health benefits for domestic partners continued after retirement from certain local public employment.

3. In cases where entities choose to provide dependent health benefits coverage to employees' domestic partners pursuant to section 1 of P.L.1979, c.391 (C.18A:16-12) or N.J.S.40A:10-16, such coverage shall continue during the employees' retirement under the provisions of sections 7 and 8 of P.L.1979, c.391 (C.18A:16-18 and C.18A:16-19), N.J.S. 40A:10-22 and N.J.S. 40A:10-23. Nothing in this section shall be construed to limit an

entity's right to extend benefits to, or withdraw benefits from, an employee or dependents of an employee.

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

Approved January 12, 2006.

CHAPTER 335

AN ACT concerning certain State-owned property and removal of certain use restrictions and revising P.L.1988, c.135.

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

1. Section 2 of P.L.1988, c.135 is amended to read as follows:
2. Except as provided in P.L.2005, c.335, any part of the following parcels of land, owned by the State and located in Montgomery Township, Somerset County, which on the effective date of this act is used for agricultural purposes shall, in perpetuity, be restricted to agricultural or horticultural use or conservation or recreation purposes and shall not be used for any other purpose: Block 25001, Lot 27; Block 27001, Lot 7; and Block 26001, Lot 1, excluding the part of Block 26001, Lot 1 the sale of which is authorized by section 1 of this act, on the Township of Montgomery tax map.
2. The Department of the Treasury is authorized to sell and convey to the County of Somerset a portion of the State's property in Block 25001, Lot 27 on the tax map of Montgomery Township, not to exceed one acre, for purposes of a roadway improvement project to be constructed by the County of Somerset at the intersection of Somerset County Route No. 601 and County Route 602. The sale and conveyance shall be in accordance with such terms and conditions as approved by the State House Commission. Any proceeds from the sale of this property shall be deposited in the General Fund of the State.
3. Notwithstanding the provisions of any law, rule or regulation to the contrary, the portion of State property conveyed in accordance with section 2 of this act is excluded from the restriction to agricultural or horticultural use or conservation or recreation purposes as set forth in P.L.1988, c.135.

4. Notwithstanding the provisions of any law, rule or regulation to the contrary, to the extent that a portion of Block 26001, Lot 1, not to exceed one acre, is conveyed to the County of Somerset or the Township of Montgomery for purposes of a roadway improvement project at the intersection of Somerset County Route No. 601 and County Route 602, that portion is excluded from the restriction to agricultural or horticultural use or conservation or recreation purposes as set forth in P.L.1988, c.135.

5. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 336

AN ACT concerning the State contracting process and the public officers and employees involved in the process, amending and supplementing various parts of the statutory law.

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

C.52:34-10.1 Communications with bidders limited; records.

1. A communication relative to any advertised procurement by a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall be limited to the individual or entity designated by the agency as responsible for the procurement. An officer or employee of a State agency who communicates with a bidder, or potential bidder, or any person acting on behalf thereof, for a public contract regarding that contract shall maintain a written record of each communication from the date of the advertisement for bids to the date the contract is awarded. The State agency shall retain the record of each communication for the term of the contract and at least three years thereafter, or such longer period as may be established in the agency's record retention schedule.

C.52:34-10.2 Issuance of notice on Internet.

2. A State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11) that is authorized by law to engage in the procurement of goods or services may, when deemed appropriate, issue on the Internet a notice of the agency's intent to advertise specifications and invitations for bids preliminary to the awarding of a contract and request information thereto from potential bidders. The purpose of such notice shall be to solicit comments from potential bidders on the nature and content of the specifica-

tions and to answer such questions as the potential bidders may have prior to the advertisement for bids. If such a notice is issued, an officer or employee of the State agency who communicates with a potential bidder, or any person acting on behalf thereof, shall maintain a written record of each such communication from the date of the issuance of the notice on the Internet until the date of the advertisement for bids.

C.52:34-10.3 Regulations relative to evaluation committee.

3. a. When a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), is a contracting agency, the members of any evaluation committee shall have no personal interest, financial or familial, in any of the contract vendors, or principals thereof, to be evaluated. This provision shall apply whether the members of such committee are appointed by the Director of the Division of Purchase and Property or pursuant to any other procedure as appropriate to the contracting agency.

b. When a State agency is a contracting agency for a contract that includes, but is not limited to, the financing of a capital project, one member of any evaluation committee, whether appointed by the Director of the Division of Purchase and Property or pursuant to any other procedure as appropriate to the contracting agency, shall be a person proficient in the financing of public projects. When a contract encompasses a purchase of information technology goods or services, including the creation or modification of such technology, one member of any evaluation committee shall be a person proficient in such technology for public projects.

c. In all cases, persons appointed to an evaluation committee shall have the relevant experience necessary to evaluate the project. When the contract is awarded, the names of the members of any evaluation committee shall be made public and the members' names, educational and professional qualifications, and practical experience, that were the basis for the appointment, shall be reported to the State Treasurer.

C.52:34-10.4 Regulations for contract oversight and performance; complaint resolution.

4. The Director of the Division of Purchase and Property in the Department of the Treasury shall promulgate regulations, applicable to all contracts for which the director is responsible, that establish procedures for (1) contract oversight and the monitoring of contract performance; and (2) complaint resolution. The director shall establish a vendor performance database.

C.52:34-10.5 Periodic report on value of goods and services purchased.

5. Whenever a governmental entity in this State is authorized to purchase any goods or services under any contract or contracts entered into on behalf of the State by the Division of Purchase and Property in the

Department of the Treasury, the contractor shall report periodically to the division the value of the goods and services, not including proprietary information, purchased by such governmental entities. The division shall by regulation provide for the content of such reports, how often they are to be made, and the form to be used for the making of such reports.

C.52:34-10.6 Purchase of equipment, goods or services related to homeland security, domestic preparedness.

6. a. Notwithstanding the provisions of any law to the contrary, any purchase by the State or by a State agency or local government unit of equipment, goods or services related to homeland security and domestic preparedness, that is paid for or reimbursed by federal funds awarded by the U.S. Department of Homeland Security or other federal agency, may be made through the receipt of public bids or as an alternative to public bidding and subject to the provisions of this section, through direct purchase without advertising for bids or rejecting bids already received but not awarded.

b. The equipment, goods or services purchased by a local government unit shall be referred to in the grant agreement issued by the State administrative agency administering such funds and shall be authorized by resolution of the governing body of the local government unit entering into the grant agreement. Such resolution may, without subsequent action of the local governing body, authorize the contracting agent of the local government unit to procure the equipment, goods or services. A copy of such resolution shall be filed with the chief financial officer of the local government unit, the State administrative agency and the Division of Local Government Services in the Department of Community Affairs.

c. Purchases made without public bidding shall be from vendors that shall either (1) be holders of a current State contract for the equipment, goods or services sought, or (2) be participating in a federal procurement program established by a federal department or agency, or (3) have been approved by the State Treasurer in consultation with the New Jersey Domestic Security Preparedness Task Force. All homeland security purchases herein shall continue to be subject to all grant requirements and conditions approved by the State administrative agency.

d. The Director of the Division of Purchase and Property may enter into or participate in purchasing agreements with one or more other states, or political subdivisions or compact agencies thereof, for the purchase of such equipment, goods or services to meet the domestic preparedness and homeland security needs of this State. Such purchasing agreement may provide for the sharing of costs and the methods of payments relating to such purchases.

C.52:34-10.7 Responsibilities of State Contract Manager for a contract.

7. The State Contract Manager shall be the State employee who shall be responsible for the overall management and administration of a State contract entered into on behalf of the State by the Division of Purchase and Property in the Department of the Treasury. The State agency using the contract shall designate the State Contract Manager for that contract and inform the Director of the Division of Purchase and Property of its designation, except that the director may designate the State Contract Manager when the director deems necessary.

The State Contract Manager for each contract shall be identified at the time of execution of the contract. At that time, the contractor shall be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and E-mail address.

For a contract where only one State agency uses the contract, the State Contract Manager shall be responsible for engaging the contractor, assuring that purchase orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager shall be the person that the contractor contacts after the contract is executed for answers to any questions and concerns about any aspect of the contract. The State Contract Manager shall be responsible for coordinating the use and resolving minor disputes between the contractor and the State agency.

If the contract has multiple users, the director may designate the State Contract Manager for that contract. The State Contract Manager shall be the central coordinator of the use of the contract for all using agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract shall notify and coordinate the use of the contract with the State Contract Manager.

The State Contract Manager shall have the following additional duties:
if the State Contract Manager determines that the contractor has failed to perform the required work and is unable to resolve that failure to perform directly with the contractor, the State Contract Manager shall file a formal complaint with the contract compliance unit in the Division of Purchase and Property and request that office to assist in the resolution of the contract performance problem with the contractor;

the State Contract Manager shall be responsible for arranging for contract extensions and preparing any re-procurement of the contract with the Purchase Bureau;

the State Contract Manager shall be responsible for obtaining permission from the director to reduce the scope of work, amend the contract or add work or special projects to the contract after contract award;

the State Contract Manager shall be responsible for completion of a project performance assessment form for submission to the division, with a copy to the Office of Management and Budget; and

the State Contract Manager shall be responsible for submitting the contractor final deliverables to the Associate Director of the Office of Management and Budget.

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor cannot resolve a dispute with contract users.

C.52:34-10.8 Contracts for professional services.

8. Contracts awarded for professional services by a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall be contracts only for services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training. Professional services contracts shall also include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor. Professional services contracts shall also include contracts for extraordinary unspecifiable services if, after evaluation and assessment, such services are determined to be such that they cannot reasonably be described by written specifications.

C.52:34-10.9 Filing of disclosure statement of State officers or employees.

9. A State officer or employee, or special State officer or employee, of a State agency, as defined in section 11 of P.L.2005, c.336 (C.52:34-10.11), shall file, in writing, with the head of the State agency and the Executive Commission on Ethical Standards, for the period covering five years prior to taking office or commencing employment to the date of filing, a disclosure statement in a form to be determined by the Executive Commission on Ethical Standards.

C.52:34-10.10 Investigation of vendor challenges.

10. The Director of the Division of Purchase and Property shall institute a process whereby vendor challenges to the division's procurement process are investigated and considered by hearing officers appointed by the director and independent of the division's procurement process, and are resolved by

written final agency determination of the director. Such challenges shall not be contested cases subject to the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and the regulations promulgated pursuant to that act. A final agency determination shall be appealable to the Appellate Division of New Jersey Superior Court.

C.52:34-10.11 "State agency" defined, adoption of procurement practices by Judicial branch, legislative branch.

11. a. As used in sections 1,2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9), "State agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such principal department, and any independent State authority, commission, instrumentality or agency.

b. The Administrative Director of the Courts, in consultation and cooperation with the Director of the Division of Purchase and Property in the Department of the Treasury, shall adopt procurement and contracting processes for the Judicial Branch of the State that are consistent with the intent of sections 1, 2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9).

c. The Legislature, in consultation and cooperation with the Director of the Division of Purchase and Property, shall adopt procurement and contracting processes for the Legislative Branch of the State that are consistent with the intent of sections 1, 2, 3, 8, and 9 of P.L.2005, c.336 (C.52:34-10.1, C.52:34-10.2, C.52:34-10.3, C.52:34-10.8, and C.52:34-10.9).

12. Section 1 of P.L.1996, c.16 (C.52:34-6.1) is amended to read as follows:

C.52:34-6.1 Purchase of goods, services from Federal Supply Schedules for State agencies, federal procurement programs.

1. Notwithstanding the provisions of P.L.1954, c.48 (C.52:34-6 et seq.) to the contrary, the Director of the Division of Purchase and Property in the Department of the Treasury shall promulgate the Federal Supply Schedules of the Federal General Services Administration or schedules from other federal procurement programs pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as an alternate price guide for the purchase of goods and services for State agencies and for the entities defined in section 1 of P.L.1959, c.40 (C.52:27B-56.1), subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

- (2) (Deleted by amendment, P.L.2005, c.336.);
- (3) the State receives the benefit of federally mandated price reductions during the term of the contract; and
- (4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the State determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the State.

13. Section 7 of P.L.1996, c.16 (C.52:34-6.2) is amended to read as follows:

C.52:34-6.2 Cooperative purchasing agreements with other states for purchase of goods, services; rules, regulations.

7. a. Notwithstanding the provisions of any other law to the contrary except the provisions of R.S.30:4-95, and as an alternative to the procedures concerning the awarding of public contracts provided in P.L.1954, c.48 (C.52:34-6 et seq.), the Director of the Division of Purchase and Property in the Department of the Treasury may enter into cooperative purchasing agreements with one or more other states, or political subdivisions thereof, for the purchase of goods and services. A cooperative purchasing agreement shall allow the jurisdictions which are parties thereto to standardize and combine their requirements for the purchase of a particular good or service into a single contract solicitation which shall be competitively bid and awarded by one of the jurisdictions on behalf of jurisdictions participating in the contract.

b. (1)The director may elect to purchase goods or services through a contract awarded pursuant to a cooperative purchasing agreement whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded or already awarded through a cooperative purchasing agreement, the director shall review and approve the specifications and proposed terms and conditions of the contract.

(2) The director may also elect to purchase goods or services through a contract awarded pursuant to a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, in which other states participate, whenever the director determines this to be the most cost-effective method of procurement. Prior to entering into any contract to be awarded through a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process, the director shall review

and approve the specifications and proposed terms and conditions of the contract.

c. The director may solicit bids and award contracts on behalf of this State and other jurisdictions which are parties to a cooperative purchasing agreement provided that the agreement specifies that each jurisdiction participating in a contract is solely responsible for the payment of the purchase price and cost of purchases made by it under the terms of any contract awarded pursuant to the agreement.

d. The director may promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), which are necessary to effectuate the purposes of this section.

14. Section 7 of P.L.1954, c.48 (C.52:34-12) is amended to read as follows:

C.52:34-12 State advertisement for bids.

7. a. Whenever advertising is required: (a) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the using agency and shall, wherever practicable, include such factors as life-cycle costs, sliding percentage preference scales, or other similar analysis as shall be deemed effective by the Director of the Division of Purchase and Property, hereinafter referred to as the director, (b) the advertisement for bids shall be in such newspaper or newspapers and other medium or media selected by the State Treasurer as will best give notice thereof to bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (c) the advertisement shall designate the time and secure location when and where proposals, which may be submitted in electronic or other format designated by the director, shall be received, opened and publicly announced, the amount of the cash or certified check, if any, which must accompany each bid, and such other terms as the State Treasurer may deem proper; (d) notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a newspaper or newspapers and other medium or media selected by the State Treasurer to give notice to bidders at least seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date; (e) failure 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 paragraph (d) of this subsection shall prevent the acceptance of bids and require the readvertisement for bids; (f) for any procurement, the State Treasurer or the director may negotiate with bidders the final terms and conditions of any procurement, including price; such ability to so

negotiate must be expressly set forth in the applicable invitation to bid and such bids shall not be publicly accessible until after negotiations have been completed and the notice of intent to award the contract has been issued; (g) award shall be made with reasonable promptness, after negotiation with bidders where authorized, by written or electronic notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered; and (h) the Treasurer shall require, with respect to contracts for information technology goods and services, a limitation of liability determined by the Director of the Division of Purchase and Property. When negotiations occur pursuant to paragraph (f) of this subsection, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall become a public record when the notice of intent to award the contract is issued.

Any or all bids may be rejected when the State Treasurer or the Director of the Division of Purchase and Property determines that it is in the public interest so to do. The State Treasurer or designee may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement the provisions of this section.

This subsection shall apply to all bids received on and after the date of enactment of P.L.1999, c.440.

b. Whenever by law a State independent authority may negotiate with bidders, after bid opening, the final terms and conditions of any procurement, including price, and such ability to so negotiate is expressly set forth in the applicable invitation to bid, a written record of the nature and content of the negotiations, as well as the dates and persons involved, shall not be publicly accessible until after the notice of intent to award the contract is issued.

15. Section 1 of P.L.1986, c.26 (C. 52:34-12.1) is amended to read as follows:

C.52:34-12.1 Awarding of contracts to multiple bidders.

1. a. When awarding contracts pursuant to section 7 of P.L.1954, c.48 (C.52:34-12), the Director of the Division of Purchase and Property may make awards to multiple bidders, to furnish the same or similar materials, supplies, services or equipment, where multiple bidders are necessary:

- (1) to furnish the quantities required by using agencies;
- (2) to provide expeditious and cost-efficient local deliveries to using agencies;
- (3) to enable using agencies to purchase materials, supplies, services or equipment which are compatible with those previously purchased;

(4) to provide for standardization of equipment, interchangeability of parts or continuation of services;

(5) to provide using agencies or participants in cooperative purchasing arrangements with a diversity of product choices to meet the collective safety, environmental or technological needs of such agencies or cooperative purchasers; or

(6) when the director determines that multiple awards are necessary to serve the State's interests.

b. The director may determine whether the anticipated use of a contract by entities authorized by law to participate in cooperative purchasing arrangements with the State justifies awarding a contract to multiple bidders on the basis of any one or more of the criteria set forth in subsection a. of this section.

c. Where multiple contracts have been awarded pursuant to subsection a. of this section, a using agency shall make purchases from that contractor whose contract terms and conditions are most advantageous to the agency, price and other factors considered.

d. All purchases made by using agencies under subsection c. of this section shall be reported to the director, in a manner prescribed by the director. The report shall include the reasons for selecting a particular contractor under subsection c. of this section.

e. (Deleted by amendment, P.L.2005, c.336.)

16. R.S.52:25-23 is amended to read as follows:

Purchasing authority delegation for amounts under \$25,000; under \$250,000, certain.

52:25-23. The Director of the Division of Purchase and Property may, by written order, delegate purchasing authority to the using agencies for purchases or contracts not in excess of \$25,000.00; except that:

a. Purchases or contracts shall not be divided to circumvent the dollar limit imposed by this section;

b. Prior to issuing purchase orders pursuant to this section, a using agency shall verify the existence of funds for the purchase or contract and shall verify that the article or service to be purchased or contracted for is not available under any of the contracts issued by the Division of Purchase and Property; and

c. Records of all purchases made or contracts negotiated under this section shall be maintained by the using agency and made available for audit by or under the direction of the Director of the Division of Purchase and Property and shall include proper proof that the purchase or contract was made or negotiated competitively, where competition is practicable.

The Director of the Division of Purchase and Property may, by written order, rescind or reduce the level of purchasing authority delegated to any using agency determined by the director to have violated the provisions of the delegated authorization.

d. The director may, by written order, delegate purchasing authority to a specific agency for advertisement of purchases or contracts not in excess of \$250,000, subject to the requirements set forth in this section, when the director has determined that such purchases or contracts are for the procurement of goods or services which are unique to the operations of that particular using agency and are not common or similar to goods or services used by other State agencies and, therefore, are not suitable for leveraging with other State agency procurements.

17. This act shall take effect on the first day of the third month following enactment.

Approved January 12, 2006.

CHAPTER 337

AN ACT concerning temporary disability benefits and amending R.S.43:21-30.

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

1. Section 6 of P.L.1948, c.110 (C.43:21-30) is amended to read as follows:

C.43:21-30 Nonduplication of benefits, exceptions, certain.

6. Nonduplication of benefits. (a) No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the federal government, except that:

(1) If a claimant is otherwise eligible for benefits under P.L.1948, c.110 (C.43:21-25 et seq.) and benefits are also paid or payable to the claimant under a disability benefit law of another state, the claimant shall be paid the benefits provided by P.L.1948, c.110 (C.43:21-25 et seq.), reduced by the amount paid concurrently under the provisions of the other state's law; and

(2) If a claimant is otherwise eligible for benefits under P.L.1948, c.110 (C.43:21-25 et seq.) and benefits are also paid or payable to the claimant under a disability or cash sickness program known as maintenance and cure as provided under the federal maritime law commonly referred to as the Jones Act, the claimant shall be paid the benefits provided by P.L.1948, c.110 (C.43:21-25 et seq.), reduced by the amount paid concurrently under the provisions of the maintenance and cure program.

(b) No benefits shall be required or paid under this act for any period with respect to which benefits, other than benefits for permanent partial or permanent total disability previously incurred, are paid or payable on account of the disability of the covered individual under any workers' compensation law, occupational disease law, or similar legislation, of this State or of any other state or the federal government, except that:

(1) Where a claimant's claim for compensation for temporary disability, under the provisions of subsection a. of R.S.34:15-12, is contested, and thereby delayed, and such claimant is otherwise eligible for benefits under this chapter, said claimant shall be paid the benefits provided by this chapter until and unless said claimant receives compensation under the provisions of subsection a. of R.S.34:15-12;

(2) In the event that workers' compensation benefits, other than benefits for permanent partial or permanent total disability previously incurred, are subsequently awarded for weeks with respect to which the claimant has received disability benefits pursuant to this act, the State fund, or the private plan, as the case may be, shall be entitled to be subrogated to such claimant's rights in such award to the extent of the amount of disability payments made hereunder; and

(3) If there has been a settlement of a workers' compensation claim pursuant to R.S.34:15-20 in an amount less than that to which the claimant would otherwise be entitled as disability benefits under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), for the same illness or injury, the claimant shall be entitled to disability benefits for the period of disability, reduced by the amount from the settlement received by the claimant under R.S.34:15-20. The State fund or a private plan seeking to recover any amount of disability benefit payments from a workers' compensation award shall be required to demonstrate that the recovery is in compliance with the provisions of this section.

(c) Disability benefits otherwise required under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.) shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his most recent employer contributed on his behalf.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 338

AN ACT concerning "The New Jersey Alternative Procedure for Dispute Resolution Act" and amending P.L.1987, c.54.

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

1. Section 19 of P.L.1987, c.54 (C.2A:23A-19) is amended to read as follows:

C.2A:23A-19 Superior Court jurisdiction of proceedings.

19. Whenever a party to an agreement for alternative resolution has the right to apply to the Superior Court under this act, those proceedings shall be heard in accordance with any rules adopted by the New Jersey Supreme Court. These proceedings shall be summary in nature and expedited. This act shall be liberally construed to effectuate its remedial purpose of allowing parties by agreement to have resolution of factual and legal issues in accordance with informal proceedings and limited judicial review in an expedited manner.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 339

AN ACT establishing the Special Education Review Commission.

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

1. The Legislature finds and declares that:
 - a. the proportion of the total State public education enrollment that is classified for special education services has steadily increased over the past seven years;

b. students are classified into Tiers according to the special education services needed, with the services provided to students in Tier II being the least costly and the services provided to students in Tier IV being the most costly;

c. over the past seven years, the number of students classified in Tier IV has grown from 10,175 to 28,424, an increase of 18,249 (179%), while the number of students classified in Tier II has grown from 111,620 to 112,052, an increase of 432 (.4%);

d. in the 553 nonvocational school districts with a resident enrollment greater than 100, there is great variation in the percent that classified students make up of a district's total residential enrollment: the median percent is 13.8%; the maximum percent is 32.4%; and the minimum percent is 5.3%;

e. while the cost factors published in the Biennial Report on the Cost of Providing a Thorough and Efficient Education used to calculate special education aid have increased since the 2001-02 school year, there has been no increase in State aid for special education during this time;

f. the number of special education students whose costs are in excess of \$40,000 is increasing dramatically, from 946 in the 1997-98 school year to 7,212 in the 2003-04 school year;

g. of the number of special education students whose costs are in excess of \$40,000, the number sent to institutions out-of-State has increased from 113 to 189 (67.3%) and the total cost has increased from \$9.2 million to \$14.4 million (57.5%) over the past three years;

h. with increased numbers of special education students and no increase in State aid for special education since the 2001-02 school year, the costs for special education are increasingly being borne by local school districts;

i. federal aid for special education, while increasing in the past few years, is still below the 40% commitment contained in the original federal legislation and in light of the federal formula for funding special education in the states, every dollar New Jersey receives is actually worth about \$.67 with respect to the average per pupil expenditure in New Jersey;

j. the State and its school districts face a considerable amount of uncertainty and costs with respect to implementing the requirements to include special education students in the Statewide assessments and in the measurement of school and school district adequate yearly progress under the federal "No Child Left Behind Act of 2001";

k. the recently enacted "Individuals with Disabilities Education Improvement Act of 2004" includes changes to the "Individuals with Disabilities Education Act" which will impact the delivery of special education services in New Jersey; and

l. given the issues the State faces with regard to special education, it is timely for the Legislature to establish a Special Education Review Com-

mission to review the delivery, quality and cost of special education services in New Jersey.

2. There is established a commission to be known as the Special Education Review Commission. The commission shall consist of 30 members as follows: two members of the Senate to be appointed by the President of the Senate who shall not be of the same political party; two members of the General Assembly to be appointed by the Speaker of the General Assembly who shall not be of the same political party; the Commissioner of Education, ex officio, or a designee; the Commissioner of Health and Senior Services, ex officio, or a designee; the Commissioner of Human Services, ex officio, or a designee; the Attorney General, ex officio, or a designee; an Executive Co-Director of the Statewide Parent Advocacy Network, or a designee; one member each to be appointed by the Arc of New Jersey, the New Jersey Developmental Disabilities Council, the New Jersey Association of School Administrators, the New Jersey Association of School Business Officials, the New Jersey Education Association, the New Jersey Parent-Teacher Association, the New Jersey Principals and Supervisors Association, the Garden State Coalition of Schools, the New Jersey Speech-Language Hearing Association, the Council of Private Schools for Children with Special Needs, ASAH, the Department of Education's Advisory Committee on Nonpublic Schools and the New Jersey School Boards Association; and eight members to be appointed by the Governor, one of whom shall be from a county special services school district, two of whom shall be public members who are either gifted disabled individuals or parents of gifted disabled individuals, and five of whom shall be public members knowledgeable about the disabilities requiring special education services and experienced in the delivery of those services.

3. Appointments to the commission shall be made within 30 days of the effective date of this act. 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 shall be entitled to their actual and necessary expenses incurred in the performance of their duties pursuant to this act.

4. a. The commission shall organize within 30 days after the appointment of its members and shall select a chairperson and a vice-chairperson from among its members and a secretary who need not be a member of the commission.

b. Staff and related support services shall be provided to the commission by the Department of Education. The commission shall also be entitled

to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

5. It shall be the duty of the commission to study the issues associated with the delivery, quality, cost and funding of special education services for New Jersey students. The commission shall include in its study the unique issues of gifted and disabled individuals who are students at elementary or secondary schools. In studying the issues of gifted and disabled individuals the commission shall assess ways to improve access to available services, reduce duplications of effort and create new programming to meet those needs that are not currently being met.

6. The commission may meet and hold hearings at the place or places it designates during the sessions or recesses of the Legislature and shall issue a final report of its findings and recommendations, including any recommended legislation, to the Governor and the Legislature no later than the 180th day following its organizational meeting.

7. This act shall take effect immediately and the commission shall expire upon submission of its report to the Governor and Legislature pursuant to section 6 of this act.

Approved January 12, 2006.

CHAPTER 340

AN ACT concerning the taking of striped bass and amending P.L.1987, c.83.

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

1. Section 1 of P.L.1987, c.83 (C.23:5-45.1) is amended to read as follows:

C.23:5-45.1 Daily limit for taking striped bass.

1. a. Except as permitted pursuant to subsection c. of this section, a person shall not take from the marine waters or other waters of the State in any one day, or have in the person's possession at any time, more than two striped bass. Each of the striped bass taken in accordance with this subsection shall be at least 28 inches in length.

b. A person shall not fillet, or remove the head or tail, or parts thereof, of any striped bass at sea, except this subsection shall not apply to striped bass that have been filleted under authority of, and in accordance with, a special permit therefor which may be issued by the Commissioner of Environmental Protection to an inspected vessel licensed to accommodate 15 or more passengers.

c. The Commissioner of Environmental Protection, by public notice placed in the New Jersey Register, shall establish management measures for striped bass in and upon the marine waters and other waters of the State, which management measures shall be consistent with the Striped Bass Management Plan of the Atlantic States Marine Fisheries Commission. Upon the approval of the Atlantic States Marine Fisheries Commission, these management measures shall provide for the taking in one day, or the possession at any time, of striped bass in addition to the two striped bass permitted pursuant to subsection a. of this section and shall include the size and quantity limits and the areas and the seasons for the taking of such additional striped bass.

The department shall monitor the catch provided for in this subsection and provide for its discontinuance as necessary to keep the State in compliance with the allowances of the commission.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 341

AN ACT concerning coverage provided to State employees and retirees under the State Health Benefits Program and amending P.L.1961, c.49 and P.L.1996, c.8.

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

1. Section 4 of P.L.1961, c.49 (C.52:14-17.28) is amended to read as follows:

C.52:14-17.28 Purchase of contracts.

4. The commission shall negotiate with and arrange for the purchase, on such terms as it deems to be in the best interests of the State and its

employees, from carriers licensed to operate in the State, contracts providing hospital, surgical, obstetrical, medical and major medical expense benefits covering employees of the State and their dependents, and shall execute all documents pertaining thereto for and on behalf and in the name of the State. The commission shall not enter into a contract under this act unless the benefits provided thereunder equal or exceed the minimum standards specified in section 5 of P.L.1961, c.49 (C.52:14-17.29) for the particular coverage which such contract provides, and unless coverage is available to all eligible employees and their dependents on the basis specified by section 7 of P.L.1961, c.49 (C.52:14-17.31), except that a State employee enrolled in the program on or after July 1, 2003 and all law enforcement officers employed by the State for whom there is a majority representative for collective negotiation purposes may not be eligible for coverage under the traditional plan as defined in section 2 of P.L.1961, c.49 (C.52:14-17.26) pursuant to a binding collective negotiations agreement or pursuant to the application by the commission, in its sole discretion, of the terms of any collective negotiations agreement binding on the State to State employees for whom there is no majority representative for collective negotiations purposes.

2. Section 6 of P.L.1996, c.8 (C.52:14-17.28b) is amended to read as follows:

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

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

employees deemed or considered to be employees of the State pursuant to subsection (c) of section 2 of P.L.1961, c.49 (C.52:14-17.26).

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

(2) Notwithstanding the provisions of any other law to the contrary, and except as otherwise provided by section 8 of P.L.1961, c.49 (C.52:14-17.32) as amended by P.L.2005, c.341, for each State employee who accrues 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems on or after July 1, 1997, excepting the employee who elects deferred retirement, the State, upon the employee's retirement, shall pay the premium or periodic charges for the health benefits provided to a retired State employee and dependents covered under the State Health Benefits Program, but not including survivors, and shall reimburse the retired employee for premium charges under Part B of Medicare covering the retired employee and the employee's spouse: (a) in accordance with the provisions, if any, concerning health benefits coverage in retirement which are in the collective negotiations agreement applicable to the employee at the time of the employee's accrual of 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems, or (b) if the employee has no majority representative for collective negotiations purposes, in a manner consistent with the terms, if any, concerning health benefits coverage in retirement which are in any collective negotiations agreement deemed applicable by the State Health Benefits Commission to that employee at the time of the employee's accrual of 25 years of nonconcurrent service credit in one or more State or locally-administered retirement systems.

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

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

8. a. The basic coverage and the major medical coverage of any employee, and the employee's dependents, if any, shall cease upon the discontinuance of the term of office or employment or upon cessation of active

full-time employment subject to such regulations as may be prescribed by the commission for limited continuance of basic coverage and major medical coverage during disability, part-time employment, leave of absence or lay off, and for continuance of basic coverage and major medical coverage after retirement, any such continuance after retirement to be provided at such rates and under such conditions as shall be prescribed by the commission, subject, however, to the requirements hereinafter set forth in this section. Notwithstanding the provisions of any law to the contrary, for law enforcement officers employed by the State for whom there is a majority representative for collective negotiation purposes, and for nonaligned sworn members of the Division of State Police who retire after July 1, 2005, the coverage options available to such employees in retirement shall be limited to those options that were available to the employee on the employee's last day of employment. The commission may also establish regulations prescribing an extension of coverage when an employee or dependent is totally disabled at termination of coverage.

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

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

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

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

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

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

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

4. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 342

AN ACT concerning minors' consent to medical care or treatment and amending P.L.1968, c.230.

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

1. Section 1 of P.L.1968, c.230 (C.9:17A-4) is amended to read as follows:

C.9:17A-4 Consent by minor to treatment.

1. The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine, when executed by a minor who is or believes that he may be afflicted with a venereal disease, or who is at least 13 years of age and is or believes that he may be infected with the human immunodeficiency virus or have acquired immune deficiency syndrome, or by a minor who, in the judgment of a treating physician, appears to have been sexually assaulted, shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. In the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so; however, inability of the treating physician, hospital or clinic to locate or notify the parents or guardian shall not preclude the provision of any necessary emergency medical or surgical care to the minor.

When a minor believes that he is suffering from the use of drugs or is a drug dependent person as defined in section 2 of P.L.1970, c.226 (C.24:21-2) or is suffering from alcohol dependency or is an alcoholic as defined in section 2 of P.L.1975, c.305 (C.26:2B-8), his consent to treatment under the supervision of a physician licensed to practice medicine, or an individual licensed or certified to provide treatment for alcoholism or in a facility licensed by the State to provide for the treatment of alcoholism shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. Treatment for drug use, drug abuse, alcohol use or alcohol abuse that is consented to by a minor shall be considered confidential information between the physician, the treatment provider or the treatment facility, as appropriate, and his patient, and neither the minor nor his physician, treatment provider or treatment facility, as appropriate, shall be required to report such treatment when it is the result of voluntary consent, except as may otherwise be required by law.

The consent of no other person or persons, including but not limited to a spouse, parent, custodian or guardian, shall be necessary in order to authorize such hospital, facility or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine or by an individual licensed or certified to provide treatment for alcoholism to such a minor.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 343

AN ACT concerning penalties for drug offenses and amending N.J.S.2C:35-16.

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

1. N.J.S.2C:35-16 is amended to read as follows:

Forfeiture or postponement of driving privileges.

2C:35-16. Forfeiture or Postponement of Driving Privileges.

a. In addition to any disposition authorized by this title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute indicating

the dispositions that can be ordered for an adjudication of delinquency, and notwithstanding the provisions of subsection c. of N.J.S.2C:43-2, a person convicted of or adjudicated delinquent for a violation of any offense defined in this chapter or chapter 36 of this title shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period to be fixed by the court at not less than six months or more than two years which shall commence on the day the sentence is imposed unless the court finds compelling circumstances warranting an exception. For the purposes of this section, compelling circumstances warranting an exception exist if the forfeiture of the person's right to operate a motor vehicle over the highways of this State will result in extreme hardship and alternative means of transportation are not available. In the case of a person who at the time of the imposition of sentence is less than 17 years of age, the period of any suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the sentence is imposed and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of any provision of this title or Title 39 of the Revised Statutes at the time of any conviction or adjudication of delinquency for a violation of any offense defined in this chapter or chapter 36 of this title, any revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension, or postponement.

b. If forfeiture or postponement of driving privileges is ordered by the court pursuant to subsection a. of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person and forward such license or licenses to the Chief Administrator of the New Jersey Motor Vehicle Commission along with a report indicating the first and last day of the suspension or postponement period imposed by the court pursuant to this section. If the court is for any reason unable to collect the license or licenses of the person, the court shall cause a report of the conviction or adjudication of delinquency to be filed with the Chief Administrator. That report shall include the complete name, address, date of birth, eye color, and sex of the person and shall indicate the first and last day of the suspension or postponement period imposed by the court pursuant to this section. The court shall inform the person orally and in writing that if the person is convicted of personally operating a motor vehicle during the period of license suspension or postponement imposed pursuant to this section, the person shall, upon conviction, be subject to the penalties set forth in R.S.39:3-40. A person shall be required to acknowledge receipt of the written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the

receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S.39:3-40. If the person is the holder of a driver's license from another jurisdiction, the court shall not collect the license but shall notify forthwith the Chief Administrator who shall notify the appropriate officials in the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privilege in this State.

c. In addition to any other condition imposed, a court may in its discretion suspend, revoke or postpone in accordance with the provisions of this section the driving privileges of a person admitted to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12 without a plea of guilty or finding of guilt.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 344

AN ACT concerning certain employees of the State Parole Board and amending P.L.1979, c.441.

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

1. Section 4 of P.L.1979, c.441 (C.30:4-123.48) is amended to read as follows:

C.30:4-123.48 Policies, determinations of parole board.

4. a. All policies and determinations of the Parole Board shall be made by the majority vote of the members.

b. Except where otherwise noted, parole determinations on individual cases pursuant to this act shall be made by the majority vote of a quorum of the appropriate board panel established pursuant to this section.

c. The chairman of the board shall be the chief executive officer of the board and, after consulting with the board, shall be responsible for designating the time and place of all board meetings, for appointing the board's employees, for organizing, controlling and directing the work of the board and its employees, and for preparation and justification of the board's budget. Only the employees in those titles and positions as are designated by the Commissioner of the Department of Personnel shall serve at the pleasure of

the chairman and shall not be subject to the provisions of Title 11A of the New Jersey Statutes. All other employees, including hearing officers, shall be in the career service and subject to the provisions of Title 11A of the New Jersey Statutes. All such career service employees who are employed by the State Parole Board on September 5, 2001, and in the case of hearing officers, those who have been employed by the State Parole Board for a period of at least one year prior to the effective date of P.L.2005, c.344, shall have permanent career service status with seniority awarded from the date of their appointments. Parole officers assigned to supervise adult parolees and all supervisory titles associated with the supervision of adult parolees in the parole officer series shall be classified employees subject to the provisions of Title 11A of the New Jersey Statutes. Parole officers assigned to supervise adult parolees and all supervisory titles associated with the supervision of adult parolees in the parole officer job classification series shall be organizationally assigned to the State Parole Board with a sworn member of the Division of Parole appointed to act as director of parole supervision. The director of parole supervision shall report directly to the Chairman of the State Parole Board or to such person as the chairman may designate.

d. The board shall promulgate such reasonable rules and regulations, consistent with this act, as may be necessary for the proper discharge of its responsibilities. The chairman shall file such rules and regulations with the Secretary of State. The provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to the promulgation of rules and regulations concerning policy and administration, but not to other actions taken under this act, such as parole hearings, parole revocation hearings and review of parole cases. In determination of its rules and regulations concerning policy and administration, the board shall consult the Governor, the Commissioner of Corrections and the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170).

e. The board, in conjunction with the Department of Corrections and the Juvenile Justice Commission, shall develop a uniform information system in order to closely monitor the parole process. Such system shall include participation in the Uniform Parole Reports of the National Council on Crime and Delinquency.

f. The board shall transmit a report of its work for the preceding fiscal year, including information on the causes and extent of parole recidivism, to the Governor, the Legislature and the Juvenile Justice Commission annually. The report also may include relevant information on compliance with established time frames in the processing of parole eligibility determinations, the effectiveness of any pertinent legislative or administrative measures, and any recommendations to enhance board operations or to effectuate

the purposes of the "Parole Act of 1979," P.L.1979, c.441 (C.30:4-123.45 et seq.).

g. The board shall give public notice prior to considering any adult inmate for release.

h. The board shall give notice to the appropriate prosecutor's office and to the committing court prior to the initial consideration of any juvenile inmate for release.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 345

AN ACT providing a credit under the corporation business tax and the gross income tax for certain film production expenses incurred in New Jersey, providing for the transfer of such tax credits under a tax credit certificate transfer program, and supplementing chapter 4 of Title 54A of the New Jersey Statutes and 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-5.39 Corporation business tax credit for certain film production expenses; definitions.

1. a. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, 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 20 percent of the qualified film production expenses of the taxpayer during a privilege period commencing after the effective date of P.L.2005, c.345, provided that (1) at least 60 percent of the total production expenses, exclusive of post-production costs, of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey, and (2) principal photography of the film commences within 150 days after the approval of the application for the credit.

b. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of

P.L.1945, c.162. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be as determined by the Director of the Division of Taxation. The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

c. A taxpayer may, with an application for a credit provided for in subsection a. of this section, apply to the director and the executive director of the authority for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the director and the authority, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under P.L.1945, c.162 or N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the credit. The certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75% of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection b. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12).

d. As used in this section:

"Film" means a feature film, a television series or a television show of 15 minutes or more in length, intended for a national audience. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, game show, sports event, award show or other gala event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and

N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes.

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including post-production costs incurred in New Jersey. Qualified film production expenses shall include but shall not be limited to wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or are due; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment. Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

"Total production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

"Post-production costs" means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

e. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this act including examples of qualified film production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to this section and pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total of \$10,000,000 in any fiscal year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under this section and section 2 of P.L.2005, c.345 (C.54A:4-12) exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under this section and section 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of the amount of credits

available. The Executive Director of the New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed.

C.54A:4-12 Gross income tax credit for certain film production expenses; definitions.

2. a. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified film production expenses of the taxpayer during a taxable year commencing after the effective date of P.L.2005, c.345, provided that (1) at least 60 percent of the total production expenses, exclusive of post-production costs, of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey, and (2) principal photography of the film commences within 150 days after the approval of the application for the credit.

b. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under N.J.S.54A:1-1 et seq. after all other credits and payments. If the credit exceeds the amount of tax otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7.

c. A taxpayer may, with an application for a credit provided for in subsection a. of this section, apply to the director and the executive director of the authority for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the director and the authority, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under N.J.S.54A:1-1 et seq. or P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the credit. The certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq., that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged

for consideration received by the taxpayer of less than 75% of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq., shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection b. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39).

d. A partnership shall not be allowed a credit under this section directly, but the amount of credit or tax credit transfer certificate of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit or certificate acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. For the purposes of subsection b. of this section, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer. The provisions of subsection c. of this section shall apply to the amount of any credit or certificate of a taxpayer in respect of a distributive share of partnership income.

e. As used in this section:

"Film" means a feature film, a television series or a television show of 15 minutes or more in length, intended for a national audience. Film shall not include a production featuring news, current events, weather and market reports or public programming, talk show, game show, sports event, award show or other gala event, a production that solicits funds, a production containing obscene material as defined in N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate or institutional purposes.

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including post-production costs incurred in New Jersey. Qualified film production expenses shall include but shall not be limited to wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or are due; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment.

Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

"Total production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

"Post production costs" means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

f. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this act including examples of qualified film production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The amount of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to this section and pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39) shall not exceed a cumulative total of \$10,000,000 in any fiscal year to apply against the tax imposed under N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under this section and section 1 of P.L.2005, c.345 (C.54:10A-5.39) exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax transfer certificates under this section and section 1 are not in excess of the amount of credits available. The Executive Director of the New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed.

3. This act shall take effect immediately and apply to qualified film production expenses incurred on or after the date of enactment, and sections 1 and 2 shall apply respectively to privilege periods and taxable years begin-

ning on and after July 1, 2005 and shall expire with privilege periods and taxable years first commencing after July 1, 2015.

Approved January 12, 2006.

CHAPTER 346

AN ACT concerning the use of defibrillators in health clubs and supplementing P.L.1999, c.34 (C.2A:62A-23 et seq.).

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

C.2A:62A-30 Findings, declarations relative to use of defibrillators in health clubs.

1. The Legislature finds and declares that:
 - a. According to the American Heart Association, when a person suffers sudden cardiac arrest, the person's chance of survival decreases by 7% to 10% for each minute that passes without defibrillation; and with defibrillation given in the first minute after cardiac arrest, the survival rate can be as high as 90%;
 - b. The greatest risk for cardiac arrest is among men over 45 and women over 55 years of age, as well as among persons who smoke, are overweight or have diabetes;
 - c. Studies have shown that while exercise helps the heart in the long run, the risk of physical activity is not zero and the risk for cardiac arrest may increase during the time that the person is engaging in moderate or vigorous exercise, particularly for those who are sporadic exercisers or have underlying cardiovascular disease;
 - d. The number of Americans who exercise regularly at health clubs has increased steadily in recent years, as has the age of persons who exercise at these clubs; as many as 30 million people now visit health and exercise centers in this country, and it is estimated that about 55% percent of these people are over age 35;
 - e. As the age of persons who use health clubs increases, it is reasonable to assume that the number of members with cardiovascular disease is rising as well;
 - f. In recognition of the increasing risk of cardiac arrest at health clubs and the effectiveness of readily accessible automated external defibrillators in saving lives, it is, therefore, in the best interest of the residents of this State to require health clubs to maintain defibrillators on their premises.

C.2A:62A-31 Requirements for health clubs relative to defibrillators.

2. No later than one year after the effective date of this act:

a. The owner or operator of a health club registered with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1987, c.238 (C.56:8-39 et seq.) shall:

(1) acquire at least one automated external defibrillator as defined in section 2 of P.L.1999, c.34 (C.2A:62A-24), and store it in an accessible location within the health club that is known and available to the employees of the health club for the purposes of this act; and

(2) ensure that the automated external defibrillator is tested and maintained, and provide notification to the appropriate first aid, ambulance or rescue squad or other appropriate emergency medical services provider regarding the defibrillator, the type acquired and its location, pursuant to section 3 of P.L.1999, c.34 (C.2A:62A-25); and

b. The owner or operator of a health club that is subject to the provisions of subsection a. of this section shall:

(1) arrange and pay for training in cardio-pulmonary resuscitation and the use of an automated external defibrillator for the employees of that health club in accordance with the provisions of section 3 of P.L.1999, c.34 (C.2A:62A-25);

(2) ensure that the health club has at least one employee on site during its normal business hours who is trained in cardio-pulmonary resuscitation and the use of an automated external defibrillator in accordance with the provisions of section 3 of P.L.1999, c.34 (C.2A:62A-25); and

(3) ensure that the employees of that health club comply with the provisions of section 4 of P.L.1999, c.34 (C.2A:62A-26) concerning the use of the automated external defibrillator.

C.2A:62A-32 Violations, penalties.

3. A person who violates the provisions of section 2 of this act shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and not less than \$1,000 for the third and each subsequent violation.

The penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality may issue a summons for a violation of the provisions of section 2 of this act, and may serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court.

A penalty recovered under the provisions of this section shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

C.2A:62A-33 Immunity from civil, criminal liability.

4. A health club that is subject to the provisions of this act shall be immune from civil or criminal liability resulting from the malfunctioning of an automated external defibrillator that has been maintained and tested by the health club according to the manufacturer's operational guidelines, pursuant to section 3 of P.L.1999, c.34 (C.2A:62A-25), as required in paragraph (2) of subsection a. of section 2 of this act.

The immunity provided in this section shall be in addition to the immunity provided pursuant to section 5 of P.L.1999, c.34 (C.2A:62A-27).

C.2A:62A-34 Rules, regulations.

5. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, shall adopt rules and regulations to effectuate the purposes of this act.

6. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 347

AN ACT concerning pedophile crime pamphlets, supplementing chapter 17B 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.52:17B-210 Pamphlet for students relative to pedophile crimes.

1. The Attorney General, in consultation with the New Jersey School Boards Association, the New Jersey Coalition Against Sexual Assault, the New Jersey Education Association, and the Division on Women, shall prepare a pamphlet to educate children about pedophile crimes and how to reduce their chances of becoming victims of such crimes. The pamphlet shall be distributed to all public and private elementary and secondary

schools throughout the State. The schools shall reproduce the pamphlet for distribution to students. The pamphlets shall be designed by the Attorney General.

2. There is appropriated from the General Fund to the Office of the Attorney General \$95,000 to effectuate the purposes of this act.

3. This act shall take effect on the first day of the seventh month after enactment, but the Attorney General may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of this act.

Approved January 12, 2006.

CHAPTER 348

AN ACT concerning protection from contribution suits, and amending and supplementing P.L.1976, c.141.

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

1. 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) (a) 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.

(b) A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs, including the payment of compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources, and (i) has received a no further action letter from the State, or (ii) has entered into an administrative or judicially approved settlement with the State, shall not be liable for claims for contribution regarding matters addressed in the settlement or the no further action letter, as the case may be. The settlement shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement, but shall reduce the potential liability of any other discharger or person in any way responsible for a discharged hazardous substance at the site that is the subject of the no further action letter or the settlement by the amount of the no further action letter or the settlement.

(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, 33U.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.

C.58:10-23.11e2 Publication of information relative to contribution suit settlements.

2. At least 30 days prior to its agreement to any administrative or judicially approved settlement entered into pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), or at least 30 days prior to the issuance of any no further action letter issued pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.), on or after the effective date of P.L.2005, c.348 (C.58:10-23.11e2 et al.), the Department of Environmental Protection shall publish in the New Jersey Register and on the New Jersey Department of Environmental Protection's website the name of the case, the names of the parties to the settlement or the no further action letter, as the case may be, the location of the property on which the discharge occurred, and a summary of the terms of the settlement or the no further action letter, including the amount of any monetary payments made or to be made. The Department of Environmental Protection shall provide written notice of the settlement or of the no further action letter, which shall include the information listed above, to all other parties in the

case and to any other potentially responsible parties of whom the department has notice at the time of the publication.

3. This act shall take effect on the 90th day after the date of enactment.

Approved January 12, 2006.

CHAPTER 349

AN ACT appropriating moneys from the "Water Supply Fund" for the costs of certain water supply projects, and for the costs of planning and feasibility studies for ground and surface water programs, water delivery and treatment programs.

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

1. a. There is appropriated to the Department of Environmental Protection from the "Water Supply Fund" established pursuant to section 14 of the "Water Supply Bond Act of 1981," P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223, the sum of \$53,000,000 to be allocated and used for the following purposes:

(1) \$30,000,000 shall be used for the costs of a drought mitigation project to enhance the interbasin transfers between the Raritan and Passaic Basins, including the interconnection facility located at Virginia Street in Newark City, Essex County;

(2) \$10,000,000 shall be used to conduct planning and feasibility studies and for the engineering and design of the Confluence Pumping Station and Pipeline Water Supply Development Project to provide additional safe yield to the Raritan Basin;

(3) \$2,000,000 shall be used to conduct a regional water supply source and infrastructure feasibility study in Gloucester, Salem and Cumberland Counties;

(4) \$10,000,000 shall be used to conduct planning and feasibility studies and acquisition of future reservoirs and other sources of water supplies;

(5) \$1,000,000 shall be used to cover the costs associated with the treatment of water supplies in Berlin Township, Camden County.

b. To the extent that the balance of the moneys available in the "Water Supply Fund" that have not been previously appropriated pursuant to law is insufficient to support the sum appropriated pursuant to subsection a. of this section, moneys returned to the "Water Supply Fund" due to loan repay-

ments, project withdrawals, cancellations, or cost savings involving projects previously funded by law shall be made available from the "Water Supply Fund" to support the remainder of the appropriation made therein as required.

2. The expenditure of the sum appropriated to the Department of Environmental Protection pursuant to section 1 of P.L.2005, c.349 is subject to the provisions and conditions of P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223, and any rules and regulations adopted by the Commissioner of Environmental Protection pursuant thereto.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 350

AN ACT concerning accessibility of affordable housing units, amending and supplementing P.L.1985, c. 222 (C.52:27D-301 et al.) 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-311a Adaptability requirement; "new construction" defined.

1. Beginning upon the effective date of P.L.2005, c.350 (C.52:27D-311a et al.), any new construction for which credit is sought against a fair share obligation shall be adaptable in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15). For the purposes of P.L.2005, c.350 (C.52:27D-311a et al.), "new construction" shall mean an entirely new improvement not previously occupied or used for any purpose.

2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to read as follows:

C.52:27D-304 Definitions.

4. As used in this act:

a. "Council" means the Council on Affordable Housing established in this act, which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

b. "Housing region" means a geographic area of not less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of this act.

c. "Low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

d. "Moderate income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50% but less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located.

e. "Resolution of participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with this act.

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

h. "Development" means any development for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

i. "Agency" means the New Jersey Mortgage and Housing Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et seq.).

j. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

k. "Disabled person" means a person with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.

l. "Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15).

3. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to read as follows:

C.52:27D-305 Council on Affordable Housing established.

5. a. There is established in, but not of, the Department of Community Affairs a Council on Affordable Housing to consist of 12 members appointed by the Governor with the advice and consent of the Senate, of whom four shall be elected officials representing the interests of local government, at least one of whom shall be representative of an urban municipality having a population in excess of 40,000 persons and a population density in excess of 3,000 persons per square mile, at least one of whom shall be representative of a municipality having a population of 40,000 persons or less and a population density of 3,000 persons per square mile or less, and no more than one of whom may be a representative of the interests of county government; four shall represent the interests of households in need of low and moderate housing, one of whom shall represent the interests of the nonprofit builders of low and moderate income housing, and shall have an expertise in land use practices and housing issues, one of whom shall be the Commissioner of Community Affairs, ex officio, or his or her designee, who shall serve as chairperson, one of whom shall be the executive director of the agency, serving ex officio; and one of whom shall represent the interests of disabled persons and have expertise in construction accessible to disabled persons; one shall represent the interests of the for-profit builders of market rate homes, and shall have an expertise in land use practices and housing issues; and three shall represent the public interest. Not more than six of the 12 shall be members of the same political party. The membership shall be balanced to the greatest extent practicable among the various housing regions of the State.

b. The members shall serve for terms of six years, except that of the members first appointed, two shall serve for terms of four years, three for terms of five years, and three for terms of six years. All members shall serve until their respective successors are appointed and shall have qualified. Notwithstanding the above, a member appointed to represent the interests of local government shall serve only such length of the term for which appointed as the member continues to hold elected local office, except that the term of a member so appointed shall not become vacant until 60 days after the member ceases to hold that elected office. Vacancies shall be filled in the same manner as the original appointments, but for the remainders of the unexpired terms only.

c. The members, excluding the executive director of the agency and the Commissioner of Community Affairs, shall be compensated at the rate of \$150.00 for each six-hour day, or prorated portion thereof for more or less than six hours, spent in attendance at meetings and consultations and all members shall be eligible for reimbursement for necessary expenses incurred in connection with the discharge of their duties.

d. The Governor shall nominate the members within 30 days of the effective date of this act and shall designate a member to serve as chairman throughout the member's term of office and until his successor shall have been appointed and qualified. The member added by P.L.2005, c.350 (C.52:27D-311a et al.) shall be nominated within 30 days of the effective date of that act.

e. Any member may be removed from office for misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for the office, or for incompetence. A proceeding for removal may be instituted by the Attorney General in the Superior Court. A member or employee of the council shall automatically forfeit his office or employment upon conviction of any crime. Any member or employee of the council shall be subject to the duty to appear and testify and to removal from his office or employment in accordance with the provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).

4. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to read as follows:

C.52:27D-307 Duties of council.

7. It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, and from time to time thereafter, to:

- a. Determine housing regions of the State;
- b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;

c. Adopt criteria and guidelines for:

(1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period. Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record;

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or to a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever:

- (a) The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized,
 - (b) The established pattern of development in the community would be drastically altered,
 - (c) Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided,
 - (d) Adequate open space would not be provided,
 - (e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),
 - (f) Vacant and developable land is not available in the municipality, and
 - (g) Adequate public facilities and infrastructure capacities are not available, or would result in costs prohibitive to the public if provided; and
- (3) (Deleted by amendment, P.L.1993, c.31).

d. Provide population and household projections for the State and housing regions;

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

In carrying out the above duties, including, but not limited to, present and prospective need estimations the council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public comment. To assist the council, the State Planning Commission established under that act shall provide the council annually with economic growth, development and decline projections for each housing region for the next ten years. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, State, municipal or private housing program.

No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the requirements set forth thereunder.

C.52:27D-123.15 Adaptability requirement; design standards.

5. a. Any new construction for which an application for a construction permit has not been declared complete by the enforcing agency before the effective date of P.L.2005, c.350 (C.52:27D-311a et al.) and for which credit is sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on or after the effective date of P.L.2005, c.350 (C.52:27D-311a et al.) shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purposes of P.L.2005, c.350 (C.52:27D-311a et al.). In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode in order to be credited pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units for which credit is sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on or after the effective date of P.L.2005, c.350 (C.52:27D-311a et al.) and for which an application for a construction permit has not been declared complete by the enforcing agency pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), shall be subject to the technical design standards of the barrier free subcode and shall include the following features:

- (1) an adaptable entrance to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;

- (3) an adaptable kitchen on the first floor;
- (4) an accessible interior route of travel; and
- (5) an adaptable room with a door or a casing where a door can be installed which may be used as a bedroom on the first floor.

c. (1) Full compliance with the requirements of this section shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Full compliance shall be considered site impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable.

d. In the case of a unit or units which are constructed with an adaptable entrance pursuant to subsection c. of this section, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed. Additionally, the builder of the unit or units shall deposit sufficient funds to adapt 10 percent of the affordable units in the project which have not been constructed with accessible entrances with the municipality in which the units are located, for deposit into the municipal affordable housing trust fund. These funds shall be available for the use of the municipality for the purpose of making the adaptable entrance of any such affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

For the purposes of this section:

"Adaptable," as used with regard to an entrance, means that the plans for the unit include a feasible building plan to adapt the entrance so as to make the unit accessible.

"Disabled person" means "disabled person" as defined in section 4 of P.L.1985, c.222 (C.52:27D-304).

"Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.

"Site impracticable" means having the characteristic of "site impracticability" as set forth in section 100.205 (a) of title 24, Code of Federal Regulations.

C.52:27D-311b Assurance of adaptability requirements; council measures.

6. The council may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided

under P.L.2005, c.350 (C.52:27D-311a et al.) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), the council may require the municipality to amend its fair share plan within 90 days of receiving notice from the council, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of receiving such notice, the council may revoke substantive certification.

7. This act shall take effect on the first day of the ninth month next following enactment, except that the commissioner may take such immediate action as necessary in order to effectuate the provisions of P.L.2005, c.350 (C.52:27D-311a et al.).

Approved January 12, 2006.

CHAPTER 351

AN ACT concerning motor vehicle sales, amending P.L.1999, c.90 and supplementing chapter 10 of Title 39 of the Revised Statutes.

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

C.39:10-19.1 Definitions relative to off-site sale of certain motor vehicles.

1. As used in this act:

"Off-site sale" means the display and sale of new or used recreational vehicles by a recreational vehicle dealer, or used motor vehicles registered in New Jersey by a used motor vehicle dealer, licensed under the provisions of R.S.39:10-19, at a location other than the dealer's established place of business. An "off-site sale" includes any off-site display of vehicles at which a recreational vehicle or used motor vehicle dealer has a sales person or employee present. For the purposes of this act, "off-site sale" does not include:

a. An off-site display of vehicles at which a recreational vehicle or used motor vehicle dealer has no sales personnel present; or

b. The sale of a vehicle at an auction at which only wholesale purchases are permitted.

"Sponsoring organization" means:

a. a credit union, automobile club, or other such not for profit organization or entity that makes the opportunity to attend and purchase a motor vehicle at an off-site sale available to its members; or

b. a trade show coordinator, or other such organization, entity, or individual that makes the opportunity to attend and purchase a recreational vehicle at an off-site sale available to ticketed individuals.

C.39:10-19.2 Certain dealers permitted off-site sale of motor vehicles.

2. Notwithstanding any other provision of law to the contrary, a recreational vehicle or used motor vehicle dealer, licensed under the provisions of R.S.39:10-19, may hold an off-site sale provided he is granted a final permit to do so pursuant to section 3 of this act.

C.39:10-19.3 Provisional permit for certain off-site motor vehicle sales; conditions.

3. a. The Chief Administrator of the Motor Vehicle Commission may issue a provisional permit, subject to a fee, for an off-site sale to a licensed recreational vehicle or used motor vehicle dealer, provided:

(1) No more than one permit for a particular location is issued during any calendar quarter;

(2) A completed application and fee, in an amount determined by the chief administrator, is received by the commission at least 15 days prior to the first day of the sale;

(3) The applicant is a recreational vehicle or used motor vehicle dealer, licensed under the provisions of R.S.39:10-19, in good standing;

(4) The sale is not conducted within 1,000 feet of the established place of business of any motor vehicle dealer licensed under the provisions of R.S.39:10-19;

(5) The display and sale of vehicles is conducted for no more than five consecutive days; and

(6) The sale is not open to the general public, but limited to members of the sponsoring organization or in the case of the off-site sales of recreational vehicles, only to ticketed individuals.

b. Following the issuance of a provisional permit for an off-site sale, and in the event that the chief administrator determines that neither the dealer, the sponsoring organization, nor the off-site sale location has an unsatisfactory history of violations of Title 39, the chief administrator shall issue a final permit for an off-site sale to the applicant, provided the dealer delivers to the commission, no later than five days prior to the sale:

(1) A surety bond in the amount of \$500,000; or

(2) A notarized copy of a certificate of self-insurance issued pursuant to section 30 of P.L.1952, c.173 (C.39:6-52).

C.39:10-19.4 Maintenance of booth, desk by dealer at off-site sale premises.

4. a. A dealer conducting an off-site sale shall maintain a booth or desk at the off-site sale premises location for the duration of the sale. The final permit for the sale and the name of the recreational vehicle or used motor vehicle dealer to whom the permit was issued shall be prominently displayed at the booth or desk at all times during the off-site sale.

b. Any agreements of sale, offerings, or contracts entered into during the off-site sale shall include, or have attached, the following information, in a clearly identifiable manner:

(1) The address and telephone number of the established place of business of the recreational vehicle or used motor vehicle dealer conducting the off-site sale; and

(2) The recreational vehicle or used motor vehicle dealer's license number; and

(3) A copy of the final permit issued to the recreational vehicle or used motor vehicle dealer authorizing him to conduct the off-site sale.

5. Section 4 of P.L.1999, c.90 (C.2C:33-26) is amended to read as follows:

C.2C:33-26 Sale of motor vehicle on Sunday; exception.

4. A person who engages in the business of buying, selling or exchanging motor vehicles or who opens a place of business and attempts to engage in such conduct on a Sunday commits a disorderly persons offense. The first offense is punishable by a fine not to exceed \$100.00 or imprisonment for a period of not more than 10 days or both; the second offense is punishable by a fine not to exceed \$500 or imprisonment for a period of not more than 30 days or both; the third or each subsequent offense is punishable by a fine of \$750.00 or imprisonment for a period of six months or both. If the person is a licensed dealer in new or used motor vehicles in this State, under the provisions of chapter 10, Title 39 of the Revised Statutes, the person shall also be subject to suspension or revocation of his dealer's license to engage in the business of buying, selling or exchanging in motor vehicles in this State as provided in Title 39, chapter 10, section 10, section 20, for violation of this statute. Nothing contained in this section shall be construed to prohibit a person from accepting a deposit to secure the sale of a recreational vehicle, as defined in section 1 of P.L.1999, c.284 (C.54:4-1.18), at an off-site sale authorized pursuant to section 2 of P.L.2005, c.351 (C.39:10-19.2), on a Sunday.

6. This act shall take effect on the first day of the seventh month after enactment, but the Chief Administrator of the Motor Vehicle Commission

may take such anticipatory acts in advance of that date as may be necessary for the timely implementation of this act.

Approved January 12, 2006.

CHAPTER 352

AN ACT concerning health claims and amending and supplementing various parts of the statutory law.

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

C.17B:30-48 Short title.

1. This act shall be known and may be cited as the "Health Claims Authorization, Processing and Payment Act."

C.17B:30-49 Findings, declarations relative to processing health claims.

2. The Legislature finds and declares that:

a. Health care services available under health benefits plans must be promptly provided to covered persons under all circumstances, along with timely reimbursement to hospitals and physicians for their services rendered;

b. However, confusion still exists among consumers, hospitals, physicians and carriers with respect to time frames for communication of determinations by carriers to deny, reduce or terminate benefits under the provisions of a health benefits plan based upon utilization management decisions;

c. Since it is the declared public policy of the State that hospital and related health care services be of the highest quality and demonstrated need and be efficiently provided and properly utilized at a reasonable cost, the hospital care and related health care services must be appropriate to the condition of the patient and payment must be for services that were rendered to the patient;

d. Because it is fair and reasonable for hospitals and physicians to receive reimbursement for health care services delivered to covered persons under their health benefits plans and inefficiencies in any area of the health care delivery system reflect poorly on all aspects of the health care delivery system, and because those inefficiencies can harm the consumers of health care, it is appropriate for the Legislature now to establish uniform procedures and guidelines for hospitals, physicians and health insurance carriers to follow in communicating and following utilization management decisions and determinations on behalf of consumers.

C.17B:30-50 Definitions relative to processing health claims.

3. As used in sections 3 through 7 of P.L.2005, c.352 (C.17B:30-50 through C.17B:30-54):

"Authorization" means a determination required under a health benefits plan, that based on the information provided, satisfies the requirements under the member's health benefits plan for medical necessity.

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

"Commissioner" means the Commissioner of Banking and Insurance.

"Covered person" means a person on whose behalf a carrier offering the plan is obligated to pay benefits or provide services pursuant to the health benefits plan.

"Covered service" means a health care service provided to a covered person under a health benefits plan for which the carrier is obligated to pay benefits or provide services.

"Generally accepted standards of medical practice" means standards that are based on: credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community; physician and health care provider specialty society recommendations; the views of physicians and health care providers practicing in relevant clinical areas; and any other relevant factor as determined by the commissioner by regulation.

"Health benefits plan" means a benefits plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. Health benefits plan includes, but is not limited to, Medicare supplement coverage and Medicare+Choice contracts to the extent not otherwise prohibited by federal law. For the purposes of sections 3 through 7 of P.L.2005, c.352 (C.17B:30-50 through C.17B:30-54), health benefits plan shall not include the following plans, policies or contracts: accident only, credit, disability, long-term care, Civilian Health and Medical Program for the Uniformed Services, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.) or hospital confinement indemnity coverage.

"Hospital" means a general acute care facility licensed by the Commissioner of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), including rehabilitation, psychiatric and long-term acute facilities.

"Medical necessity" or "medically necessary" means or describes a health care service that a health care provider, exercising his prudent clinical judgment, would provide to a covered person for the purpose of evaluating, diagnosing or treating an illness, injury, disease or its symptoms and that is:

in accordance with the generally accepted standards of medical practice; clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the covered person's illness, injury or disease; not primarily for the convenience of the covered person or the health care provider; and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that covered person's illness, injury or disease.

"Network provider" means a participating hospital or physician under contract or other agreement with a carrier to furnish health care services to covered persons.

"Payer" means a carrier which requires that utilization management be performed to authorize the approval of a health care service and includes an organized delivery system that is certified by the Commissioner of Health and Senior Services or licensed by the commissioner pursuant to P.L.1999, c.409 (C.17:48H-1 et seq.).

"Payer's agent" or "agent" means an intermediary contracted or affiliated with the payer to provide authorization for service or perform administrative functions including, but not limited to, the payment of claims or the receipt, processing or transfer of claims or claim information.

"Physician" means a physician licensed pursuant to Title 45 of the Revised Statutes.

"Utilization management" means a system for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the health benefits plan. The system may include, but shall not be limited to: preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures and retrospective review.

C.17B:30-51 Information required from payer.

4. a. A payer shall provide the following information concerning utilization management and the processing and payment of claims in a clear and conspicuous manner through an Internet website no later than 30 calendar days before the information or policies or any changes in the information or policies take effect:

(1) a description of the source of all commercially produced clinical criteria guidelines and a copy of all internally produced clinical criteria guidelines used by the payer or its agent to determine the medical necessity of health care services;

(2) a list of the material, documents or other information required to be submitted to the payer with a claim for payment for health care services;

(3) a description of claims for which the submission of additional documentation or information is required for the adjudication of a claim fitting that description;

(4) the payer's policy or procedure for reducing the payment for a duplicate or subsequent service provided by a health care provider on the same date of service; and

(5) any other information the commissioner deems necessary.

b. Any changes in the information or policies required to be provided pursuant to subsection a. of this section shall be clearly noted on the Internet website..

C.17B:30-52 Response by payer to request for authorization of health care services.

5. a. A payer shall respond to a hospital or physician request for authorization of health care services by either approving or denying the request based on the covered person's health benefits plan. Any denial of a request for authorization or limitation imposed by a payer on a requested service shall be made by a physician under the clinical direction of the medical director who shall be licensed in this State and communicated to the hospital or physician by facsimile, E-mail or any other means of written communication agreed to by the payer and hospital or physician, as follows:

(1) in the case of a request for prior authorization for a covered person who will be receiving inpatient hospital services, the payer shall communicate the denial of the request or the limitation imposed on the requested service to the hospital or physician within a time frame appropriate to the medical exigencies of the case but no later than 15 days following the time the request was made;

(2) in the case of a request for authorization for a covered person who is currently receiving inpatient hospital services or care rendered in the emergency department of a hospital, the payer shall communicate the denial of the request or the limitation imposed on the requested service to the hospital or physician within a time frame appropriate to the medical exigencies of the case but no later than 24 hours following the time the request was made;

(3) in the case of a request for prior authorization for a covered person who will be receiving health care services in an outpatient or other setting, including, but not limited to, a clinic, rehabilitation facility or nursing home, the payer shall communicate the denial of the request or the limitation imposed on the requested service to the hospital or physician within a time frame appropriate to the medical exigencies of the case but no later than 15 days following the time the request was made; and

(4) if the payer requires additional information to approve or deny a request for authorization, the payer shall so notify the hospital or physician by facsimile, E-mail or any other means of written communication agreed to by the payer and hospital or physician within the applicable time frame set forth in paragraph (1), (2) or (3) of this subsection and shall identify the specific information needed to approve or deny the request for authorization.

If the payer is unable to approve or deny a request for authorization within the applicable time frame set forth in paragraph (1), (2) or (3) of this subsection because of the need for this additional information, the payer shall have an additional period within which to approve or deny the request, as follows:

(a) in the case of a request for prior authorization for a covered person who will be receiving inpatient hospital services, within a time frame appropriate to the medical exigencies of the case but no later than 15 days beyond the time of receipt by the payer from the hospital or physician of the additional information that the payer has identified as needed to approve or deny the request for authorization;

(b) in the case of a request for authorization for a covered person who is currently receiving inpatient hospital services or care rendered in the emergency department of a hospital, no more than 24 hours beyond the time of receipt by the payer from the hospital or physician of the additional information that the payer has identified as needed to approve or deny the request for authorization; and

(c) in the case of a request for authorization for a covered person who will be receiving health care services in another setting, within a time frame appropriate to the medical exigencies of the case but no more than 15 days beyond the time of receipt by the payer from the hospital or physician of the additional information that the payer has identified as needed to approve or deny the request for authorization.

b. Payers and hospitals shall have appropriate staff available between the hours of 9 a.m. and 5 p.m., seven days a week, to respond to authorization requests within the time frames established pursuant to subsection a. of this section.

c. If a payer fails to respond to an authorization request within the time frames established pursuant to subsection a. of this section, the hospital or physician's request shall be deemed approved and the payer shall be responsible to the hospital or physician for the payment of the covered services delivered pursuant to the hospital or physician's contract with the payer.

d. If a hospital or physician fails to respond to a payer's request for additional information necessary to render an authorization decision within 72 hours, the hospital or physician's request for authorization shall be deemed withdrawn.

C.17B:30-53 Reimbursement for covered services, conditions.

6. a. When a hospital or physician complies with the provisions set forth in section 5 of P.L.2005, c.352 (C.17B:30-52), no payer, or payer's agent, shall deny reimbursement to a hospital or physician for covered services rendered to a covered person on grounds of medical necessity in the absence of fraud or misrepresentation if the hospital or physician:

(1) requested authorization from the payer and received approval for the health care services delivered prior to rendering the service;

(2) requested authorization from the payer for the health care services prior to rendering the services and the payer failed to respond to the hospital or physician within the time frames established pursuant to section 5 of P.L.2005, c.352 (C.17B:30-52); or

(3) received authorization for the covered service for a patient who is no longer eligible to receive coverage from that payer and it is determined that the patient is covered by another payer, in which case the subsequent payer, based on the subsequent payer's benefits plan, shall accept the authorization and reimburse the hospital or physician.

b. If the hospital is a network provider of the payer, health care services shall be reimbursed at the contracted rate for the services provided.

c. No payer, or payer's agent, shall amend a claim by changing the diagnostic code assigned to the services rendered by a hospital or physician without providing written justification.

C.17B:30-54 Reimbursement according to provider contract.

7. A payer, or payer's agent, shall reimburse a hospital or physician according to the provider contract for all medically necessary emergency and urgent care health care services that are covered under the health benefits plan, including all tests necessary to determine the nature of an illness or injury.

8. Section 11 of P.L.1997, c.192 (C.26:2S-11) is amended to read as follows:

C.26:2S-11 Independent Health Care Appeals Program.

11. There is established the Independent Health Care Appeals Program in the department.

The purpose of the appeals program is to provide an independent medical necessity or appropriateness of services review of final decisions by carriers to deny, reduce or terminate benefits in the event the final decision is contested by the covered person or any health care provider acting on behalf of the covered person but only with the covered person's consent. The

appeal review shall not include any decisions regarding benefits not covered by the covered person's health benefits plan.

a. A covered person or health care provider may apply to the Independent Health Care Appeals Program for a review of a decision to deny, reduce or terminate a benefit if the person or health care provider has already completed the carrier's appeals process, if any, and the person or health care provider contests the final decision by the carrier. The person or health care provider shall apply to the department within 60 days of the date the final decision was issued by the carrier, in a manner determined by the commissioner.

b. As part of the application, the covered person or health care provider shall provide the department with:

- (1) The name and business address of the carrier;
- (2) A brief description of the covered person's medical condition for which benefits were denied, reduced or terminated;
- (3) A copy of any information provided by the carrier regarding its decision to deny, reduce or terminate the benefit; and

(4) A written consent to obtain any necessary medical records from the carrier and, in the case of a carrier which offers a managed care plan, any other out-of-network physician the person may have consulted on the matter.

c. The covered person shall pay the department an application processing fee of \$25, except that the commissioner may reduce or waive the fee in the case of financial hardship. The health care provider acting on the covered person's behalf shall bear all costs associated with the appeal that are normally paid by the covered person.

d. Prior to receiving hospital services, a covered person or a person designated by the covered person may sign a consent form authorizing a health care provider acting on the covered person's behalf to appeal a determination by the carrier to deny, reduce or terminate benefits. The consent is valid for all stages of the carrier's informal and formal appeals process and the Independent Health Care Appeals Program established pursuant to this section. A covered person shall retain the right to revoke his consent at any time.

e. A health care provider shall provide notice to the covered person whenever the health care provider initiates an appeal of a carrier's determination to deny, reduce or terminate a benefit or deny payment for a health care service based on a medical necessity determination made by the carrier. The health care provider shall provide additional notice to the covered person each time the health care provider continues the appeal to the next stage of an appeals process, including any appeal to an independent utilization review organization pursuant to this section.

9. Section 12 of P.L.1997, c.192 (C.26:2S-12) shall be amended to read as follows:

C.26:2S-12 Contract to conduct appeal reviews; procedures.

12. a. The commissioner shall contract with one or more independent utilization review organizations in the State that meet the requirements of this act to conduct the appeal reviews. The independent utilization review organization shall be independent of any carrier. The commissioner may establish additional requirements, including conflict of interest standards, consistent with the purposes of this act that an organization shall meet in order to qualify for participation in the Independent Health Care Appeals Program.

b. The commissioner shall establish procedures for transmitting the completed application for an appeal review to the independent utilization review organization.

c. The independent utilization review organization shall promptly review the pertinent medical records of the covered person to determine the appropriate, medically necessary health care services the person should receive, based on applicable, generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards or associations and any applicable clinical protocols or practice guidelines developed by the carrier. The organization shall complete its review and make its determination within 90 days of receipt of a completed application for an appeal review or within less time, as prescribed by the commissioner.

Upon completion of the review, the organization shall state its findings in writing and make a determination of whether the carrier's denial, reduction or termination of benefits deprived the covered person of medically necessary services covered by the person's health benefits plan. If the organization determines that the denial, reduction or termination of benefits deprived the person of medically necessary covered services, it shall convey to the covered person or the health care provider acting on behalf of the covered person and carrier its decision regarding the appropriate, medically necessary health care services that the person should receive, which shall be binding on the carrier. If all or part of the organization's decision is in favor of the covered person, the carrier shall promptly provide coverage for the health care services found by the organization to be medically necessary covered services. If the covered person is not in agreement with the organization's decision, the person may seek the desired health care services outside of his health benefits plan, at his own expense.

d. If the commissioner determines that a carrier has failed to comply with the decision of an independent utilization review organization or is

otherwise in violation of patient rights and other applicable regulations, the commissioner may impose such penalties and sanctions on the carrier, as provided by regulation, as the commissioner deems appropriate.

e. The commissioner shall require the independent utilization review organization to establish procedures to provide for an expedited review of a carrier's denial, reduction or termination of a benefit decision when a delay in receipt of the service could seriously jeopardize the health or well-being of the covered person.

f. The covered person's medical records provided to the Independent Health Care Appeals Program and the independent utilization review organization and the findings and recommendations of the organization made pursuant to this act are confidential and shall be used only by the department, the organization and the affected carrier for the purposes of this act. The medical records and findings and recommendations shall not otherwise be divulged or made public so as to disclose the identity of any person to whom they relate, and shall not be included under materials available to public inspection pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

g. The commissioner shall establish a reasonable, per case reimbursement schedule for the independent utilization review organization.

h. The cost of the appeal review shall be borne by the carrier pursuant to a schedule of fees established by the commissioner.

10. Section 2 of P.L.1999, c.154 (C.17:48-8.4) is amended to read as follows:

C.17:48-8.4 Hospital service corporation to receive, transmit transactions electronically; standards.

2. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a hospital service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a hospital service corporation, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a hospital service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all group and individual contracts issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a hospital service corporation or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the contract.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a hospital service corporation or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

(a) the health care provider is eligible at the date of service;

(b) the person who received the health care service was covered on the date of service;

(c) the claim is for a service or supply covered under the health benefits plan;

(d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51); and

(e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care provider for an overdue claim shall be credited to any civil penalty for late

payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the reimbursement request to the health care provider or after the health care

provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A hospital service corporation or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount of money in dispute, if applicable, with accrued interest at the rate of 12%

per annum, on or before the 30th calendar day following the notification of the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest, on or before the 10th business day following the issuance of the determina-

tion. If the arbitrator determines that a payer has withheld or denied payment on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured hospital service corporation contract for which the financial obligation for the payment of a claim under the contract rests upon the hospital service corporation.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

11. Section 3 of P.L.1999, c.154 (C.17:48A-7.12) is amended to read as follows:

C.17:48A-7.12 Medical service corporation to receive, transmit transactions electronically; standards.

3. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a medical service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a medical service corporation, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a medical service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all group and individual contracts issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a medical service corporation or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the contract.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a medical service corporation or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51) ; and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care provider for an overdue claim shall be credited to any civil penalty for late

payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the reimbursement request to the health care provider or after the health care

provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A medical service corporation or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount of money in dispute, if applicable, with accrued interest at the rate of 12%

per annum, on or before the 30th calendar day following the notification of the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest, on or before the 10th business day following the issuance of the determina-

tion. If the arbitrator determines that a payer has withheld or denied payment on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured medical service corporation contract for which the financial obligation for the payment of a claim under the contract rests upon the medical service corporation.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

12. Section 4 of P.L.1999, c.154 (C.17:48E-10.1) is amended to read as follows:

C.17:48E-10.1 Health service corporation to receive, transmit transactions electronically; standards.

4. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a health service corporation, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health service corporation or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all group and individual contracts issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health service corporation or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the contract.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a health service corporation or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51) ; and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care provider for an overdue claim shall be credited to any civil penalty for late

payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L. 1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L. 1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the reimbursement request to the health care provider or after the health care

provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A health service corporation or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount of money in dispute, if applicable, with accrued interest at the rate of 12%

per annum, on or before the 30th calendar day following the notification of the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest, on or before the 10th business day following the issuance of the determina-

tion. If the arbitrator determines that a payer has withheld or denied payment on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured health service corporation contract for which the financial obligation for the payment of a claim under the contract rests upon the health service corporation.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

13. Section 5 of P.L.1999, c.154 (C.17B:26-9.1) is amended to read as follows:

C.17B:26-9.1 Health insurer to receive, transmit transactions relative to individual policies electronically; standards.

5. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a health insurer, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all individual policies issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the policy.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a health insurer or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51); and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care provider for an overdue claim shall be credited to any civil penalty for late

payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L. 1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L. 1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the reimbursement request to the health care provider or after the health care

provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A health insurer or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount of money in dispute, if applicable, with accrued interest at the rate of 12% per annum, on or before the 30th calendar day following the notification of

the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest, on or before the 10th business day following the issuance of the determination. If the arbitrator determines that a payer has withheld or denied payment

on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured policy for which the financial obligation for the payment of a claim under the policy rests upon the health insurer.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

14. Section 6 of P.L.1999, c.154 (C.17B:27-44.2) is amended to read as follows:

C.17B:27-44.2 Health insurer to receive, transmit transactions relative to group policies electronically; standards.

6. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a health insurer, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all group policies issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health insurer or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the policy.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a health insurer or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51) ; and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care provider for an overdue claim shall be credited to any civil penalty for late

payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the reimbursement request to the health care provider or after the health care

provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A health insurer or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount of money in dispute, if applicable, with accrued interest at the rate of 12% per annum, on or before the 30th calendar day following the notification of

the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest, on or before the 10th business day following the issuance of the determination. If the arbitrator determines that a payer has withheld or denied payment

on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured policy for which the financial obligation for the payment of a claim under the policy rests upon the health insurer.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

15. Section 7 of P.L.1999, c.154 (C.26:2J-8.1) is amended to read as follows:

C.26:2J-8.1 Health maintenance organization to receive, transmit transactions electronically; standards.

7. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health maintenance organization or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for implementation will result in an undue hardship to a health maintenance organization, or its agent, its subsidiary or its covered persons.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health maintenance organization or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all group and individual health maintenance organization coverage for health care services issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health maintenance organization or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the contract.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a health maintenance organization or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51) ; and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the

Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care

provider for an overdue claim shall be credited to any civil penalty for late payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the

reimbursement request to the health care provider or after the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A health maintenance organization or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount

of money in dispute, if applicable, with accrued interest at the rate of 12% per annum, on or before the 30th calendar day following the notification of the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

(a) signed by the arbitrator;

(b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and

(c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest,

on or before the 10th business day following the issuance of the determination. If the arbitrator determines that a payer has withheld or denied payment on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured health maintenance organization contract for which the financial obligation for the payment of a claim under the health maintenance organization coverage for health care services rests upon the health maintenance organization.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

16. Section 10 of P.L.1999, c.154 (C.17:48F-13.1) is amended to read as follows:

C.17:48F-13.1 Prepaid prescription service organization to receive, transmit transactions electronically; standards.

10. a. Within 180 days of the adoption of a timetable for implementation pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a prepaid prescription service organization or its agent or a subsidiary that processes health care benefits claims as a third party administrator, shall demonstrate to the satisfaction of the Commissioner of Banking and Insurance that it will adopt and implement all of the standards to receive and transmit health care transactions electronically, according to the corresponding timetable, and otherwise comply with the provisions of this section, as a condition of its continued authorization to do business in this State.

The Commissioner of Banking and Insurance may grant extensions or waivers of the implementation requirement when it has been demonstrated to the commissioner's satisfaction that compliance with the timetable for

implementation will result in an undue hardship to a prepaid prescription service organization, or its agent, its subsidiary or its covered enrollees.

b. Within 12 months of the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a prepaid prescription service organization or its agent or a subsidiary that processes health care benefits claims as a third party administrator shall use the standard health care enrollment and claim forms in connection with all contracts issued, delivered, executed or renewed in this State.

c. Twelve months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a prepaid prescription service organization or its agent shall require that health care providers file all claims for payment for health care services. A covered person who receives health care services shall not be required to submit a claim for payment, but notwithstanding the provisions of this subsection to the contrary, a covered person shall be permitted to submit a claim on his own behalf, at the covered person's option. All claims shall be filed using the standard health care claim form applicable to the contract.

d. For the purposes of this subsection, "substantiating documentation" means any information specific to the particular health care service provided to a covered person.

(1) Effective 180 days after the effective date of P.L.1999, c.154, a prepaid prescription service organization or its agent, hereinafter the payer, shall remit payment for every insured claim submitted by a covered person or health care provider, no later than the 30th calendar day following receipt of the claim by the payer or no later than the time limit established for the payment of claims in the Medicare program pursuant to 42 U.S.C. s.1395u(c)(2)(B), whichever is earlier, if the claim is submitted by electronic means, and no later than the 40th calendar day following receipt if the claim is submitted by other than electronic means, if:

- (a) the health care provider is eligible at the date of service;
- (b) the person who received the health care service was covered on the date of service;
- (c) the claim is for a service or supply covered under the health benefits plan;
- (d) the claim is submitted with all the information requested by the payer on the claim form or in other instructions that were distributed in advance to the health care provider or covered person in accordance with the provisions of section 4 of P.L.2005, c.352 (C.17B:30-51); and
- (e) the payer has no reason to believe that the claim has been submitted fraudulently.

(2) If all or a portion of the claim is not paid within the time frames provided in paragraph (1) of this subsection because:

(a) the claim submission is incomplete because the required substantiating documentation has not been submitted to the payer;

(b) the diagnosis coding, procedure coding, or any other required information to be submitted with the claim is incorrect;

(c) the payer disputes the amount claimed; or

(d) there is strong evidence of fraud by the provider and the payer has initiated an investigation into the suspected fraud,

the payer shall notify the health care provider, by electronic means and the covered person in writing within 30 days of receiving an electronic claim, or notify the covered person and health care provider in writing within 40 days of receiving a claim submitted by other than electronic means, that:

(i) the claim is incomplete with a statement as to what substantiating documentation is required for adjudication of the claim;

(ii) the claim contains incorrect information with a statement as to what information must be corrected for adjudication of the claim;

(iii) the payer disputes the amount claimed in whole or in part with a statement as to the basis of that dispute; or

(iv) the payer finds there is strong evidence of fraud and has initiated an investigation into the suspected fraud in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(3) If all or a portion of an electronically submitted claim cannot be adjudicated because the diagnosis coding, procedure coding or any other data required to be submitted with the claim was missing, the payer shall electronically notify the health care provider or its agent within seven days of that determination and request any information required to complete adjudication of the claim.

(4) Any portion of a claim that meets the criteria established in paragraph (1) of this subsection shall be paid by the payer in accordance with the time limit established in paragraph (1) of this subsection.

(5) A payer shall acknowledge receipt of a claim submitted by electronic means from a health care provider, no later than two working days following receipt of the transmission of the claim.

(6) If a payer subject to the provisions of P.L.1983, c.320 (C.17:33A-1 et seq.) has reason to believe that a claim has been submitted fraudulently, it shall investigate the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), or refer the claim, together with supporting documentation, to the Office of the

Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(7) Payment of an eligible claim pursuant to paragraphs (1) and (4) of this subsection shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means and on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

If payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of paragraph (2) or paragraph (3) of this subsection, the claims payment shall be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, for claims submitted by electronic means and the 40th calendar day for claims submitted by other than electronic means, following receipt by the payer of the required documentation or information or modification of an initial submission.

If payment is withheld on all or a portion of a claim by a payer pursuant to paragraph (2) or (3) of this subsection and the provider is not notified within the time frames provided for in those paragraphs, the claim shall be deemed to be overdue.

(8) (a) No payer that has reserved the right to change the premium shall deny payment on all or a portion of a claim because the payer requests documentation or information that is not specific to the health care service provided to the covered person.

(b) No payer shall deny payment on all or a portion of a claim while seeking coordination of benefits information unless good cause exists for the payer to believe that other insurance is available to the covered person. Good cause shall exist only if the payer's records indicate that other coverage exists. Routine requests to determine whether coordination of benefits exists shall not be considered good cause.

(c) In the event payment is withheld on all or a portion of a claim by a payer pursuant to subparagraph (a) or (b) of this paragraph, the claims payment shall be deemed to be overdue if not remitted to the claimant or his agent by the payer on or before the 30th calendar day or the time limit established by the Medicare program, whichever is earlier, following receipt by the payer of a claim submitted by electronic means or on or before the 40th calendar day following receipt of a claim submitted by other than electronic means.

(9) An overdue payment shall bear simple interest at the rate of 12% per annum. The interest shall be paid to the health care provider at the time the overdue payment is made. The amount of interest paid to a health care

provider for an overdue claim shall be credited to any civil penalty for late payment of the claim levied by the Department of Human Services against a payer that does not reserve the right to change the premium.

(10) With the exception of claims that were submitted fraudulently or submitted by health care providers that have a pattern of inappropriate billing or claims that were subject to coordination of benefits, no payer shall seek reimbursement for overpayment of a claim previously paid pursuant to this section later than 18 months after the date the first payment on the claim was made. No payer shall seek more than one reimbursement for overpayment of a particular claim. At the time the reimbursement request is submitted to the health care provider, the payer shall provide written documentation that identifies the error made by the payer in the processing or payment of the claim that justifies the reimbursement request. No payer shall base a reimbursement request for a particular claim on extrapolation of other claims, except under the following circumstances:

- (a) in judicial or quasi-judicial proceedings, including arbitration;
- (b) in administrative proceedings;
- (c) in which relevant records required to be maintained by the health care provider have been improperly altered or reconstructed, or a material number of the relevant records are otherwise unavailable; or
- (d) in which there is clear evidence of fraud by the health care provider and the payer has investigated the claim in accordance with its fraud prevention plan established pursuant to section 1 of P.L.1993, c.362 (C.17:33A-15), and referred the claim, together with supporting documentation, to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety established pursuant to section 32 of P.L.1998, c.21 (C.17:33A-16).

(11) (a) In seeking reimbursement for the overpayment from the health care provider, except as provided for in subparagraph (b) of this paragraph, no payer shall collect or attempt to collect:

- (i) the funds for the reimbursement on or before the 45th calendar day following the submission of the reimbursement request to the health care provider;
- (ii) the funds for the reimbursement if the health care provider disputes the request and initiates an appeal on or before the 45th calendar day following the submission of the reimbursement request to the health care provider and until the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section are exhausted; or
- (iii) a monetary penalty against the reimbursement request, including but not limited to, an interest charge or a late fee.

The payer may collect the funds for the reimbursement request by assessing them against payment of any future claims submitted by the health care provider after the 45th calendar day following the submission of the

reimbursement request to the health care provider or after the health care provider's rights to appeal set forth under paragraphs (1) and (2) of subsection e. of this section have been exhausted if the payer submits an explanation in writing to the provider in sufficient detail so that the provider can reconcile each covered person's bill.

(b) If a payer has determined that the overpayment to the health care provider is a result of fraud committed by the health care provider and the payer has conducted its investigation and reported the fraud to the Office of the Insurance Fraud Prosecutor as required by law, the payer may collect an overpayment by assessing it against payment of any future claim submitted by the health care provider.

(12) No health care provider shall seek reimbursement from a payer or covered person for underpayment of a claim submitted pursuant to this section later than 18 months from the date the first payment on the claim was made, except if the claim is the subject of an appeal submitted pursuant to subsection e. of this section or the claim is subject to continual claims submission. No health care provider shall seek more than one reimbursement for underpayment of a particular claim.

e. (1) A prepaid prescription service organization or its agent, hereinafter the payer, shall establish an internal appeal mechanism to resolve any dispute raised by a health care provider regardless of whether the health care provider is under contract with the payer regarding compliance with the requirements of this section or compliance with the requirements of sections 4 through 7 of P.L.2005, c.352 (C.17B:30-51 through C.17B:30-54). No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of an appeal pursuant to this subsection. The payer shall conduct the appeal at no cost to the health care provider.

A health care provider may initiate an appeal on or before the 90th calendar day following receipt by the health care provider of the payer's claims determination, which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance which shall describe the type of substantiating documentation that must be submitted with the form. The payer shall conduct a review of the appeal and notify the health care provider of its determination on or before the 30th calendar day following the receipt of the appeal form. If the health care provider is not notified of the payer's determination of the appeal within 30 days, the health care provider may refer the dispute to arbitration as provided by paragraph (2) of this subsection.

If the payer issues a determination in favor of the health care provider, the payer shall comply with the provisions of this section and pay the amount

of money in dispute, if applicable, with accrued interest at the rate of 12% per annum, on or before the 30th calendar day following the notification of the payer's determination on the appeal. Interest shall begin to accrue on the day the appeal was received by the payer.

If the payer issues a determination against the health care provider, the payer shall notify the health care provider of its findings on or before the 30th calendar day following the receipt of the appeal form and shall include in the notification written instructions for referring the dispute to arbitration as provided by paragraph (2) of this subsection.

The payer shall report annually to the Commissioner of Banking and Insurance the number of appeals it has received and the resolution of each appeal.

(2) Any dispute regarding the determination of an internal appeal conducted pursuant to paragraph (1) of this subsection may be referred to arbitration as provided in this paragraph. The Commissioner of Banking and Insurance shall contract with a nationally recognized, independent organization that specializes in arbitration to conduct the arbitration proceedings.

Any party may initiate an arbitration proceeding on or before the 90th calendar day following the receipt of the determination which is the basis of the appeal, on a form prescribed by the Commissioner of Banking and Insurance. No dispute shall be accepted for arbitration unless the payment amount in dispute is \$1,000 or more, except that a health care provider may aggregate his own disputed claim amounts for the purposes of meeting the threshold requirements of this subsection. No dispute pertaining to medical necessity which is eligible to be submitted to the Independent Health Care Appeals Program established pursuant to section 11 of P.L.1997, c.192 (C.26:2S-11) shall be the subject of arbitration pursuant to this subsection.

(3) The arbitrator shall conduct the arbitration proceedings pursuant to the rules of the arbitration entity, including rules of discovery subject to confidentiality requirements established by State or federal law.

(4) An arbitrator's determination shall be:

- (a) signed by the arbitrator;
- (b) issued in writing, in a form prescribed by the Commissioner of Banking and Insurance, including a statement of the issues in dispute and the findings and conclusions on which the determination is based; and
- (c) issued on or before the 30th calendar day following the receipt of the required documentation.

The arbitration shall be nonappealable and binding on all parties to the dispute.

(5) If the arbitrator determines that a payer has withheld or denied payment in violation of the provisions of this section, the arbitrator shall order the payer to make payment of the claim, together with accrued interest,

on or before the 10th business day following the issuance of the determination. If the arbitrator determines that a payer has withheld or denied payment on the basis of information submitted by the health care provider and the payer requested, but did not receive, this information from the health care provider when the claim was initially processed pursuant to subsection d. of this section or reviewed under internal appeal pursuant to paragraph (1) of this subsection, the payer shall not be required to pay any accrued interest.

(6) If the arbitrator determines that a health care provider has engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund, including interest accrued at the rate of 12% per annum. Interest shall begin to accrue on the day the appeal was received by the payer for resolution through the internal appeals process established pursuant to paragraph (1) of this subsection.

(7) The arbitrator shall file a copy of each determination with and in the form prescribed by the Commissioner of Banking and Insurance.

f. As used in this section, "insured claim" or "claim" means a claim by a covered person for payment of benefits under an insured prepaid prescription service organization contract for which the financial obligation for the payment of a claim under the contract rests upon the prepaid prescription service organization.

g. Any person found in violation of this section with a pattern and practice as determined by the Commissioner of Banking and Insurance shall be liable to a civil penalty as set forth in section 17 of P.L.2005, c.352 (C.17B:30-55).

C.17B:30-55 Violations, penalties; rules, regulations.

17. a. The Commissioner of Banking and Insurance shall enforce the provisions of sections 2 through 7 of P.L.2005, c.352 (C.17B:30-49 through C.17B:30-54) and sections 2, 3, 4, 5, 6, 7 and 10 of P.L.1999, c.154 (C.17:48-8.4, 17:48A-7.12, 17:48E-10.1, 17B:26-9.1, 17B:27-44.2, 26:2J-8.1 and 17:48F-13.1) as amended by P.L.2005, c.352 (C.17B:30-48 et al.). A payer found in violation of those sections shall be liable for a civil penalty of not more than \$10,000 for each day that the payer is in violation if reasonable notice in writing is given of the intent to levy the penalty and, at the discretion of the commissioner, the payer has 30 days, or such additional time as the commissioner shall determine to be reasonable, to remedy the condition which gave rise to the violation and fails to do so within the time allowed. The penalty shall be collected by the commissioner in the name of the State in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner's determination shall be a final agency decision subject to review by the Appellate Division of the Superior Court.

b. If the Commissioner of Banking and Insurance has reason to believe that a person is engaging in a practice or activity, for the purpose of avoiding or circumventing the legislative intent of sections 2, 3, 4, 5, 6, 7 and 10 of P.L.1999, c.154 (C.17:48-8.4, 17:48A-7.12, 17:48E-10.1, 17B:26-9.1, 17B:27-44.2, 26:2J-8.1 and 17:48F-13.1) as amended by P.L.2005, c.352 (C. 17B:30-48 et al.), the Commissioner of Banking and Insurance is authorized to promulgate rules or regulations necessary to prohibit that practice or activity and levy a civil penalty of not more than \$10,000 for each day that person is in violation of that rule or regulation.

c. For the purpose of administering the provisions of sections 2 through 7 of P.L.2005, c.352 (C.17B:30-49 through C.17B:30-54) and sections 2, 3, 4, 5, 6, 7 and 10 of P.L.1999, c.154 (C.17:48-8.4, 17:48A-7.12, 17:48E-10.1, 17B:26-9.1, 17B:27-44.2, 26:2J-8.1 and 17:48F-13.1) as amended by P.L.2005, c.352 (C.17B:30-48 et al.), 50% of the penalty monies collected pursuant to subsections a. and b. of this section shall be deposited into the General Fund. For the purpose of providing payments to hospitals in accordance with the formula used for the distribution of charity care subsidies that are provided pursuant to P.L.1992, c.160 (C.26:2H-18.51 et seq.), 50% of the penalty monies collected pursuant to subsections a. and b. of this section shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58).

d. A penalty levied pursuant to this section against a payer that does not reserve the right to change the premium shall be credited towards a penalty levied against the payer by the Department of Human Services for the same violation.

18. Section 11 of P.L.1999, c.154 (C.26:1A-15.1) is amended to read as follows:

C.26:1A-15.1 Advisory board on health information electronic data interchange technology, Statewide electronic health records policy.

11. The Commissioner of Health and Senior Services, in consultation with the Commissioner of Banking and Insurance, shall establish an advisory board to make recommendations to the commissioners on health information electronic data interchange technology policy, including a Statewide policy on electronic health records, and measures to protect the confidentiality of medical information. The members of the board shall include, at a minimum, representation from health insurance carriers, health care professionals and facilities, higher education, business and organized labor, health care consumers and the commissioner of each department in the State that uses individuals' medical records or processes claims for health care services. The members of the board shall serve without compensation but shall be entitled

to reimbursement for reasonable expenses incurred in the performance of their duties.

19. Section 16 of P.L.1999, c.154 (C.17B:30-25) shall be amended to read as follows:

C.17B:30-25 Thomas A. Edison State College to study, monitor effectiveness of electronic data interchange technology, electronic health records.

16. Thomas A. Edison State College shall study and monitor the effectiveness of electronic data interchange technology and electronic health records in reducing administrative costs, identify means by which new electronic data interchange technology and electronic health records can be implemented to effect health care system cost savings, and determine the extent of electronic data interchange technology and electronic health records use in the State's health care system.

The Departments of Health and Senior Services and Banking and Insurance or any other department upon request shall cooperate with and provide assistance to the college in carrying out its study pursuant to this section.

The college shall report to the Legislature and the Governor from time to time on its findings and recommendations.

C.17B:30-56 Rules, regulations.

20. The Commissioner of Banking and Insurance shall promulgate 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 purposes of this act.

C.17B:30-57 Liberal construction.

21. This act shall be liberally construed to effectuate the legislative purposes of the act.

22. This act shall take effect on the 180th day after enactment, but the Commissioner of Banking and Insurance may take such anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved January 12, 2006.

CHAPTER 353

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

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

1. All proceedings heretofore had or taken by any school district or at any school election for the authorization or the issuance of bonds of the school district, and any bonds or other obligations issued or to be issued in pursuance of any proposal adopted by the legal voters at such election, are hereby ratified, validated and confirmed to authorize bonds in the additional amount of State grants for which the project was eligible, notwithstanding that the bond proposal did not conform with the requirements of N.J.S.18A:22-39; provided that the interpretive statement published with the bond proposal indicates that the additional bonds were authorized in the amount of the State grants; and provided further that no action, suit or other proceedings 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 fifteen days after the effective date of this act.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 354

AN ACT concerning the State's workforce investment system and revising various parts of the statutory law.

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

1. Section 1 of P.L.1992, c.48 (C.34:15B-35) is amended to read as follows:

C.34:15B-35 Definitions relative to job training.

1. As used in this act:

"Approved community-based or faith-based organization" means an organization which is an approved service provider, a nonprofit organization exempt from federal taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. s.501), and approved by the commissioner as demonstrating expertise and effectiveness in the field of workforce invest-

ment and being representative of a community or a significant segment of a community where the organization provides services.

"Approved service provider" or "approved training provider" means a service provider which is on the State Eligible Training Provider List.

"Apprenticeship Policy Committee" means the New Jersey Apprenticeship Policy Committee established by an agreement between the Bureau of Apprenticeship and Training in the United States Department of Labor, the State Department of Labor and Workforce Development and the State Department of Education and consisting of a representative of the Commissioner of the State Department of Education, a representative of the Commissioner of the State Department of Labor and Workforce Development, the Director of Region II of the Bureau of Apprenticeship and Training in the United States Department of Labor, and a representative of the New Jersey State AFL-CIO.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Credential" means a credential recognized by the Department of Education or the Commission on Higher Education, or approved by the Credentials Review Board established by the Department of Labor and Workforce Development pursuant to section 25 of P.L.2005, c.354 (C.34:1A-1.10).

"Department" means the Department of Labor and Workforce Development.

"Employment and training services" means:

- a. Counseling provided pursuant to section 4 of this act;
- b. Occupational training; or
- c. Remedial instruction.

"Federal job training funds" means any moneys expended to obtain employment and training services, pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or any other federal law pursuant to which moneys may be expended to obtain employment and training services or other employment-directed and workforce development programs and activities, except that, to the extent that the application of any specific provision of this act would cause the amount of federal job training funds provided to the State to be reduced, that provision shall not apply.

"Labor demand occupation" means an occupation which:

- a. The Center for Occupational Employment Information has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or
- b. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to subsection d. of

section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

"Office of Customized Training" means the Office of Customized Training established pursuant to section 5 of P.L.1992, c.43 (C.34:15D-5).

"One Stop Career Center" means any of the facilities established, sponsored or designated by the State, a political subdivision of the State and a Workforce Investment Board in a local area to coordinate or make available State and local programs providing employment and training services or other employment-directed and workforce development programs and activities, including job placement services, and any other similar facility as may be established, sponsored or designated at any later time to coordinate or make available any of those programs, services or activities.

"Permanent employment" means full-time employment unsubsidized by government training funds which provides a significant opportunity for career advancement and long-term job security.

"Poverty level" means the official poverty level based on family size, established and adjusted under section 673 (2) of Subtitle B of the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C. s.9902 (2)).

"Qualified job counselor" means a job counselor whose qualifications meet standards established by the commissioner.

"Qualified staff" means staff whose qualifications meet standards set by regulations adopted by the Commissioner of Labor and Workforce Development.

"Remedial education" or "remedial instruction" means any literacy or other basic skills training or instruction which may not be directly related to a particular occupation but is needed to facilitate success in occupational training or work performance, including training or instruction in basic mathematics, reading comprehension, basic computer literacy, English proficiency and work-readiness skills.

"Self-sufficiency" for an individual means a level of earnings from employment not lower than 250% of the poverty level for an individual, taking into account the size of the individual's family.

"Service provider," "training provider" or "provider" means a provider of employment and training services including but not limited to a private or public school or institution of higher education, a business, a labor organization or a community-based organization.

"State Eligible Training Provider List" means the Statewide list of eligible training providers maintained pursuant to section 14 of P.L.2005, c.354 (C.34:15C-10.2).

"Vocational training" or "occupational training" means training or instruction which is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

"Workforce investment services" means core, intensive, and training services as defined by the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.).

2. Section 3 of P.L.1992, c.48 (C.34:15B-37) is amended to read as follows:

C.34:15B-37 Funding of on the job training.

3. a. On the job training shall not be paid for with federal job training funds for any employment found by the commissioner to be of a level of skill and complexity too low to merit training.

b. The duration of on the job training for any individual shall not exceed the duration indicated by the Bureau of Labor Statistics' Occupational Information Network, or "O*NET," for the occupation for which the training is provided and shall in no case exceed 26 weeks. The department shall set the duration of on the job training for an individual for less than the indicated maximum, when training for the maximum duration is not warranted because of the level of the individual's previous training, education or work experience.

c. On the job training shall not be paid for with federal job training funds unless it is accompanied, concurrently or otherwise, by whatever amount of classroom-based or equivalent occupational training, remedial instruction or both, is deemed appropriate for the worker by the commissioner.

d. Each employer receiving federal job training funds for on the job training shall retain or place in permanent employment each trainee who successfully completes the training. The commissioner may, for a time period he deems appropriate, provide for the withholding of whatever portion he deems appropriate of the funding as a final payment for training, contingent upon the retention of a program completer as required pursuant to this section.

e. On the job training shall not be paid for with federal job training funds unless the trainee is provided benefits, pay and working conditions at a level and extent not less than the benefits and working conditions of other trainees or employees of the trainee's employer with comparable skills, responsibilities, experience and seniority.

3. Section 4 of P.L.1992, c.48 (C.34:15B-38) is amended to read as follows:

C.34:15B-38 Counseling requirement.

4. a. No individual shall receive employment and training services paid for with federal job training funds other than counseling unless the individual first receives counseling pursuant to this section. The counseling shall be provided by a job counselor hired and employed by the State pursuant to Title 11A, Civil Service, of the New Jersey Statutes, or hired and employed by a political subdivision of the State, or be provided by a qualified job counselor hired and employed by a non-profit organization which began functioning as the One Stop Career Center operator with the written consent of the chief elected official and the commissioner prior to the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.), or hired and employed by an approved community-based or faith-based organization to provide counseling which the organization entered into an agreement to provide before the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.). The purpose of any counseling provided pursuant to this section is to assist each individual in obtaining the employment and training services most likely to enable the individual to obtain employment providing self-sufficiency for the individual and also to provide the individual with the greatest opportunity for long-range career advancement with high levels of productivity and earning power. The counseling shall include:

(1) Testing and assessment of the individual's job skills and aptitudes, including the individual's literacy skills and other basic skills. Basic skills testing and assessment shall be provided to the individual unless information is provided regarding the individual's educational background and occupational or professional experience which clearly demonstrates that the individual's basic skill level meets the standards established pursuant to section 14 of P.L.1989, c.293 (C.34:15C-11) or unless the individual is already participating in a remedial instruction program which meets those standards;

(2) An evaluation by a qualified job counselor of what remedial instruction, if any, is determined to be necessary for the individual to advance in his current career or occupation or to succeed in any particular occupational training which the individual would undertake under the program, provided that the remedial instruction shall be at a level not lower than that needed to meet the standards established pursuant to section 14 of P.L.1989, c.293 (C.34:15C-11);

(3) The provision of information to the individual regarding the labor demand occupations, including the information about the wage levels in those occupations, and information regarding the effectiveness of approved service providers of occupational training in labor demand occupations which the individual is considering, including a consumer report card on service providers showing the long-term success of former trainees of each

provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training;

(4) The timely provision of information to the individual regarding the services and benefits available to the individual, and all actions required of the individual to obtain the services and benefits, under programs supported by federal job training funds or the provisions of P.L.1992, c.47 (C.43:21-57 et al.), and the provision to the individual of a written statement of the individual's rights and responsibilities with respect to programs for which the individual is eligible, which includes a full disclosure to the individual of his right to obtain the services most likely to enable the individual to obtain employment providing self-sufficiency and the individual's right not to be denied employment and training services for any of the reasons indicated in section 5 of P.L.1992, c.48 (C.34:15B-39), including the individual's right not to be denied training services because the individual already has identifiable vocational skills, if those existing skills are for employment with a level of earnings lower than the level of self-sufficiency;

(5) Discussion with the counselor of the results of the testing and evaluation; and

(6) The development of a written Employability Development Plan identifying the training and employment services or other workforce investment services, including any needed remedial instruction, to be provided to the individual.

b. Federal job training funds shall be used to provide training and employment services or other workforce investment services to an individual identified in an Employability Development Plan developed pursuant to this section only if the counselor who evaluates the individual pursuant to this section determines that the individual can reasonably be expected to successfully complete the training and instruction identified in the plan.

c. All information regarding an individual applicant or trainee which is obtained or compiled in connection with the testing, assessment and evaluation and which may be identified with the individual shall be confidential and shall not be released to an entity other than the individual, the counselor, the department, the commission or partners of the One-Stop system as necessary for them to provide training and employment services or other workforce investment services to the individual, unless the individual provides written permission to the department for the release of the information or the information is used solely for program evaluation.

4. Section 5 of P.L.1992, c.48 (C.34:15B-39) is amended to read as follows:

C.34:15B-39 Eligibility for employment, training services.

5. An otherwise qualified individual shall not be denied employment and training services or other workforce investment services included in the Employability Development Plan developed for the individual pursuant to section 4 of this act for any of the following reasons: the services include remedial instruction needed by the individual to advance in the individual's current employment or occupation or to succeed in the occupational component of the training; the qualified displaced worker or other individual has identifiable occupational skills but the training services are needed to enable the individual to develop skills necessary to attain at least the level of self-sufficiency; the training is part of a program under which the individual may obtain a college degree enhancing the individual's marketable skills and earning power; the individual has previously received a training grant; the length of the training period under the program; or the lack of a prior guarantee of employment upon completion of the training, except for on the job training. This section shall not be construed as requiring that federal job training funds be used to pay for employment and training services or other workforce investment services for which other assistance, such as State or federal student financial aid, is provided.

5. Section 6 of P.L.1992, c.48 (C.34:15B-40) is amended to read as follows:

C.34:15B-40 Approval, evaluation of service provider.

6. a. No federal job training funds shall be used to obtain employment and training services from a service provider unless the provider is an approved service provider and the provider agrees to provide, on a first-come, first-served basis, the services it offers to any trainee who is referred to it to obtain the offered services, if included in the individual's Employability Development Plan developed pursuant to section 4 of this act, up to the total number of trainees that the provider agrees to serve.

b. Each service provider shall maintain, make available and submit appropriate records and data for monitoring and evaluation purposes, as required by the State Employment and Training Commission. The records and data shall include, but not be limited to:

(1) A record for each trainee enrolled, including the trainee's name, Social Security number, gender, date of birth, date of enrollment, and any date of completion, termination, start in a job or application for a license, any licensing examination result, date of issue of a license or credential issued, and any other information specified by the State Employment and Training Commission or the Center for Occupational Employment Information. For

any individual who does not have a Social Security number, the service provider may substitute an alternate method of identification, except that, at the time of start into employment, the alternate code shall be cross-referenced with the individual's valid Social Security number;

(2) A record of all administrative and overhead expenses of the provider related to the providing of employment and training services funded by the program and the provider's direct expenses of providing the services; and

(3) Any other information deemed appropriate by the commissioner or the State Employment and Training Commission for evaluation purposes.

c. In the case of a provider of occupational training services, the commissioner shall collect the information needed to measure effectively the long-term success of the former trainees of the provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training. The commission shall set such standards as it deems appropriate regarding comparisons of the former trainees with groups of otherwise similar individuals who did not receive the training. The information obtained pursuant to this subsection shall be used to:

(1) Assist in evaluating the performance of providers of occupational training services;

(2) Assist in determining which providers of occupational training services to place on the State Eligible Training Provider List; and

(3) Assist in providing reliable information regarding the quality of available providers of occupational training services as part of the counseling provided pursuant to section 4 of this act, including the furnishing, for use in the counseling, including counseling provided pursuant to section 4 of P.L.1992, c.48 (C.34:15B-38), section 7 of P.L.1992, c.43 (C.34:15D-7) and section 3 of P.L.1992, c.47 (C.43:21-59), of a consumer report card on service providers showing the long-term success of former trainees of each provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training.

d. The State Employment and Training Commission, the commissioner, and each service provider shall comply with all pertinent State and federal laws regarding the privacy of students and other participants in employment and training programs, including but not limited to, the Privacy Act of 1974, Pub.L.93-579 (5 U.S.C. s.552 and 20 U.S.C. s.1232g), and shall provide all disclosures to the students and participants required by those laws.

6. Section 4 of P.L.1989, c.293 (C.34:15C-1) is amended to read as follows:

C.34:15C-1 Definitions.

4. As used in this act:

a. "At-risk youth" means a teenage high school dropout or a teenage parent or other teenager whose pattern of behavior is likely to result in becoming a high school dropout.

b. "Commission" means the State Employment and Training Commission established pursuant to section 5 of this act.

c. "Federal job training funds" means any moneys expended pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or any other federal law to obtain employment and training services or other employment-directed and workforce development programs and activities, including employment and training services as defined in section 1 of P.L.1992, c.48 (C.34:15B-35) and employment-directed and workforce development programs and activities as described in sections 2 and 4 of P.L.2004, c.39 (C.34:1A-1.3 and 34:1A-1.5).

d. "Labor demand occupation" means an occupation which:

(1) The Center for Occupational Employment Information has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

(2) The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

e. "Owner" of a qualifying school means any person who acts as the proprietor of a qualifying school, including any individual who has an ownership interest of five percent or more in the qualifying school.

f. (1) "Qualifying school" means, except as provided in paragraph (2) of this subsection f., a government unit, person, association, firm, corporation, private organization, or any entity doing business or maintaining facilities within the State, whether operating on a for profit or not for profit basis, which:

(a) Offers or maintains a course of instruction or instructional program utilized to prepare individuals for future education or the workplace, includ-

ing instruction in literacy or basic skills, or provides supplemental instruction in recognized occupational skills, pre-employment skills or literacy skills;

(b) Offers instruction by any method including, but not limited to, classroom, shop, laboratory experience, correspondence, Internet and other distance learning media, or any combination thereof;

(c) Offers instruction to the general public or in conjunction with New Jersey's workforce investment system; and

(d) Charges tuition or other fees or costs, or receives public funding for the delivery of any of the above types of instruction.

(2) "Qualifying school" does not mean:

(a) Colleges and universities licensed by the Commission on Higher Education or other schools, institutions and entities, including public or private schools below college level, which are regulated and approved pursuant to any law of this State other than this 2005 amendatory and supplementary act;

(b) Employers offering instruction to their employees directly or through a contract instructor, where there is no cost to the employee and no profit to the employer; or

(c) Schools offering instruction which is avocational, cultural or recreational in nature.

g. "Service provider," "training provider" or "provider" means a provider of employment and training services including, but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization.

h. "State job training funds" means any moneys expended from the Workforce Development Partnership Fund created pursuant to section 9 of P.L.1992, c.43 (C.34:15D-9), the Supplemental Workforce Fund for Basic Skills established pursuant to section 1 of P.L.2001, c.152 (C.34:15D-21) or any other source of State moneys to obtain employment and training services or other employment-directed and workforce development programs and activities, including employment and training services as defined in section 3 of P.L.1992, c.43 (C.34:15D-3) and employment-directed and workforce development programs and activities as described in sections 2 and 4 of P.L.2004, c.39 (C.34:1A-1.3 and 34:1A-1.5).

i. "Workforce Investment Board" means a board established pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.).

j. "Workforce investment programs" means programs and services that are State or federally funded and designed to develop, improve, or maintain the productivity and earning power of workers and job seekers, including employment and training services, as defined in section 1 of P.L.1992, c.48 (C.34:15B-35) and section 3 of P.L.1992, c.43 (C.34:15D-3), and including

employment-directed and workforce development programs and activities as described in sections 2 and 4 of P.L.2004, c.39 (C.34:1A-1.3 and 34:1A-1.5).

k. "Workforce investment services" means core, intensive, and training services as defined by the "Workforce Investment Act of 1998," Pub.L.105-220 (29 U.S.C. s.2801 et seq.).

7. Section 8 of P.L.1989, c.293 (C.34:15C-5) is amended to read as follows:

C.34:15C-5 Purpose of commission.

8. The purpose of the commission shall be to develop and assist in the implementation of a State workforce investment policy with the goal of creating a coherent, integrated system of workforce investment programs and services which, in concert with the efforts of the private sector, will provide each citizen of the State with equal access to the learning opportunities needed to attain and maintain high levels of productivity and earning power. The principal emphasis of the workforce investment policy shall be developing a strategy to fill significant gaps in New Jersey's workforce investment efforts, with special attention to finding ways to mobilize and channel public and private resources to individuals who would otherwise be denied access to the training and education they need to make their fullest contribution to the economic well being of the State. To the extent practicable, the strategy shall emphasize types of training and education which foster the communication and critical thinking skills in workers and job seekers which will be of greatest benefit for long term career advancement.

8. Section 9 of P.L.1989, c.293 (C.34:15C-6) is amended to read as follows:

C.34:15C-6 Duties of commission.

9. The commission shall:

a. Issue the New Jersey Unified Workforce Investment Plan pursuant to the provisions of the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) and section 10 of this act;

b. Establish performance standards for workforce investment programs pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) and section 11 of this act;

c. Act to ensure the full participation of Workforce Investment Boards in the planning and supervision of local workforce investment systems. The commission shall be responsible to oversee and develop appropriate standards to ensure Workforce Investment Board compliance with State and

federal law, the State plan, and other relevant requirements regarding membership, staffing, meetings, and functions;

d. Foster and coordinate initiatives of the Department of Education and Commission on Higher Education to enhance the contributions of public schools and institutions of higher education to the implementation of the State workforce investment policy;

e. Examine federal and State laws and regulations to assess whether those laws and regulations present barriers to achieving any of the goals of this act. The commission shall, from time to time as it deems appropriate, issue to the Governor and the Legislature reports on its findings, including recommendations for changes in State or federal laws or regulations concerning workforce investment programs or services, including, when appropriate, recommendations to merge other State advisory structures and functions into the commission;

f. Perform the duties assigned to a State Workforce Investment Board pursuant to subsection (d) of section 111 of the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2821);

g. Have the authority to enter into agreements with the head of each State department or commission which administers or funds education, employment or training programs, including, but not limited to, the Departments of Labor and Workforce Development, Community Affairs, Education, and Human Services and the Commission on Higher Education, the New Jersey Commerce, Economic Growth and Tourism Commission, and the Juvenile Justice Commission, which agreements are for the purpose of assigning planning, policy guidance and oversight functions to each Workforce Investment Board with respect to any workforce investment program funded or administered by the State department or commission within the Workforce Investment Board's respective labor market area or local area, as the case may be; and

h. Establish guidelines to be used by the Workforce Investment Boards in performing the planning, policy guidance, and oversight functions assigned to the boards under any agreement reached by the commission with a department or commission pursuant to subsection g. of this section. The commission shall approve all local Workforce Investment Board plans that meet the criteria established by the commission for the establishment of One-Stop systems. The Department of Labor and Workforce Development shall approve the operational portion of the plans for programs administered by the department.

The commission shall have access to all files and records of other State agencies and may require any officer or employee therein to provide such information as it may deem necessary in the performance of its functions.

Nothing in P.L.2005, c.354 (C.34:15C-7.1 et al.) shall be construed as affecting the authority of the Commissioner of Personnel to review and approve training programs for State employees pursuant to N.J.S.11A:6-25.

9. Section 10 of P.L.1989, c.293 (C.34:15C-7) is amended to read as follows:

C.34:15C-7 Preparation of New Jersey Unified Workforce Investment Plan.

10. The commission shall prepare a New Jersey Unified Workforce Investment Plan. The plan shall include:

- a. A description of the State workforce investment policy developed pursuant to section 8 of this act;
- b. An assessment and an evaluation of the demand for various kinds of trained workers in New Jersey and recommendations on how to direct the State's workforce investment efforts to be most effective in using that demand to increase the productivity and earning power of the work force;
- c. (Deleted by amendment, P.L.2005, c.354.)
- d. A description of any performance standards established pursuant to section 11 of this act and remedial instruction standards established pursuant to section 14 of this act and any evaluation of workforce investment activities based on those standards;
- e. Evaluations of other existing workforce investment programs, their goals and structures, and the consistency of each program with the State workforce investment policy developed by the commission;
- f. (1) Evaluations of the organizational structures, functions and activities of governmental agencies performing advisory functions or activities in relation to workforce investment programs or services, including advisory functions and activities performed in connection with vocational education, adult education, apprenticeship, vocational rehabilitation and human services programs; and
(2) Recommendations to the Governor about coordination of the State's efforts in these program areas, including, if the commission deems appropriate, a recommendation to the Governor for the transfer of these advisory functions and activities to the jurisdiction of the commission; and
- g. Recommendations for any other changes the commission deems appropriate in the overall structure of the State's workforce investment system, including the consolidation of duplicative programs and services and the reallocation of State and federal funds to the agencies able to make the best use of those funds.

The New Jersey Unified State Workforce Investment Plan shall be submitted to the Governor, the Legislature and each department charged with the operation of any program or service which is evaluated by the

commission or the subject of a recommendation in the report consistent with the timetable established by the federal Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.).

The New Jersey Unified State Workforce Investment Plan shall be a strategic unified workforce investment plan encompassing all of the required and optional One-Stop partners prescribed by the federal Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.). The plan is intended to create a comprehensive workforce investment system in New Jersey. The programs included in the plan shall include but not be limited to workforce investment-related activities and programs authorized under: the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub.L.105-332 (20 U.S.C. s.2301 et seq.); the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.), including activities for adults, dislocated workers and youth under Title I of that act and adult education and family literacy programs under Title II of that act; the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.); the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub.L.104-193 (42 U.S.C. 601 et seq.); the federal Food and Agricultural Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); chapter 2 of Title II of the Trade Act of 1974, Pub.L.93-618 (19 U.S.C. s.2102 et seq.); the Wagner-Peyser Act (29 U.S.C. s.49 et seq.); Part B of Title I of the "Rehabilitation Act of 1973" (29 U.S.C. s.701 et seq.); 38 U.S.C. s.4100 et seq. and 38 U.S.C. s.4200 et seq., including veterans' employment, disabled veterans' outreach, and local veterans' employment representative programs; the "unemployment compensation law," R.S.43:21-1 et seq.; the "Older Americans Act of 1965" (42 U.S.C. s.3001 et seq.); Titles V and XIX of the Social Security Act (42 U.S.C. s.701 et seq. and 42 U.S.C. s.1396 et seq.); U.S. Department of Housing and Urban Development Community Development Block Grants, public housing programs; and Community Services Block Grant Act; and the State Workforce Development Partnership Program, P.L.1992, c.43 (C.34:15D-1 et seq.), including individual grants, customized training, youth transition to work, occupational health and safety training, tuition waivers and basic skills including literacy.

The commission may, at any other time as it deems appropriate, issue additional reports to the Governor and the Legislature concerning any of the subjects addressed in the New Jersey Unified Workforce Investment Plan. Significant changes in the economy or technology or in federal or State policy on any area included in the workforce investment system may result in modifications to the plan.

The commission shall conduct a periodic, comprehensive evaluation of the activities of the workforce investment system and make a periodic report

to the Governor and the Legislature regarding the effectiveness of the workforce investment system in implementing the purposes of this act.

10. Section 11 of P.L.1989, c.293 (C.34:15C-8) is amended to read as follows:

C.34:15C-8 Establishment of performance standards for evaluating workforce investment system.

11. a. The commission shall establish quantifiable performance standards for evaluating the workforce investment system, and guidelines for procedures to encourage and enforce compliance with those standards. The commission shall establish the standards and procedures in conjunction with any department or commission which funds or administers workforce investment programs.

The standards shall be designed to measure the success of the system in assisting the individuals it serves to attain and maintain high levels of productivity and earning power, through preparation for employment in occupations with significant opportunities for career advancement. The standards shall take into account the specific needs and characteristics of the target populations.

b. Each workforce investment program, including any program funded or established pursuant to the Workforce Investment Act of 1998, Pub. L. 105-220 (29 U.S.C. s. 2901 et seq.), the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub.L.105-332 (20 U.S.C. s.2301 et seq.), or the State Workforce Development Partnership Program, P.L.1992, c.43 (C.34:15D-1 et seq.), is hereby deemed to be subject to the performance standards and guidelines established pursuant to subsection a. of this section. The performance standards for the program shall be based on factors including, but not limited to:

(1) The percentage of trainees who are placed, following completion of the program, in employment in the occupation for which they are trained or who are enrolled for further education or training, if those enrollments are a goal of the program;

(2) The success of the program in sustaining or increasing the trainees' levels of earnings, based on the wage levels upon placement in employment, and the trainees' retention in employment; and

(3) (Deleted by amendment, P.L.2005, c.354.)

(4) The success of the program in facilitating the remedial instruction which the program is required to make available to trainees under standards established pursuant to section 14 of this act.

In establishing performance standards, the commission shall not use criteria which may adversely affect the assessment of a program because of

any emphasis the program may have on long-term occupational training and instruction.

The commission shall establish dates by which each department administering workforce investment programs shall adopt the standards and guidelines for use in the planning, budgeting and administration of those programs.

The standards shall apply to a program which is State or federally funded except to the extent that application of the standards would prevent the program from receiving the federal funding.

11. Section 13 of P.L.1989, c.293 (C.34:15C-10) is amended to read as follows:

C.34:15C-10 Commission shall establish requirements for each workforce investment program.

13. The commission shall establish such requirements as it deems appropriate for each workforce investment program to utilize the comprehensive occupational information compiled and disseminated by the Center for Occupational Employment Information established pursuant to section 27 of P.L.2005, c.354 (C.34:1A-86) and other information developed cooperatively by the Department of Labor and Workforce Development and the commission for program planning and individual career decision-making.

C.34:15C-7.1 Selection of industries with growing, unmet demand for skilled workers.

12. a. The State Employment and Training Commission shall select industries in which a growing or unmet demand for skilled workers, professionals or other personnel provides an opportunity to generate significant growth in employment or careers providing access to self-sufficiency and shall create State-level industry task forces consisting of key stakeholders in each selected industry to analyze the most significant mismatches between labor supply and demand in the industry and develop Statewide strategies to rectify those mismatches. The membership of each task force shall be selected by the commission and shall include leaders of businesses, labor unions, professional associations and other stakeholders in the industry and representatives from State departments and agencies which the commission determines may be of assistance in rectifying the mismatches of supply and demand.

b. The commission shall select Workforce Investment Boards and direct them to create regional planning bodies to address the workforce needs in the regions under the jurisdictions of the boards of specific industries, occupations or career clusters in which a growing or unmet demand for skilled workers, professionals or other personnel provides an opportunity to generate significant growth in employment or careers providing self-sufficiency. The membership of each regional planning body shall include

representatives of Workforce Investment Boards and One Stop Career Center partners and leaders of businesses, labor unions and professional associations and other stakeholders of the industries, occupations, career clusters or employers in the region. The region under a regional planning body shall be selected by the commission to enhance local delivery systems by providing meaningful geographic boundaries for labor market rationalization. The region selected for one industry, occupation or career cluster may be different from the region selected for another industry, occupation or career cluster. The size of regions under regional planning bodies may vary in accordance with the concentration of the relevant work forces or in accordance with other factors. The commission may also determine any areas outside of the State which would benefit from a joint effort with a regional planning body and direct the body to seek cooperation with the Workforce Investment Board or boards outside of the State that have jurisdiction over those areas.

c. The purpose of each regional planning body shall be to develop, for its area of jurisdiction, strategies to match labor market supply and demands and support a demand-side focus anchoring the employment and training system to the labor market in a manner which increases opportunities for employment and careers providing access to self-sufficiency. Those strategies may include job skill training and utilization of labor market and demographic information to match the location of jobs with the residence of workers. The planning for the development of the strategy shall include an analysis of the adequacy of the transportation system to get the workers to the jobs and the suitability of the training being offered in an area for the needs of the local workplace, and shall take into consideration any Statewide strategy developed by a Statewide industry task force pursuant to subsection a. of this section which is relevant to the jurisdiction of the regional planning body.

d. The Legislature finds and declares that the current and growing shortage of skilled and credentialed health care professionals, paraprofessionals, and entry-level workers has reached crisis proportions. The commission shall establish a State-level industry taskforce on the health care industry, as well as regional planning bodies on the health care industry in each region designated by the commission, to address this problem and promote enduring partnerships among employers, labor unions, professional associations and other stakeholders in the health care industry, the public workforce investment system, primary, secondary and postsecondary education, and social service providers to develop and sustain solutions in the areas of recruitment, retention, training and education capacity-building in that industry in a manner which increases opportunities for employment and careers providing access to self-sufficiency.

C.34:15C-10.1 Certificate of approval for, application by qualifying schools.

13. a. A qualifying school shall make a written application to the Commissioner of Labor and Workforce Development for a certificate of approval, and shall not be permitted to operate unless it receives the certificate of approval issued by the Commissioner of Labor and Workforce Development and the Commissioner of Education pursuant to the rules that they promulgate. The application shall be in the form prescribed by the commissioners and shall furnish the information required by the commissioners. Upon receipt of this application, with the required documentation, the Commissioner of Labor and Workforce Development shall cause to be conducted an evaluation of the applicant school prior to the issuance of a certificate of approval. The certificate shall be in a form prescribed by the Commissioners of Labor and Workforce Development and Education and shall be prominently displayed so that it is visible to the general public. The certificate is issued to the applicant owner and school and is nontransferable. In the event of a change of ownership, the new owner is required to apply for a change in ownership subject to the conditions and fees prescribed by the Commissioner of Labor and Workforce Development and prior to the issuance of a new certificate of approval. Approval shall also be required for changes in location and any additional locations. Program and course curricula and instructional personnel and administrator credentials shall be submitted for approval and contain sufficient information for proper evaluation as determined by the Commissioner of Education. The personnel of a qualifying school shall meet the qualifications set forth by the Commissioners of Labor and Workforce Development and Education in order to own, operate, market, supervise, or offer instruction.

b. A casino gaming school shall not receive a certificate of approval pursuant to subsection a. of this section unless the school is licensed by the New Jersey Casino Control Commission pursuant to subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92).

c. An applicant shall not be issued a certificate of approval if, upon the review and consideration of the submitted application, the application is found to be not in accordance with the rules and regulations set forth by the Commissioners of Labor and Workforce Development and Education. The Commissioners of Labor and Workforce Development and Education may revoke, suspend, or place reasonable conditions upon the continued approval represented by the certificate. Prior to revocation, the Commissioners of Labor and Workforce Development and Education shall notify the holder in writing of the impending action and set forth the grounds for the action. The Commissioners of Labor and Workforce Development and Education may reexamine a school during the year in which notice or conditions have

been imposed. A certificate of approval may be revoked, suspended, or made conditional if the Commissioners of Labor and Workforce Development and Education have reasonable cause to believe that the school is guilty of violating this section or any of the rules adopted under this section or is found to be financially unsound.

d. An approved qualifying school shall maintain a permanent student record for each student enrolled. This information shall include, but not be limited to, the student's Social Security number, gender, date of birth, date of enrollment, and any date of completion, date of termination, date of start in a job, date of application for a license, licensing examination result, date of issue of a license, any credential issued, and other information as specified by the State Employment and Training Commission or the Center for Occupational Employment Information. For any individual who does not have a Social Security number, the qualifying agency may substitute an alternate method of identification, except that, at the time of start into employment the alternate code shall be cross-referenced with the individual's valid Social Security number. The applicant school shall submit a record retention plan to the Commissioner of Labor and Workforce Development that describes the method by which a student or other legitimate requester may obtain a copy of the permanent record verifying attendance and academic achievement of a student at the school. The plan shall identify the organization or individual responsible for maintaining and responding to requests for and distributing records in the event that the school ceases operation or closes. The Department of Labor and Workforce Development and the Department of Education may adopt additional regulations prescribing the manner in which student records, including transcripts, shall be maintained and distributed, and regulations setting penalties for failure to comply with an approved record retention plan.

e. An approved qualifying school shall be open for monitoring and inspection to any officer, representative or agent designated by the Commissioners of Labor and Workforce Development and Education. The Departments of Labor and Workforce Development and Education shall conduct examinations of all facilities and methods of operating, as they deem appropriate.

f. The Departments of Labor and Workforce Development and Education shall continue to oversee the proper conduct of qualifying schools and shall maintain rules governing curricula, qualifications of instructors and supervisors, facilities, record keeping requirements and any other matters essential to the maintenance of quality instruction and the business integrity of qualifying schools.

g. An approved qualifying school shall submit an annual report to the Commissioner of Labor and Workforce Development. The annual report

shall include, but not be limited to, enrollment information, post-training placement information and tuition received as well as an electronic or paper copy of student transcripts. Failure to furnish the required report shall be just cause for the commissioner to amend, suspend or revoke the approval to operate as previously granted by whatever governmental entity, or to take other appropriate actions. The annual report shall be for the period of July 1 through June 30 of the preceding year and shall be submitted, not later than 30 calendar days after the close of the reporting period, in the format and on the forms provided by the commissioner. A qualifying school shall also submit any additional reports as requested by the commissioner on a more frequent basis. A qualifying school shall submit the name and Social Security number of each newly enrolled student on a reporting basis to be established by the commissioner.

h. Objective performance standards and measures for evaluating qualifying schools shall be jointly developed and implemented by the State Board of Education and the New Jersey State Employment and Training Commission. Policy makers and consumers shall be provided with information concerning approved programs and shall be provided access to a consumer report card on the effectiveness of the qualifying schools on the State Eligible Training Provider List showing the long-term success of former trainees of each qualifying school in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training.

i. Any State or federal funds which become available for the school approval functions performed by the Department of Labor and Workforce Development or the Department of Education, as described in this act, shall be appropriated to the respective department for the regulation and oversight of qualifying schools pursuant to the provisions of this act.

j. The Commissioner of the Department of Labor and Workforce Development shall, in consultation with the Department of Education, adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as necessary to establish approval and renewal fees and to effectuate the provisions of this section. Existing rules and regulations, as of the effective date of P.L.2005, c.354 (C.34:15C-7.1 et al.), shall remain in effect for one year or until rules and regulations adopted pursuant to this subsection replace them.

C.34:15C-10.2 State Eligible Training Provider List.

14. a. The Department of Labor and Workforce Development shall maintain a Statewide list of approved training providers known as the State

Eligible Training Provider List. In order to be placed and retained on the list, a training provider shall meet:

- (1) The requirements of section 122 of the "Workforce Investment Act of 1998, Pub.L.105-220 (29U.S.C. s.2842);
- (2) The requirements of this section;
- (3) Any requirement applicable to that training provider pursuant to section 13 of P.L.2005, c.354 (C.34:15C-10.1), section 6 of P.L.1992, c.48 (C.34:15B-40) and section 6 of P.L.1992, c.43 (C.34:15D-8);
- (4) All reporting requirements of section 29 of P.L.2005, c.354 (C.34:1A-88); and
- (5) Any other requirements established by the State Employment and Training Commission.

No training provider who is not an approved training provider included on the State Eligible Training Provider List shall receive any federal job training funds or State job training funds.

b. In order to be placed on the State Eligible Training Provider List, each training provider, including a school, shall obtain approval from an authorized government agency. Any provider that is not aligned with a specific cognizant agency shall be required to obtain approval from the Department of Labor and Workforce Development. Authorized government agencies shall include, but are not limited to, the following:

(1) The Commission on Higher Education: The commission shall approve programs from all institutions under its jurisdiction. This approval includes course work for degrees and certificates awarded by higher education institutions including public and private institutions.

(2) The Department of Education: The Department of Education shall approve all institutions in its jurisdiction. Programs operated by the Division of Vocational Rehabilitation Services shall be approved by the Department of Education cooperatively with the Department of Labor and Workforce Development. Private schools controlled or operated by a charitable institution or any school controlled or operated by a religious denomination requesting to be included on the State Eligible Training Provider List shall be approved by the Department of Labor and Workforce Development in consultation with the Department of Education or any other appropriate State agency. Appropriate fees may be charged for certification and annual renewal.

(3) State departments responsible for licensing: Training providers are approved by any State department authorized to license training providers for specific training programs.

(4) The federal Government: Training providers required to be approved by an agency of the federal government shall be included on the State

Eligible Training Provider List after submission of the application and documentation indicating approval by the appropriate agency.

(5) Out-of-state approval: Training providers located in other states may be on the State Eligible Training Provider List if they demonstrate that they are approved by an appropriate state agency in the state in which they are located. Those providers shall complete the appropriate application process, submit to the Center for Occupational Employment Information proof of their approval, agree to the established reports, agree to any other requirements established for in-State providers, and comply with the specific requirements of the funding source.

c. Where applicable, training programs shall align with or use existing nationally recognized, industry-based skill standards and certifications as the basis for developing competency-based learning objectives, curricula, instructional methods, teaching materials and worksite activities; prepare students to satisfy employer knowledge and skill requirements assessed by related examination, and provide students with the opportunity to take exams and receive certifications or licenses.

d. Each training provider shall apply to be placed on the State Eligible Training Provider List and provide a record for each trainee enrolled. This information shall include, but not be limited to, the participant's Social Security number, gender, date of birth, date of enrollment, any date of completion, date of termination, date of start in a job, date of application for a license, licensing examination result, date of issue of a license, any credential issued, and other information as specified by the State Employment and Training Commission or Center for Occupational Employment Information. For individuals who do not have a Social Security number, the qualifying agency may substitute an alternate method of identification, except that, at the time of start into employment, the alternate code shall be cross-referenced with the individual's valid Social Security number. In addition, the training provider shall agree to provide any other information deemed appropriate by the State Employment and Training Commission, the Department of Labor and Workforce Development and the Department of Education for evaluation purposes.

e. Every training provider shall provide access for on site visitation and monitoring by the State or its designee upon request.

f. Objective performance standards and measures for evaluating training providers shall be jointly developed and implemented by the State Board of Education and the New Jersey State Employment and Training Commission. Policy makers and consumers shall be provided with information concerning training providers on the State Eligible Training Provider List and shall be provided a consumer report card on the effectiveness of those training providers showing the long-term success of former trainees

of each provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training.

g. Any qualifying school which has a currently valid certificate of approval issued pursuant to section 13 of P.L.2005, c.354 (C.34:15C-10.1) and complies with all requirements of this section applicable to the school shall be placed on the State Eligible Training Provider List and any qualifying school which has its certificate revoked or suspended shall be removed from the list until the certification is reinstated.

15. Section 14 of P.L.1989, c.293 (C.34:15C-11) is amended to read as follows:

C.34:15C-11 Commission to coordinate initiatives with State departments.

14. a. The commission shall foster and coordinate workforce investment initiatives of all State Departments. It shall promote initiatives of the Department of Education and the Commission on Higher Education to maximize the contributions of the State's public schools and institutions of higher education in implementing the State workforce investment policy developed by the commission. The commission shall foster and coordinate initiatives of the Department of Education and the Commission on Higher Education that will enhance the State's efforts to assist at-risk youths in achieving educational success and making successful transitions to work. The commission shall foster initiatives of the Commission on Higher Education among institutions of higher education that will enhance the State's workforce investment efforts, including: the coordination of vocational programs between institutions; more use of facilities at institutions which provide education at or above the level of county colleges, including, but not limited to, the Advanced Technology Centers established pursuant to P.L.1985, c.102 (C.52:9X-1 et seq.), P.L.1985, c.103 (C.18A:64J-1 et seq.), P.L.1985, c.104 (C.18A:64J-8 et seq.), P.L.1985, c.105 (C.18A:64J-15 et seq.), and P.L.1985, c.106 (C.18A:64J-22 et seq.); developing more programs to offer four year degrees for working students who attend only at nights and on weekends; and expanding programs which provide college credit for training and educational experiences outside of traditional academic contexts.

b. The commission shall have the responsibility, jointly with the Department of Education, the Department of Labor and Workforce Development and the Commission on Higher Education, to: (1) establish standards regarding the minimum levels of remedial instruction which shall be made available to a trainee under any workforce investment program, including

any program of training undertaken in connection with additional unemployment compensation benefits provided pursuant to the provisions of P.L. 1992, c.47 (C.43:21-57 et al.) or any program funded or established pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L. 1992, c.43 (C.34:15D-1 et al.) or the Workforce Investment Act of 1998, Pub. L. 105-220 (29 U.S.C. s.2801 et seq.); and (2) coordinate the development of appropriate intake and assessment instruments and procedures for the assessment of persons seeking access to workforce investment programs. The remedial instruction standards shall be determined through the use of common diagnostic tools, curricula, and evaluation techniques, and shall take into account the differing needs and characteristics of the various target populations which the programs serve. The remedial instruction standards shall be based on evaluations of the minimum levels of basic skills needed to succeed in particular types of occupational training offered under the programs and any additional improvements in basic skills needed by individuals of each target population to successfully adapt to the State's changing economy. The standard for the minimum level of remedial instruction that shall be made available to an individual receiving the occupational training for a particular occupation shall not be less than the level necessary to attain the minimum basic skill levels indicated as needed for that occupation in the Bureau of Labor Statistics' Occupational Information Network, or "O*NET." The commission, the Department of Education, the Department of Labor and Workforce Development and the Commission on Higher Education, may jointly set this standard at a higher level, but if they do not, the level indicated in the Bureau of Labor Statistics' Occupational Information Network, or "O*NET," shall be regarded as the established standard.

16. Section 15 of P.L. 1989, c.293 (C.34:15C-12) is amended to read as follows:

C.34:15C-12 Preparation of annual budget for commission, funding.

15. a. The chairperson of the commission shall prepare an annual budget for the commission. Resources to support the activities of the commission and commission staff shall be contributed by each of the State's workforce investment system's partner State departments. Up to 15 percent of allowable State administrative funds from all federally supported and State-supported workforce investment programs may be used to support the commission.

b. Funding for the commission and local Workforce Investment Boards shall be obtained from all workforce investment programs. Funding shall be established cooperatively by the departments who are partners to the workforce investment system. The Commissioner of Labor and Workforce

Development, in consultation with the commission, shall set criteria and standards for any Workforce Investment Board administrators hired with these administrative resources.

17. Section 18 of P.L.1989, c.293 (C.34:15C-15) is amended to read as follows:

C.34:15C-15 Workforce Investment Boards; representatives; duties, powers.

18. a. Each workforce investment area shall be under the jurisdiction of a Workforce Investment Board. Each local workforce investment area established by the Governor shall have the same boundaries as the labor market area of which it is a part, except in cases where the boundaries are different because the Governor is required, pursuant to section 116 of Pub. L. 105-220 (29 U.S.C. s. 2831), to approve a request to be a workforce investment area.

b. Each Workforce Investment Board shall be in conformity with section 116 of Pub. L. 105-220 (29 U.S.C. s.2831) and the guidelines issued by the State Employment and Training Commission and shall consist of:

(1) Representatives of businesses who:

(a) Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policy making or hiring authority;

(b) Represent businesses with employment opportunities that reflect the employment opportunities of the local area;

(c) Are appointed from among individuals nominated by local business organizations and business trade associations; and

(d) Constitute a majority of the membership of the local board;

(2) Representatives of local educational entities who:

(a) Are representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, county vocational technical schools and post-secondary educational institutions, including representatives of community colleges; and

(b) Are selected from nominations by regional or local educational agencies, institutions or organizations representing such local educational entities;

(3) Representatives of local area labor organizations who are nominated by local labor federations;

(4) Representatives of community-based organizations including organizations representing individuals with disabilities, organizations representing veterans, and faith-based organizations;

(5) Representatives of local economic development agencies including private sector entities;

- (6) Representatives of each of the One-Stop partners; and
- (7) Representatives that chief elected officials deem appropriate for board membership.

The chairperson of the board shall be selected from among members of the board who are representative of business in the local area.

c. Members of the board shall be appointed from among individuals nominated by appropriate organizations in accordance with section 117 of Pub. L. 105-220 (29 U.S.C. s.2832). If there is only one unit of general local government in the local area with experience in administering workforce investment programs, the chief elected official of that unit shall determine the initial number of members on the board and shall appoint the members. If there are two or more units in the local area with experience in administering job training programs, the chief elected officials of those units shall, in accordance with an agreement entered into by all of those units, determine the initial number of members on the board and appoint the members. In the absence of an agreement by all of the units, the Governor shall determine the initial number of members on the board and appoint the members. Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed. A vacancy in the membership of the board shall be filled in the same manner as the original appointment. A member of the board may be removed for cause in accordance with procedures established by the board.

d. The Governor shall certify a board if it is determined that the board's composition and appointments are consistent with the provisions of this section and section 117 of Pub. L. 105-220 (29 U.S.C. s.2832) and the requirements of the State Employment and Training Commission. The certification shall be made or denied not later than 30 days after the date on which a list of members and necessary supporting documentation are submitted to the Governor. The board shall, within 30 days after its certification by the Governor, be convened by the official or officials who made the appointments to the board under subsection c. of this section. The board shall meet at least four times per year, with meetings open to attendance by interested persons pursuant to the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

e. Each Workforce Investment Board established pursuant to this act shall:

- (1) Provide policy guidance for, and exercise oversight with respect to, all workforce investment programs within its labor market area in partnership with the unit or units of general local government within the area. To provide the policy guidance and oversight, the board shall review and evaluate the programs and, as appropriate, make recommendations to the Governor, the Legislature, or any State agency or local governing entity

involved in the funding or administration of the programs. The recommendations shall be based primarily on how effective each program is in meeting relevant performance standards, including standards regarding the cost and quality of training and the characteristics of participants. The board shall provide any planning, policy guidance or oversight with respect to workforce investment programs in accordance with any agreement entered into pursuant to subsection g. of section 9 of this act by the commission and the department administering or funding the programs.

(2) Establish skill level and competency guidelines, which may be above the criteria established by the commission, consistent with the provisions of this act to be used as a basis for the selection of skill training programs and competency curriculum in its local area;

(3) Assist in the development, approval and submission of the State workforce investment operating plan for its labor market area;

(4) Prepare, approve and submit to the Department of Labor and Workforce Development and the State Employment and Training Commission a budget for itself in accordance with the Workforce Investment Act of 1998, Pub. L. 105-220 (29 U.S.C. s. 2801 et seq.);

(5) Submit to the State Employment and Training Commission, by September 1 of each year, an annual report covering the immediately preceding program period of July 1 to June 30. The report shall contain:

(a) An account of activities during the program period, including all coordination activities undertaken by the board to eliminate unnecessary duplication of services and foster a unified One-Stop delivery system;

(b) Information describing the extent to which the activities failed or succeeded in meeting relevant performance standards; and

(c) The skill level and competency guidelines to be used in the upcoming year;

(6) Fulfill any other role or function of a Workforce Investment Board required pursuant to Pub. L. 105-220 (29 U.S.C. s. 2801 et seq.); and

(7) Assume any additional responsibilities assigned to it by the Governor in consultation with the State Employment and Training Commission.

f. In order to carry out its functions under this act, a Workforce Investment Board may:

(1) Hire staff;

(2) Incorporate as a non-profit or other entity;

(3) Select, under agreement with the chief elected official or officials, the administrative entity for workforce investment programs funded within the workforce investment area;

(4) Seek, obtain and expend additional funding for the programs from public and private sources; and

(5) Establish as many committees as are necessary to satisfactorily perform its duties. There shall be, at a minimum, a local Youth Council, a Disability Committee, a One-Stop Committee and a Literacy Committee.

g. (Deleted by amendment, P.L.2005, c.354.)

h. No member of a Workforce Investment Board established pursuant to this act shall cast a vote on the provision of services by that member or any organization which that member directly represents or vote on any matter which would provide direct financial benefit to that member. Workforce Investment Boards shall be subject to policies concerning conflict of interest and nepotism prescribed by the Commissioner of Labor and Workforce Development.

i. (Deleted by amendment, P.L.2005, c.354.)

18. Section 2 of P.L.1999, c.107 (C.34:15C-18) is amended to read as follows:

C.34:15C-18 State Council for Adult Literacy Education Services.

2. a. There is created within the State Employment and Training Commission, established pursuant to section 5 of P.L.1989, c.293 (C.34:15C-2) in the Department of Labor and Workforce Development, a State Council for Adult Literacy Education Services.

b. The 27-member council shall consist of the following ex officio members: the Commissioners of Labor and Workforce Development, Human Services, Education, Community Affairs and Corrections, the Secretary and Chief Executive Officer of the New Jersey Commerce, Economic Growth and Tourism Commission, the Executive Director of the Commission on Higher Education, and the Executive Director of the State Employment and Training Commission. The council shall also include one member of the Senate appointed by the President thereof and one member of the General Assembly appointed by the Speaker thereof, who shall serve during the two-year legislative session in which the appointment is made and who shall not be of the same political party; and 17 public members as follows: five public members appointed by the Governor including a member of a Workforce Investment Board literacy committee, a State or national adult education expert and three representatives of the business community, at least one of whom shall represent a small business; six public members appointed by the President of the Senate including a student or former student who received adult literacy services and a representative from each of the following: a county college, a four-year institution of higher education, the State Library or a local library, a Department of Education-funded adult education provider of adult basic education programs, general educational development programs or English as a second language programs and a

community-based organization which is an adult education provider; and six public members appointed by the Speaker of the General Assembly including a representative from each of the following: a vocational school providing adult academic education programs, a trade union, the New Jersey Network, the New Jersey Association of Lifelong Learning, the Literacy Volunteers of America and the New Jersey Education Association.

c. The public members shall serve for terms of three years, but of the public members first appointed, six shall serve a term of three years, six shall serve a term of two years and five shall serve a term of one year. Each member shall hold office for the term of appointment and until his successor is appointed and qualified. A member appointed to fill a vacancy occurring in the membership of the board for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. All vacancies shall be filled in the same manner as the original appointment. A member may be appointed for any number of successive terms. A member may be removed from office by the Governor, for cause, after a hearing and may be suspended by the Governor pending the completion of the hearing.

d. The members shall select annually a chairperson and a vice-chairperson, who shall be nongovernmental members of the council, and shall appoint an executive director. The executive director shall report to the chairperson of the council and be responsible for administering the daily operations of the council. The executive director shall serve in the State unclassified service. The council may call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes.

e. Members of the council shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties as members, within the limits of funds appropriated or otherwise made available to the council for its purposes. Actions may be taken and motions and resolutions may be adopted by the council by an affirmative vote of a majority of the members.

19. Section 1 of P.L.1999, c.223 (C.34:15C-21) is amended to read as follows:

C.34:15C-21 Council on Gender Parity in Labor and Education.

1. a. There is created, in the New Jersey State Employment and Training Commission, a council which shall be known as the Council on Gender Parity in Labor and Education.

b. The council shall consist of 17 members who are individuals with experience in the fields of labor, education, training or gender equity. The

17 members shall include: six members appointed by the Director of the Division on Women; six members appointed by the Executive Director of the State Employment and Training Commission; and five members who shall serve ex officio, one of whom shall be appointed by the Commissioner of Community Affairs, one by the Commissioner of Education, one by the Commissioner of Human Services, one by the Commissioner of Labor and Workforce Development and one by the Executive Director of the Commission on Higher Education. Not more than half of the members appointed by the Director of the Division on Women and not more than half of the members appointed by the Executive Director of the State Employment and Training Commission shall be of the same political party. The members appointed by the director and executive director shall serve for terms of three years, except that of the eight members first appointed by the director and the executive director, four shall be appointed for three years, two shall be appointed for two years, and two 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 appointed to fill a vacancy occurring in the membership of the council for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. Vacancies shall be filled in the same manner as the original appointment. A member may be appointed for any number of successive terms. Any member appointed by the director or the executive director may be removed from the council by the director or the executive director, as the case may be, for cause, after a hearing and may be suspended by the director or the executive director pending the completion of the hearing.

c. Members of the council shall serve without compensation, but may 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 council at a council meeting by an affirmative vote of a majority of the members. The council shall elect from its members a chairperson who shall be a nongovernmental member of the council. Advanced notification for, and copies of the minutes of, each meeting of the council shall be filed with the Governor, the President of the Senate and the Speaker of the General Assembly.

20. Section 3 of P.L.1992, c.43 (C.34:15D-3) is amended to read as follows:

C.34:15D-3 Definitions relative to workforce development.

3. As used in this act:

"Administrative costs" means any costs incurred by the department to administer the program, including any cost required to collect information

and conduct evaluations of service providers pursuant to section 8 of this act and conduct surveys of occupations pursuant to section 12 of this act, to the extent that funding is not available from federal or other sources.

"Apprenticeship Policy Committee" means the New Jersey Apprenticeship Policy Committee established by an agreement between the Bureau of Apprenticeship and Training in the United States Department of Labor, the State Department of Labor and Workforce Development and the State Department of Education and consisting of a representative of the Commissioner of the State Department of Education, a representative of the Commissioner of the State Department of Labor and Workforce Development, the Director of Region II of the Bureau of Apprenticeship and Training in the United States Department of Labor and a representative of the New Jersey State AFL-CIO.

"Approved community-based or faith-based organization" means an organization which is an approved service provider, a nonprofit organization exempt from federal taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. s. 501), and approved by the commissioner as demonstrating expertise and effectiveness in the field of workforce investment and being representative of a community or a significant segment of a community where the organization provides services.

"Approved service provider" or "approved training provider" means a service provider which is on the State Eligible Training Provider List.

"Commission" means the State Employment and Training Commission.

"Commissioner" means the Commissioner of Labor and Workforce Development or the commissioner's designees.

"Credential" means a credential recognized by the Department of Education or the Commission on Higher Education, or approved by the Credentials Review Board established by the Department of Labor and Workforce Development pursuant to section 25 of P.L.2005, c.354 (C.34:1A-1.10).

"Customized training services" means employment and training services which are provided by the Office of Customized Training pursuant to section 5 of this act.

"Department" means the State Department of Labor and Workforce Development.

"Employer" or "business" means any employer subject to the provisions of R.S.43:21-1 et seq.

"Employment and training services" means:

- a. Counseling provided pursuant to section 7 of this act;
- b. Occupational training;
- c. Remedial instruction; or
- d. Occupational safety and health training.

e. In the case of a qualified disadvantaged worker who is or was receiving, or is eligible for but not receiving, benefits under the Work First New Jersey program, "employment and training services" includes, in addition to any of the benefits listed in subsections a. through d. above, Supplemental Workforce Development Benefits approved as part of the workers' Employability Development Plan pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7).

"Fund" means the Workforce Development Partnership Fund established pursuant to section 9 of this act.

"Labor Demand Occupation" means an occupation which:

a. The Center for Occupational Employment Information has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

b. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

"Occupational safety and health training" means training or instruction which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation.

"Office" means the Office of Customized Training established pursuant to section 5 of this act.

"One Stop Career Center" means any of the facilities established, sponsored or designated by the State, a political subdivision of the State and a Workforce Investment Board in a local area to coordinate or make available State and local programs providing employment and training services or other employment-directed and workforce development programs and activities, including job placement services, and any other similar facility as may be established, sponsored or designated at any later time to coordinate or make available any of those programs, services or activities.

"Permanent employment" means full-time employment unsubsidized by government training funds which provides a significant opportunity for career advancement and long-term job security.

"Poverty level" means the official poverty level based on family size, established and adjusted under section 673 (2) of Subtitle B of the "Community Services Block Grant Act," Payable-35 (42 U.S.C. s. 9902 (2)).

"Program" means the Workforce Development Partnership Program created pursuant to this act.

"Qualified disadvantaged worker" means a worker who is not a qualified displaced worker or a qualified employed worker but who otherwise meets the following criteria:

- a. Is unemployed;
- b. Is working part-time and actively seeking full-time work or is working full-time but is earning wages substantially below the median salary for others in the labor force with similar qualifications and experience; or
- c. Is certified by the Department of Human Services as:
 - (1) Currently receiving public assistance;
 - (2) Having been recently removed from the public assistance rolls because of gross income exceeding the grant standard for assistance; or
 - (3) Being eligible for public assistance but not receiving the assistance because of a failure to apply for it.

"Qualified displaced worker" means a worker who:

- a. Is unemployed, and:
 - (1) Is currently receiving unemployment benefits pursuant to R.S.43:21-1 et seq. or any federal or State unemployment benefit extension; or
 - (2) Has exhausted eligibility for the benefits or extended benefits during the preceding 52 weeks; or
- b. Meets the criteria set by the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.), to be regarded as a "dislocated worker" pursuant to that act.

"Qualified employed worker" means a worker who is employed by an employer participating in a customized training program, or other employed worker who is in need of remedial instruction.

"Qualified job counselor" means a job counselor whose qualifications meet standards established by the commissioner.

"Qualified staff" means staff whose qualifications meet standards set by regulations adopted by the commissioner.

"Remedial education" or "remedial instruction" means any literacy or other basic skills training or instruction which may not be directly related to a particular occupation but is needed to facilitate success in occupational training or work performance, including training or instruction in mathematics, reading comprehension, computer literacy, English proficiency and work-readiness skills.

"Self-sufficiency" for an individual means a level of earnings from employment not lower than 250% of the poverty level for an individual, taking into account the size of the individual's family.

"Service provider," "training provider" or "provider" means a provider of employment and training services including but not limited to a private or public school or institution of higher education, a business, a labor organization or a community-based organization.

"State Eligible Training Provider List" means the Statewide list of eligible training providers maintained pursuant to section 14 of P.L.2005, c.354 (C.34:15C-10.2).

"Supplemental Workforce Fund for Basic Skills" means the fund established pursuant to section 1 of P.L.2001, c.152 (C.34:15D-21).

"Total revenues dedicated to the program during any one fiscal year" means all moneys received for the fund during any fiscal year, including moneys withdrawn from the State disability benefits fund pursuant to section 3 of P.L.1992, c.44 (C.34:15D-14), minus any repayment made during that fiscal year from the fund to the State disability benefits fund pursuant to that section.

"Training grant" means a grant provided to fund occupational training and any needed remedial instruction for a qualified displaced or disadvantaged worker pursuant to section 6 of this act, or to fund needed remedial instruction for a qualified employed worker pursuant to section 1 of P.L.2001, c.152 (C.34:15D-21).

"Vocational training" or "occupational training" means training or instruction which is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

"Workforce Investment Services" means core, intensive, and training services as defined by the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.).

21. Section 4 of P.L.1992, c.43 (C.34:15D-4) is amended to read as follows:

C.34:15D-4 Workforce Development Partnership Program.

4. a. The Workforce Development Partnership Program is hereby established in the Department of Labor and Workforce Development and shall be administered by the Commissioner of Labor and Workforce Development. The purpose of the program is to provide qualified displaced, disadvantaged and employed workers with the employment and training services most likely to enable the individual to obtain employment providing self-sufficiency for the individual and also to provide the greatest opportunity for long-range career advancement with high levels of productivity and earning power. To implement that purpose, the program shall provide those services by means of training grants or customized training services in coordination with funding for the services from federal or other sources. The

commissioner is authorized to expend moneys from the Workforce Development Partnership Fund to provide the training grants or customized training services and provide for each of the following:

(1) The cost of counseling required pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7), to the extent that adequate funding for counseling is not available from federal or other sources;

(2) Reasonable administrative costs, which shall not exceed 10% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any fiscal year ending before July 1, 2001, except for additional start-up administrative costs approved by the Director of the Office of Management and Budget during the first year of the program's operation;

(3) Reasonable costs, which shall not exceed 0.5% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any fiscal year ending before July 1, 2001, as required by the State Employment and Training Commission to design criteria and conduct an annual evaluation of the program; and

(4) The cost of reimbursement to individuals for excess contributions pursuant to section 6 of P.L.1992, c.44 (C.34:15D-17).

b. Not more than 10% of the moneys received by any service provider pursuant to this act shall be expended on anything other than direct costs to the provider of providing the employment and training services, which direct costs shall not include any administrative or overhead expense of the provider.

c. Training and employment services or other workforce investment services shall be provided to a worker who receives counseling pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7) only if the counselor who evaluates the worker pursuant to that section determines that the worker can reasonably be expected to successfully complete the training and instruction identified in the Employability Development Plan developed pursuant to that section for the worker.

d. All occupational training provided under this act:

(1) Shall be training which is likely to substantially enhance the individual's marketable skills and earning power; and

(2) Shall be training for a labor demand occupation, except for:

(a) Customized training provided to the present employees of a business which the commissioner deems to be in need of the training to prevent job loss caused by obsolete skills, technological change or national or global competition; or

(b) Customized training provided to employees at a facility which is being relocated from another state into New Jersey; or

(c) Entrepreneurial training and technical assistance supported by training grants provided pursuant to subsection b. of section 6 of P.L.1992, c.43 (C.34:15D-6).

e. During any fiscal year ending before July 1, 2001, not less than 25% of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified displaced workers; not less than six percent of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers; not less than 45% of the total revenues dedicated to the program during any one fiscal year shall be reserved for and appropriated to the Office of Customized Training; not less than 3% of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training; and 5% of the total revenues dedicated to the program during any one fiscal year shall be reserved for and appropriated to the Youth Transitions to Work Partnership created pursuant to P.L.1993, c.268 (C.34:15E-1 et seq.).

f. Funds available under the program shall not be used for activities which induce, encourage or assist: any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers; any replacement of laid off workers by trainees; or any relocation of operations resulting in a loss of employment at a previous workplace located in the State.

g. On-the-job training shall not be funded by the program for any employment found by the commissioner to be of a level of skill and complexity too low to merit training. The duration of on-the-job training funded by the program for any worker shall not exceed the duration indicated by the Bureau of Labor Statistics' Occupational Information Network, or "O*NET," for the occupation for which the training is provided and shall in no case exceed 26 weeks. The department shall set the duration of on-the-job training for a worker for less than the indicated maximum, when training for the maximum duration is not warranted because of the level of the individual's previous training, education or work experience. On-the-job training shall not be funded by the program unless it is accompanied, concurrently or otherwise, by whatever amount of classroom-based or equivalent occupational training, remedial instruction or both, is deemed appropriate for the worker by the commissioner. On-the-job training shall not be funded by the program unless the trainee is provided benefits, pay and working conditions at a level and extent not less than the benefits and working conditions of other trainees or employees of the trainee's employer with comparable skills, responsibilities, experience and seniority.

h. Employment and training services funded by the program shall not replace, supplant, compete with or duplicate in any way approved apprenticeship programs.

i. No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

j. All staff who are hired and supported by moneys from the Workforce Development Partnership Fund, including any of those staff located at any One Stop Career Center, but not including any staff of a service provider providing employment and training services supported by a customized training grant pursuant to section 5 of P.L.1992, c.43 (C.34:15D-5) or an individual training grant pursuant to section 6 of P.L.1992, c.43 (C.34:15D-6), shall be hired and employed by the State pursuant to Title 11A, Civil Service, of the New Jersey Statutes, be hired and employed by a political subdivision of the State, or be qualified staff hired and employed by a non-profit organization which began functioning as the One Stop Career Center operator with the written consent of the chief elected official and the commissioner prior to the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.), or be qualified staff hired and employed by an approved community-based or faith-based organization to provide services at the level of staffing provided in an agreement entered into by the organization before the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.).

22. Section 5 of P.L.1992, c.43 (C.34:15D-5) is amended to read as follows:

C.34:15D-5 Office of Customized Training established.

5. a. There is hereby established, as part of the Workforce Development Partnership Program, the Office of Customized Training. Moneys allocated to the office from the fund shall be used to provide employment and training services to eligible applicants approved by the commissioner.

b. An applicant shall be eligible for customized training services if it is one of the following:

(1) An individual employer that seeks the customized training services to create, upgrade or retain jobs in a labor demand occupation;

(2) An individual employer that seeks customized training services to upgrade or retain jobs in an occupation which is not a labor demand occupation, if the commissioner determines that the services are necessary to prevent the likely loss of the jobs or that the services are being provided to

employees at a facility which is being relocated from another state into New Jersey;

(3) An employer organization, labor organization or community-based or faith-based organization seeking the customized training services to provide training in labor demand occupations in a particular industry; or

(4) A consortium made up of one or more educational institutions and one or more eligible individual employers or labor, employer or community-based or faith-based organizations that seeks the customized training services to provide training in labor demand occupations in a particular industry.

c. Each applicant seeking funding for customized training services shall submit an application to the commissioner in a form and manner prescribed in regulations adopted by the commissioner. The application shall be accompanied by a business plan of each employer which will receive customized training services if the application is approved. The business plan shall include:

(1) A justification of the need for the services and funding from the office, including information sufficient to demonstrate to the satisfaction of the commissioner that the applicant will provide significantly less of the services if the requested funding is not provided by the office;

(2) A comprehensive long-term human resource development plan which:

(a) Extends significantly beyond the period of time in which the services are funded by the office;

(b) Significantly enhances the productivity and competitiveness of the employer operations located in the State and the employment security of workers employed by the employer in the State; and

(c) States the number of current or newly-hired workers who will be trained under the grant and the pay levels of jobs which will be created or retained for those workers as a result of the funding and the plan.

(3) Evidence, if the training sought is for an occupation which is not a labor demand occupation, that the customized training services are needed to prevent job loss caused by obsolete skills, technological change or national or global competition or that the services are being provided to employees at a facility which is being relocated from another state into New Jersey;

(4) Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services;

(5) A commitment to provide the information needed by the commissioner to evaluate the success of the funding and the plan in creating and retaining jobs, to assure compliance with the provisions of P.L.1992, c.43 (C.34:15D-1 et seq.); and

(6) Any other information or commitments which the commissioner deems appropriate to assure compliance with the provisions of P.L.1992, c.43 (C.34:15D-1 et seq.).

The commissioner may provide whatever assistance he deems appropriate in the preparation of the application and business plan, which may include labor market information, projections of occupational demand and information and advice on alternative training and instruction strategies.

d. Each employer that receives a grant for customized training services shall contribute a minimum of 50% of the total cost of the customized training services, except that the commissioner shall set a higher or lower minimum contribution by an employer, if warranted by the size and economic resources of the employer or other factors deemed appropriate by the commissioner, and except that, for individuals hired by the employer through a One Stop Career Center who receive classroom training under the grant and were recipients of benefits under the Work First New Jersey program at any time during the 12 months preceding the date of employment, the employer shall be eligible for reimbursement of up to 50% of wages paid to the individual during the classroom training in addition to reimbursement for tuition and other direct costs of the training as determined to be appropriate by the office, and provided, further, that no individual shall be hired or placed in a manner which results in a violation of the restrictions of subsection f. of section 4 of P.L.1992, c.43 (C.34:15D-4) against displacing current employees.

e. Each employer receiving a grant for customized training services shall hire or retain in permanent employment each worker who successfully completes the training and instruction provided under the customized training. The employer shall be entitled to select the qualified employed, disadvantaged or displaced workers who will participate in the customized training, except that if any collective bargaining unit represents a qualified employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The commissioner shall provide for the withholding, for a time period he deems appropriate, of whatever portion he deems appropriate of program funding as a final payment for customized training services, contingent upon the hiring and retention of a program completer as required pursuant to this section. If an employer receiving a grant for customized training services pursuant to this section relocates or outsources any or all of the jobs out of the State for which the customized training services were provided under the grant within three years following the end date of the customized contract, the employer shall, if all of the jobs are relocated or outsourced, return all of the moneys provided to the employer by the State for customized training services, or, if only a portion of the jobs are relocated or outsourced, return a part of the

moneys, deemed by the commissioner to be appropriate and proportional to the portion of the jobs relocated or outsourced, and the returned amount shall be deposited into the Workforce Development Partnership Fund.

f. The customized training services provided to an approved applicant may include any combination of employment and training services or any single employment and training service approved by the commissioner, including remedial instruction provided to upgrade workplace literacy. Each service may be provided by a separate approved service provider. No training or employment service shall be funded through a customized training grant, unless the service is provided directly by an employer or is provided by an approved service provider. An employer who directly provides training and employment services to his own employees shall not be regarded as a service provider and shall not be subject to any requirement to obtain approval by the State as a service provider, including the requirements of section 13 of P.L.2005, c.354 (C.34:15C-10.1) to be approved as a qualifying school or the requirements of section 14 of P.L.2005, c.354 (C.34:15C-10.2) to be included on the State Eligible Training Provider List.

g. Customized training services shall include any remedial instruction determined necessary pursuant to section 7 of this act. Applications for customized training services shall include estimates of the total need for remedial instruction determined in a manner deemed appropriate by the commissioner.

h. Any business seeking customized training services shall, in the manner prescribed by the commissioner, participate in the development of a plan to provide the services. Any business seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

i. Any business receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

j. The commissioner shall establish an annual goal that 15% or more of the jobs to be created or retained in connection with training supported by grants from the office shall be jobs provided to individuals who were recipients of benefits under the Work First New Jersey program at any time during the 12 months prior to being placed in the jobs. The means to attain the goal shall include coordinated efforts between the office and One Stop Career Centers to prepare recipients for employment and make them available to employers, but shall not include any policy which may penalize

employers or discourage employers from using customized training service provided by the office.

23. Section 7 of P.L.1992, c.43 (C.34:15D-7) is amended to read as follows:

C.34:15D-7 Counseling.

7. Counseling shall be made available by the department to each qualified displaced worker or qualified disadvantaged worker applying to participate in the Workforce Development Partnership program and, in the case of a qualified disadvantaged worker who is a recipient of, or eligible for, benefits under the Work First New Jersey Program, to participate in the Workforce Development Partnership program or in any of those employment-directed workforce development programs or activities transferred to the Department of Labor and Workforce Development pursuant to section 2 of P.L.2004, c.39 (C.34:1A-1.3) which provide employment and training services as defined in section 3 of P.L.1992, c.43 (C.34:15D-3), including the services indicated in paragraphs (11) through (16) of subsection b. of section 2 of P.L.2004, c.39 (C.34:1A-1.3). Counseling may also be made available to a qualified employed worker who seeks remedial instruction or is selected to participate in a customized training program, if the worker's employer requests the counseling. The counseling shall be provided by a job counselor hired and employed by the State pursuant to Title 11A, Civil Service, of the New Jersey Statutes, or hired and employed by a political subdivision of the State, or be provided by a qualified job counselor hired and employed by a non-profit organization which began functioning as the One Stop Career Center operator with the written consent of the chief elected official and the commissioner prior to the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.), or hired and employed by an approved community-based or faith-based organization to provide counseling which the organization entered into an agreement to provide before the effective date of P.L.2004, c.39 (C.34:1A-1.2 et al.). In the case of a qualified disadvantaged worker who is a recipient of, or is eligible for, benefits under the Work First New Jersey Program, the counseling provided pursuant to this section shall be the counseling for the provision of employment and training services either under the Workforce Development Partnership program or under programs or activities transferred to the Department of Labor and Workforce Development pursuant to section 2 of P.L.2004, c.39 (C.34:1A-1.3), but the counseling provided pursuant to this section shall be provided in conjunction and in coordination with counseling provided in connection with any services, other than training and employment services, made available to the disadvantaged worker under programs or activities transferred to the Depart-

ment of Labor and Workforce Development pursuant to section 2 of P.L.2004, c.39 (C.34:1A-1.3). The purpose of any counseling made available pursuant to this section is to assist each worker in obtaining the employment and training services most likely to enable the worker to obtain employment providing self-sufficiency for the worker and also to provide the worker with the greatest opportunity for long-range career advancement with high levels of productivity and earning power. The counseling shall include:

a. Testing and assessment of the worker's job skills and aptitudes, including the worker's literacy skills and other basic skills. Basic skills testing and assessment shall be provided to the worker unless information is provided regarding the worker's educational background and occupational or professional experience which clearly demonstrates that the worker's basic skill level meets the standards established pursuant to section 14 of P.L.1989, c.293 (C.34:15C-11) or unless the worker is already participating in a remedial instruction program which meets those standards;

b. An evaluation by a qualified job counselor of what remedial instruction, if any, is determined to be necessary for the worker to advance in his current employment or occupation or to succeed in any particular occupational training which the worker would undertake under the program, provided that the remedial instruction shall be at a level not lower than that needed to meet the standards established pursuant to section 14 of P.L.1989, c.293 (C.34:15C-11);

c. The provision to the worker of information regarding any of the labor demand occupations for which training meets the requirements of section 4 of this act in the worker's case, including information about the wage levels in those occupations, and information regarding the effectiveness of approved service providers of occupational training in occupations which the worker is considering, including a consumer report card on service providers showing the long-term success of former trainees of each provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training;

d. The timely provision of information to the worker regarding the services and benefits available to the worker, and all actions required of the worker to obtain the services and benefits, under the provisions of this act and P.L.1992, c.47 (C.43:21-57 et al.), and under the Work First New Jersey program in the case of a qualified disadvantaged worker receiving or eligible for benefits under that program; and the provision to the worker of a written statement of the worker's rights and responsibilities with respect to programs for which the worker is eligible, which includes a full disclosure to the worker of the worker's right to obtain the services most likely to enable the

worker to obtain employment providing self-sufficiency and the workers' right not to be denied training services for any of the reasons indicated in subsection d. of section 6 of P.L.1992, c.43 (C.34:15D-6), including the worker's right not to be denied training services because the worker already has identifiable occupational skills, if those existing skills are for employment with a level of earnings lower than the level of self-sufficiency;

e. Discussion with the counselor of the results of the testing and evaluation; and

f. The development of a written Employability Development Plan identifying the training, employment and other workforce investment services, including any needed remedial instruction, to be provided to the worker pursuant to this act. In the case of a qualified disadvantaged worker, the Employability Development Plan will be, to the greatest extent possible while remaining in compliance with any applicable federal requirements, coordinated and made consistent with any individual responsibility plan developed for the worker under the Work First New Jersey program. In the case of a qualified disadvantaged worker who is or was receiving, or who is eligible for but not receiving, benefits under the Work First New Jersey program, and who does not have a marketable bachelor's degree, the counselor may approve, as part of the workers' Employability Development Plan, the replacement of Work First New Jersey program benefits by Supplemental Workforce Development Benefits paid to the disadvantaged worker for full-time educational activity without, or with insufficient, other work activity from available resources for employment-directed and workforce development programs and activities transferred from the Department of Human Services pursuant to section 2 of P.L.2004, c.39 (C.34:1A-1.3) or from the account of the Workforce Development Partnership Fund reserved for qualified disadvantaged workers pursuant to subsection b. of section 9 of P.L.1992, c.43 (C.34:15D-9), for any period of time for which the counselor determines that:

(1) Full-time remedial instruction to obtain a high school diploma or G.E.D. or full-time post secondary education in a two-year or four-year degree-granting educational program with a course of study related to work, even if the duration of the full-time education is longer than two years, is the training and employment service that is most likely to enable the worker to obtain employment providing self-sufficiency;

(2) The worker has responsibility during that period of time for the care of dependent children or other family members unable to care for themselves the magnitude of which, if added to the full-time instructional or educational activities indicated in paragraph (1) of this subsection, make it likely that any additional work activity will jeopardize the success of the instructional or educational activity; and

(3) Providing Work First New Jersey program benefits to the worker during that period of time for the full-time instructional or educational activity without, or with insufficient, work activities would result in a loss of benefits for the worker pursuant to section 9 of P.L.1997, c.38 (C.44:10-63) or would be counted toward the maximum limit of 60 cumulative months of Work First New Jersey program benefits provided to the worker pursuant to section 2 of P.L.1997, c.37 (C.44:10-72).

With respect to the use of the funds deposited during any fiscal year in the account of the Workforce Development Partnership Fund reserved for qualified disadvantaged workers pursuant to subsection b. of section 9 of P.L.1992, c.43 (C.34:15D-9), first priority shall be given for the payment of Supplemental Workforce Development Benefits pursuant to this subsection. Not more than 1,500 qualified disadvantaged workers shall receive Supplemental Workforce Development Benefits pursuant to this subsection at any one time. With respect to using available resources for employment-directed and workforce development programs and activities transferred from the Department of Human Services pursuant to section 2 of P.L.2004, c.39 (C.34:1A-1.3) for Supplemental Workforce Development Benefits, no federal funds which are part of those resources may be used for Supplemental Workforce Development Benefits which result in the imposition of conditions of participation other than those established by this subsection. If federal funds are used for childcare costs of a participant, the Department of Human Services may transfer the funds to the Child Care and Development Block Grant, as permitted by law and as needed to permit the use of the federal funds while preventing any loss of benefits to the participant and preventing the childcare time from being counted toward the participant's maximum limit of 60 cumulative months of Work First New Jersey program benefits. The counselor shall assist in facilitating the use, to the maximum extent possible, of Pell grants or other available educational grants to pay for tuition and other educational costs of a recipient of Supplemental Workforce Development Benefits provided pursuant to this section. The requirements for receiving Supplemental Workforce Development Benefits may include work-site experience which will enhance the participant's employability in the participant's field, provided that the required sum of class hours for a full-time class schedule, hours of study time at not less than one and one half times class time, and hours of work-site experience, shall not exceed 40 hours per week and that the commissioner shall adopt regulations for reasonable adjustments in participation requirements for good cause, including verifiable needs related to physical or mental health problems, illness, accident or death or serious personal or family problems that necessitate reduced participation, provided further that no individual shall receive Supplemental Workforce Development Benefits for a period of more than

five years. The commissioner shall adopt regulations setting standards for satisfactory academic progress for continued participation. Participation may not be denied for any of the reasons which subsection d. of section 6 of P.L.1992, c.43 (C.34:15D-6) prohibits from being used to deny training grants. For the purposes of this section, "Work First New Jersey benefits" means benefits for which a worker and the worker's family would be eligible if the worker was participating in the Work First New Jersey program or any successor program to the Work First New Jersey program.

Counseling made available at the request of an employer participating in a customized training program may include only those components requested by the employer.

All information regarding a worker applicant or trainee which is obtained or compiled in connection with the testing, assessment and evaluation and which may be identified with the worker shall be confidential and shall not be released to an entity other than the worker, the counselor, the department or partners of the One-Stop system as necessary for them to provide training and employment services or other workforce investment services to the individual, unless the worker provides written permission to the department for the release of the information or the information is used solely for program evaluation.

24. Section 8 of P.L.1992, c.43 (C.34:15D-8) is amended to read as follows:

C.34:15D-8 Employment, training services; criteria.

8. a. No employment and training services shall be obtained from a service provider with moneys from the fund unless the provider is located in New Jersey and the provider is an approved service provider, except that, in the case of occupational safety and health training, the service provider shall be approved by the commissioner in consultation with the Commissioner of Health and Senior Services.

b. No service provider shall be approved to be funded by the program to provide an employment and training service unless the provider agrees to provide the service to each trainee referred to it on a first-come, first-served basis, up to the total number of trainees that the provider agrees to serve. This subsection shall not be construed as limiting or curtailing in any way an employer's right to select the workers who participate in customized training pursuant to the provisions of subsection e. of section 5 of this act.

c. Each service provider shall maintain, make available and submit appropriate records and data for monitoring and evaluation purposes, as

required by the State Employment and Training Commission and the department. The records and data shall include, but not be limited to:

(1) A record for each student enrolled, including the student's name, Social Security number, gender, date of birth, date of enrollment, and any date of completion, termination, start in a job or application for a license, any licensing examination result, date of issue of a license or credential issued, and any other information specified by the State Employment and Training Commission or the Center for Occupational Employment Information. For any individual who does not have a Social Security number, the service provider may substitute an alternate method of identification, except that, at the time of start into employment, the alternate code shall be cross-referenced with the individual's valid Social Security number;

(2) A record of all administrative and overhead expenses of the provider related to the providing of employment and training services funded by the program and the provider's direct expenses of providing the services; and

(3) Any other information deemed appropriate by the commissioner or the State Employment and Training Commission for evaluation purposes.

d. In the case of a provider of occupational training services, the commissioner shall collect the information needed to effectively measure the long-term success of the former trainees of the provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training. The commission shall set such standards as it deems appropriate regarding comparisons of the former trainees with groups of otherwise similar individuals who did not receive the training. The information obtained pursuant to this subsection shall be used to:

(1) Assist in evaluating the performance of providers of occupational training services;

(2) Assist in determining which providers of occupational training services to place on the State Eligible Training Provider List;

(3) Assist in providing reliable information regarding the quality of available providers of occupational training services as part of the counseling provided pursuant to section 7 of this act, including the furnishing, for use in the counseling, including counseling provided pursuant to section 4 of P.L.1992, c.48 (C.34:15B-38), section 7 of P.L.1992, c.43 (C.34:15D-7) and section 3 of P.L.1992, c.47 (C.43:21-59), of a consumer report card on service providers showing the long-term success of former trainees of each provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training; and

(4) Assist in evaluating the overall effectiveness of training funded by the program.

e. The State Employment and Training Commission, the commissioner, and each service provider shall comply with all pertinent State and federal laws regarding the privacy of students and other participants in employment and training programs, including but not limited to, the Privacy Act of 1974, Pub. L.93-579 (5 U.S.C. s.552 and 20 U.S.C. s.1232g), and shall provide all disclosures to the students and participants required by those laws.

C.34:1A-1.10 Credentials Review Board established.

25. There is established, in the Department of Labor and Workforce Development, the Credentials Review Board, for the purpose of directing the technical credentialing process for the workforce investment system and approving such credentials as it deems appropriate for issuance to individuals in connection with employment and training programs. The board shall include the following members or their designated representatives: the Commissioner of Education; the Staff Director of the Center for Occupational Employment Information; the Chairman of the Commission on Higher Education; the Director of the Division of Vocational Education; the Commissioner of Labor and Workforce Development; the Executive Director of the State Employment and Training Commission; a Workforce Investment Board director as designated by the commissioner; and a One-Stop Career Center operator as designated by the department.

C.34:1A-85 Definitions relative to State's workforce investment system.

26. As used in sections 26 through 29 of P.L.2005, c.354 (C.34:1A-85 through C.34:1A-88):

“Career cluster” means any of the career clusters and related educational programs as defined in the Perkins Act and the federal Department of Education’s career cluster taxonomy.

“Center for Occupational Employment Information” or “center” means the Center for Occupational Employment Information established pursuant to section 27 of P.L.2005, c.354 (C.34:1A-86).

“Career pathway” means any of the career pathways and related educational programs as defined in the Perkins Act and the federal Department of Education’s career cluster taxonomy.

“Federal job training funds” means any moneys expended pursuant to the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) or any other federal law to obtain employment and training services or other employment-directed and workforce development programs and activities, including employment and training services as defined in section 1 of P.L.1992, c.48, (C.34:15B-35) and employment-directed and workforce

development programs and activities as described in sections 2 and 4 of P.L.2004, c.39 (C.34:1A-1.3 and 34:1A-1.5).

"Occupational license" means a license, registration or certificate which, when issued by an authorized entity of government or recognized industry, enables an individual to work within a recognized occupation in the State of New Jersey.

"Perkins Act" means the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998, Pub.L.105-332 (20 U.S.C. s.2301 et seq.).

"Qualifying agency" means any executive agency of State government, including, but not limited to, the Departments of Community Affairs, Education, Environmental Protection, Health and Senior Services, Human Services, Labor and Workforce Development, Law and Public Safety, Military and Veterans' Affairs and the Commission on Higher Education. A qualifying agency may include any additional agency of State government, which oversees the operation of, or collects or disseminates information from any qualifying school, or issues an occupational license.

"Qualifying school" means, except as provided below, a government unit, person, association, firm, corporation, private organization, or any entity doing business or maintaining facilities within the State, whether operating for profit or not for profit which:

(1) Offers or maintains a course of instruction or instructional program utilized to prepare individuals for future education or the workplace, including instruction in literacy or basic skills, or provides supplemental instruction in recognized occupational skills, pre-employment skills or literacy skills;

(2) Offers instruction by any method including, but not limited to, classroom, shop, laboratory experience, correspondence, Internet and other distance learning media, or any combination thereof;

(3) Offers instruction to the general public or in conjunction with New Jersey's workforce investment system; or,

(4) Charges tuition or other fees or costs, or receives public funding for the delivery of any of the above types of instruction.

"Qualifying school" shall not mean:

(1) Colleges and universities licensed by the Commission on Higher Education or other schools, institutions and entities which are otherwise regulated and approved pursuant to any other law or rule making process of this State;

(2) Employers offering instruction to their employees directly or through a contract instructor, where there is no cost to the employee and no profit to the employer; or

(3) Schools offering instruction for the purpose of self-enrichment, avocational, cultural, or recreational in nature.

"Regional" means a geographic configuration used to aggregate information as designated by the Center for Occupational Employment Information.

"Service provider," "training provider" or "provider" means a provider of employment and training services including but not limited to a private or public school or institution of higher education, a business, a labor organization or a community-based organization.

"State Employment and Training Commission" or "commission" means the "State Employment and Training Commission" created pursuant to section 5 of P.L.1989, c.293 (C.34:15C-2).

"State job training funds" means any moneys expended from the Workforce Development Partnership Fund created pursuant to section 9 of P.L.1992, c.43 (C.34:15D-9), the Supplemental Workforce Fund for Basic Skills established pursuant to section 1 of P.L.2001, c.152 (C.34:15D-21) or any other source of State moneys to obtain employment and training services or other employment-directed and workforce development programs and activities, including employment and training services as defined in section 3 of P.L.1992, c.43 (C.34:15D-3) and employment-directed and workforce development programs and activities as described in sections 2 and 4 of P.L.2004, c.39 (C.34:1A-1.3 and 34:1A-1.5).

"Student outcome information" means information pertaining to individual enrollment, participation, and completion in any education or training program designed to provide workforce skills or provide supplemental education or training in a recognized occupation. This information shall include, but not be limited to, the participant's Social Security number, gender, date of birth, date of enrollment, any date of completion, date of termination, date of start in a job, date of application for a license, licensing examination result, date of issue of a license, any credential issued, and other information as specified by the commission or the center. For any individual who does not have a Social Security number, the qualifying agency may substitute an alternate method of identification. However, at the time of start into employment the alternate code shall be cross-referenced with the individual's valid Social Security number.

C.34:1A-86 Center for Occupational Employment Information.

27. There is established in the Department of Labor and Workforce Development, the Center for Occupational Employment Information, which shall:

a. Serve as the entity designated to carry out the State level career information activities prescribed in the Perkins Act. In accordance with that act, the center shall, in cooperation with the New Jersey Department of Education and the Commission on Higher Education:

(1) Provide support for career guidance and academic counseling programs designed to promote improved career and education decision-making by individuals, especially in areas of career information delivery and use;

(2) Make information and planning resources that relate educational preparation to career goals and expectations available, on the Internet to the extent possible, to students, parents, teachers, administrators, counselors, job-seekers, workers and other clients of the workforce investment system, including the consumer report card on the effectiveness of qualified schools and other approved training providers placed on the State Eligible Training Provider List provided pursuant to section 13 of P.L.2005, c.354 (C.34:15C-10.1), section 4 of P.L.1992, c.48 (C.34:15B-38), section 7 of P.L.1992, c.43 (C.34:15D-7) and section 3 of P.L.1992, c.47 (C.43:21-59).

(3) Equip workforce investment system professionals, including teachers, administrators, and counselors, with the knowledge and skills needed to assist clients of the workforce investment system, including students and parents, with career exploration, educational opportunities and education financing;

(4) Assist appropriate State entities in tailoring career-related educational resources and training for use by such entities;

(5) Improve coordination and communication among administrators and planners of programs included in the State's workforce investment system to ensure non-duplication of efforts and the appropriate use of shared information and data; and

(6) Provide ongoing means for clients of the workforce investment system, including students and parents, to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirements.

b. Design and implement a comprehensive workforce information system to meet the needs for the planning and operation of all public and private training and job placement programs, which is responsive to the economic demands of the employer community and education and training needs of the State and of Workforce Investment Board areas within the State, as recommended by the commission and designated by the Commissioner of Labor and Workforce Development. In doing so, the center shall insure that the information:

(1) Is delivered in a user friendly, timely and easily understood manner;

(2) Pays special attention to the particular needs of each Workforce Investment Board and is consistent with the labor market of each Workforce Investment Board; and

(3) Is delivered, to the extent possible, on the Internet in a format designed to meet the needs of all user groups.

c. Use the occupational employment information system to implement an electronic career information delivery system, which shall provide students, parents, counselors and other career decision makers with accurate, timely and locally relevant information on the careers available in the New Jersey labor market.

d. Analyze, not less than once every two years and on a regional basis, the relationship between the projected need for trained individuals in each of the career clusters and each of the career pathways, and the total number of individuals being trained in the skills or skill sets needed to work in each of the clusters and pathways. Based on this relationship, the center shall designate as a labor demand occupation any occupation that is in a cluster or pathway for which the number of individuals needed significantly exceeds, or shall exceed, the number being trained, and may designate as a labor demand occupation an occupation for which the center determines that the number of individuals needed significantly exceeds, or will exceed, the number being trained, even if that is not the case for the entire career cluster or pathway to which the occupation belongs. In cases where a Workforce Investment Board established pursuant to section 18 of P.L.1989, c.293 (C.34:15C-15) submits information to the center that there is or is likely to be, in the region for which the board is responsible, a significant excess of demand over supply of adequately trained workers for an occupation, the center may conduct a survey of the need or anticipated need in that region for trained workers in that occupation and, whether or not it conducts that survey, shall, in conjunction with the board, determine whether to designate the occupation to be a labor demand occupation in that region. The center may utilize survey data obtained by other agencies or from other sources to fulfill its responsibilities under this subsection.

e. Assist the commission in preparing the New Jersey Unified Workforce Investment Plan pursuant to section 10 of P.L.1989, c.293 (C.34:15C-7) by providing information requested by the commission.

C.34:1A-87 Steering committee to manage center.

28. The center shall be managed by a Steering Committee comprised of the Commissioners of Community Affairs, Education, Health and Senior Services, Human Services, and Labor and Workforce Development; the Executive Directors of the Commission on Higher Education and the State Employment and Training Commission; the Secretary and Chief Executive Officer of the New Jersey Commerce, Economic Growth and Tourism Commission; the Director of the Division of Vocational Rehabilitation Services; a director or member of a Workforce Investment Board as designated by the Executive Director of the State Employment and Training Commission; and a One-Stop Career Center operator as designated by the

Commissioner of Labor and Workforce Development. The committee shall set policy for the operation of the center and shall have the authority to increase membership of the committee, as it deems necessary, to carry out the purposes of sections 25 through 29 of P.L.2005, c.354 (C.34:1A-86 through C.34:1A-88).

C.34:1A-88 Authority to access files, records.

29. a. The Center for Occupational Employment Information and the State Employment and Training Commission are authorized to access the files and records of other State agencies which administer or distribute State job training funds or federal job training funds or issue any license necessary for an individual to work in a specific occupation. Student outcomes and licensing information, including individual Social Security numbers, shall be reported to the commission through the center by:

- (1) Each qualifying agency;
- (2) Each qualifying school; and
- (3) Each training provider receiving State job training funds or federal job training funds, including a provider which is not a qualifying school.

The entities required to report that information shall include, but not be limited to, all post-secondary institutions engaged in any form of workforce preparation or adult literacy education and training.

b. The information required by this section shall be provided annually, or on any other mutually agreed schedule, to the center by December 31st, for the preceding 12-month period ending June 30th.

c. The information reported or accessed pursuant to subsection a. of this section may be used by the commission and the center for:

(1) The development and analysis of information on the demand for trained workers in any of the recognized career clusters, career pathways or occupations at the State and local area level as required or permitted by subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86).

(2) Establishing standards for training and job placement;

(3) Evaluating the effectiveness of programs, services and service providers under the State's workforce investment system and providing information regarding those evaluations, including the collection of information used to help produce a consumer report card on service providers showing the long-term success of former trainees of each provider in obtaining permanent employment and increasing earnings;

(4) Assisting in determining which training providers to place on the State Eligible Training Provider List;

(5) Assisting State agencies in preparing reports to federal grantor agencies; and

(6) Any other purpose deemed necessary for the accomplishment of the mission of the center as determined by the center's steering committee or any federal funding agency.

d. Information reported to the center by a qualifying agency or school or other training provider shall not be utilized for any purpose other than the governmental purposes authorized in subsection c. of this section. The center shall only use aggregate statistical summaries of individual data in assessing or evaluating any program at a qualifying school or other training provider. The commission and the center shall adopt standards and procedures to prevent any State agency from publishing, disclosing or releasing information which could identify any individual and shall not publish, disclose or otherwise release information which could identify any individual, except to an agency of government requiring such information in the performance of its statutory duties. Any executive agency of State government precluded by law from sharing information on specific individuals may provide student outcome and licensing information through statistical summary or other forms which prevent the identification of specific individuals.

e. The commission, the center, each qualifying agency, and any entity which reports student outcome or licensing information to a qualifying agency, shall comply with all pertinent State and federal laws regarding the privacy of students and other participants in employment and training programs, including but not limited to, the Privacy Act of 1974, Pub.L.93-579 (5 U.S.C. s.552 and 20 U.S.C. s.1232g) and shall provide all disclosures to the students and participants required by those laws.

30. Section 2 of P.L.1992, c.47 (C.43:21-58) is amended to read as follows:

C.43:21-58 Definitions.

2. As used in this act:

"Approved service provider" or "approved training provider" means a service provider which is on the State Eligible Training Provider List.

"Commission" means the State Employment and Training Commission.

"Employment and training services" means: counseling provided pursuant to section 3 of this act; occupational training; or remedial instruction.

"Labor Demand Occupation" means an occupation which:

a. The Center for Occupational Employment Information has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, on a regional basis, subject to a significant excess of demand over supply for trained workers, based on a comparison of the total need or anticipated need for trained workers with the total number being trained; or

b. The Center for Occupational Employment Information, in conjunction with a Workforce Investment Board, has, pursuant to subsection d. of section 27 of P.L.2005, c.354 (C.34:1A-86), determined is or will be, in the region for which the board is responsible, subject to a significant excess of demand over supply for adequately trained workers, based on a comparison of total need or anticipated need for trained workers with the total number being trained.

"Qualified job counselor" means a job counselor whose qualifications meet standards established by the commissioner.

"Remedial education" or "remedial instruction" means any literacy or other basic skills training or instruction which may not be directly related to a particular occupation but is needed to facilitate success in occupational training or work performance.

"Service provider," "training provider" or "provider" means a provider of employment and training services including but not limited to a private or public school or institution of higher education, a business, a labor organization or a community-based organization.

"Vocational training" or "occupational training" means training or instruction which is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

31. Section 3 of P.L.1992, c.47 (C.43:21-59) is amended to read as follows:

C.43:21-59 Counseling, Employability Development Plan.

3. Counseling shall be made available by the Department of Labor and Workforce Development to each individual who meets the requirements indicated in subsections a. and b. of section 4 of this act. The department may provide the counseling or obtain the counseling from a service provider, if the service provider is different from and not affiliated with any service provider offering any employment and training services to the worker other than the counseling. The purpose of the counseling is to assist the individual in obtaining the employment and training services most likely to enable the individual to obtain employment providing self-sufficiency for the individual and also to provide the individual with the greatest opportunity for long-range career advancement with high levels of productivity and earning power. The counseling shall include:

a. Testing and assessment of the individual's job skills and aptitudes, including the individual's literacy skills and other basic skills. Basic skills testing and assessment shall be provided to the individual unless information is provided regarding the individual's educational background and occupational or professional experience which clearly demonstrates that the individ-

ual's basic skill level meets the standards indicated in section 14 of P.L.1989, c.293 (C.34:15C-11) or unless the individual is already participating in a remedial instruction program which meets those standards;

b. An evaluation by a qualified job counselor of:

(1) Whether the individual is eligible for the additional benefits indicated in section 5 of this act; and

(2) What remedial instruction, if any, is determined to be necessary for the individual to advance in his current occupation or succeed in any particular occupational training which the individual would undertake in connection with additional benefits indicated in section 4 of this act, provided that the remedial instruction shall be at a level not lower than that needed to meet the standards indicated in section 14 of P.L.1989, c.293 (C.34:15C-11);

c. The provision of information to the individual regarding any of the labor demand occupations for which training meets the requirements of subsection e. of section 4 of this act in the claimant's case, including information about the wage levels in those occupations, the effectiveness of any particular provider of training for any of those occupations which the individual is considering using, including a consumer report card on service providers showing the long-term success of former trainees of the provider in obtaining permanent employment and increasing earnings over one or more time periods following the completion or other termination of training, including a period of two years following the completion or other termination of training;

d. The timely provision of information to the individual regarding the services and benefits available to the individual, and all actions required of the individual to obtain the services and benefits, under the provisions of this act and employment and training programs provided or funded pursuant to the "1992 New Jersey Employment and Workforce Development Act," P.L.1992, c.43 (C.34:15D-1 et al.) and the Workforce Investment Act of 1998, Pub.L.105-220 (29 U.S.C. s.2801 et seq.) and regarding the tuition waivers available pursuant to P.L.1983, c.469 (C.18A:64-13.1 et seq.) and P.L.1983, c.470 (C.18A:64A-23.1 et seq.); and the timely provision to the individual of a written statement of the individual's rights and responsibilities with respect to programs for which the individual is eligible, which includes a full disclosure to the individual of his right to obtain the services most likely to enable the individual to obtain employment providing self-sufficiency and the individual's right not to be denied employment and training services for any of the reasons indicated in section 4 of P.L.1992, c.47 (C.43:21-60), including the individual's right not to be denied training services because the individual already has identifiable vocational skills, if those existing skills are for employment with a level of earnings lower than the level of self-sufficiency;

e. Discussion with the counselor of the results of the testing and evaluation; and

f. The development of a written Employability Development Plan, consistent with the requirements of subsections e., f. and g. of section 4 of this act, for the individual describing any remedial instruction and the occupational training that the individual will undertake in connection with benefits provided pursuant to the provisions of this act.

All information regarding an individual applicant or trainee which is obtained or compiled in connection with the testing, assessment and evaluation and which may be identified with the individual shall be confidential and shall not be released to an entity other than the individual, the counselor, the department, the commission or partners of the One-Stop system as necessary for them to provide training and employment services or other workforce investment services to the individual, unless the individual provides written permission to the department for the release of the information; or the information is used solely for program evaluation.

32. Section 4 of P.L.1992, c.47 (C.43:21-60) is amended to read as follows:

C.43:21-60 Requirements for provision of additional benefits.

4. Except as provided in section 8 of this act, the additional benefits indicated in section 5 of this act shall be provided to any individual who:

a. Has received a notice of a permanent termination of employment by the individual's employer or has been laid off and is unlikely to return to his previous employment because work opportunities in the individual's job classification are impaired by a substantial reduction of employment at the worksite;

b. Is, at the time of the layoff or termination, eligible, pursuant to the "unemployment compensation law," R.S.43:21-1 et seq., for unemployment benefits;

c. Enters into the counseling made available pursuant to section 3 of this act as soon as possible following notification by the Department of Labor and Workforce Development of its availability;

d. (1) Notifies the department of the individual's intention to enter into the instruction and training identified in the Employability Development Plan developed pursuant to section 3 of this act, not later than 60 days after the date of the individual's termination or layoff, not later than 30 days after the department provides notice to the individual pursuant to section 6 of this act or not later than 30 days after the Employability Development Plan is developed, whichever occurs last;

(2) Enters into the instruction and training identified in the Employability Development Plan as soon as possible after giving the notice required by paragraph (1) of this subsection d.; and

(3) Maintains satisfactory progress in the instruction and training;

e. Enrolls in occupational training which:

(1) Is training for a labor demand occupation;

(2) Is likely to facilitate a substantial enhancement of the individual's marketable skills and earning power;

(3) Is provided by an approved service provider; and

(4) Does not include on the job training or other training under which the individual is paid by an employer for work performed by the individual during the time that the individual receives additional benefits pursuant to the provisions of section 5 of this act;

f. Enrolls in occupational training, remedial instruction or a combination of both on a full-time basis; and

g. Reasonably can be expected to successfully complete the occupational training and any needed remedial instruction, either during or after the period of additional benefits.

If the requirements of this section are met, the division shall not deny an individual unemployment benefits pursuant to the "unemployment compensation law," R.S.43:21-1 et seq., P.L.1970, c.324 (C.43:21-24.11 et seq.) or the additional benefits indicated in section 5 of this act for any of the following reasons: the training includes remedial instruction needed by the individual to succeed in the occupational component of the training; the individual has identifiable occupational skills but the training services are needed to enable the individual to develop skills necessary to attain at least the level of self-sufficiency; the training is part of a program under which the individual may obtain any college degree enhancing the individual's marketable skills and earning power; the individual has previously received a training grant; the length of the training period under the program; or the lack of a prior guarantee of employment upon completion of the training. If the requirements of this section are met, the division shall regard a training program as approved for the purposes of paragraph (4) of subsection (c) of R.S.43:21-4.

33. Section 2 of P.L.1966, c.13 (C.44:12-2) is amended to read as follows:

C.44:12-2 Local units; powers.

2. In order to facilitate cooperation with the Federal Government in carrying out the programs contemplated by the Economic Opportunity Act of 1964 or related federal legislation, every local unit is authorized:

- (a) To accept from the Federal Government, subject to terms and conditions appertaining thereto, grants of funds, equipment, supplies, material and other property; and
- (b) to hold, use, expend, deal with, employ, distribute and dispose of such funds, equipment, supplies, material and other property; and
- (c) to appropriate money; and
- (d) to enter into contracts and agreements with the federal and state governments, other local units or private organizations; and
- (e) to engage in such activities and to do such other acts and things as may be necessary or convenient to carry out the powers given in this act.

Repealer.

34. The following are repealed:
N.J.S.18A:69-1 to N.J.S.18A:69-16, inclusive;
Sections 1 and 2 of P.L.1987, c.457 (C.34:1A-76 and 34:1A-77);
Section 12 of P.L.1992, c.43 (C.34:1A-78);
Section 11 of P.L.1992, c.47 (C.34:1A-79);
Section 7 of P.L.1992, c.48 (C.34:1A-80);
Section 13 of P.L.1992, c.43 (C.34:15C-8.1);
Section 8 of P.L.1992, c.48 (C.34:15C-8.2);
Section 9 of P.L.1993, c.268 (C.34:15C-8.3);
Section 12 of P.L.1989, c.293 (C.34:15C-9);
Section 17 of P.L.1989, c.293 (C.34:15C-14); and
Section 19 of P.L.1989, c.293 (C.34:15C-16).

35. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 355

AN ACT concerning remediation of condemned property, and supplementing
P.L.1993, c.139 (C.58:10B-1 et seq.).

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

C.58:10B-3.1 Authority to perform remediation of condemned property by local government unit, certain conditions.

1. a. If a local government unit condemns contaminated property pursuant to the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), and the property is undergoing a remediation, the local government

unit may petition the Department of Environmental Protection, in writing, for authority to perform the remediation of the condemned property. The department, upon a determination that the local government unit has demonstrated sufficient resources to perform the remediation, may replace the person performing the remediation of the condemned property with the local government unit that has condemned the property, provided that, at the time the condemnation action is filed, more than four years have elapsed since the person performing the remediation first entered into an oversight document for the site with the Department of Environmental Protection and the person has not begun implementation of a remedial action workplan for each area of concern on the property. The department shall not replace the person performing the remediation of the condemned property unless the local government unit enters into an appropriate oversight document with the department to perform the remediation.

b. Upon the replacement of the person performing a remediation of contaminated property with a local government unit pursuant to subsection a. of this section, the department may release the person performing the remediation from the requirement to establish a remediation funding source as otherwise required pursuant to section 25 of P.L. 1993, c.139 (C.58:10B-3).

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 356

AN ACT concerning certain payments and amending R.S.27:7-34.

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

1. R.S. 27:7-34 is amended to read as follows:

Partial and deferred payments for highway work; amount; deposit.

27:7-34. Contracts shall provide for partial payments at least once each month or from time to time as the work progresses on work of construction or maintenance. Two per centum of the amount due on partial payments of the total contract price shall be withheld from the contractor pending completion of the contract, but upon substantial completion of the contract, as defined by rules or regulations of the department 1% shall be withheld. At any time during the performance of the work, if work is not progressing, as

defined by the "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," the commissioner may at the commissioner's discretion, increase the withholding to 4% of the payment due. No retainage shall be withheld on service contracts including, but not limited to, mowing, sweeping, tree trimming and similar contracts. Any partial payments made after substantial completion of the contract shall be made only upon certification by the general contractor to the department that all subcontractors have been paid in the same proportion that he has been paid; however, should the amount owed by a general contractor to a subcontractor be in dispute the department shall be empowered to advance to the general contractor the amount in dispute after a determination by the commissioner.

Contracts may also provide for partial payments at least once in each month or from time to time as the work progresses on all materials placed along or upon the site, or stored at locations approved by the commissioner, which are suitable for the use and execution of the contract, provided the contractor furnishes releases of liens for all materials furnished at the time each estimate of work is submitted for payment, but such partial payments shall not exceed the cost of the material.

When the contract provides that a portion of the work may be deferred with the approval of the commissioner, the sum withheld from the contractor may not be less than 25% of the value of said work.

Any money heretofore or hereafter withheld from contract payments as provided for herein shall be paid by the State to any contractor entitled thereto who shall deposit under terms of an escrow agreement, in a banking institution located in this State and approved by the commissioner, negotiable bonds, acceptable to the commissioner, issued by the State or any political subdivision thereof, said bonds having value equal to the amount of money to be paid to any such contractor. For purposes of this section, value shall mean par value or market value, whichever is lower.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 357

AN ACT establishing an Internet gambling public awareness campaign and supplementing P.L.1977, c. 110 (C.5:12-1 et seq.).

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

C.5:12-76.1 Internet gambling public awareness campaign.

1. a. The Director of the Division of Gaming Enforcement, in consultation with the Casino Control Commission, shall establish an Internet gambling public awareness campaign in order to promote awareness among the general public of issues relating to Internet gambling.

b. The public awareness campaign shall include the development and implementation of public awareness and outreach efforts to inform the public about Internet gambling, including, but not limited to, the following subjects:

- (1) the legal status of Internet gambling in New Jersey;
- (2) the fact that Internet gambling is unregulated by New Jersey, and that the fairness and integrity of Internet gambling cannot be guaranteed by the State;
- (3) the risks of being defrauded of potentially large amounts of money when gambling on the Internet;
- (4) the risks of identity theft when using personal identification or financial information to gamble on the Internet;
- (5) special risks for underage and problem gamblers when gambling on the Internet; and
- (6) access to services for problem gamblers, including contact information for the Council on Compulsive Gambling.

c. The director shall coordinate the efforts of the division with any activities being undertaken by other State agencies to provide information to the public about Internet gambling.

d. The director, within the limits of funds available for this purpose, shall seek to utilize both electronic and print media, and may prepare and disseminate such written information as the director deems necessary to accomplish the purposes of this act.

e. The division shall make available electronically on its website in both English and Spanish information about Internet gambling as described in subsection b. of this section.

f. The director may accept, for the purposes of the public awareness campaign, any special grant of funds, services, or property from the federal government or any of its agencies, or from any foundation, organization or other entity.

g. The director shall report to the Governor and the Legislature, no later than 18 months after the effective date of this act, on the activities and accomplishments of the public awareness campaign.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 358

AN ACT allocating certain previously appropriated funds for the support of the diesel air pollution control program and for administrative costs of the underground storage tank program, amending the annual appropriations act for fiscal year 2006, P.L.2005, c.132, and repealing section 1 of P.L.2004, c.6.

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

1. The following language provisions are added to section 1 of P.L.2005, c.132, the fiscal year 2006 annual appropriation act:

42 DEPARTMENT OF ENVIRONMENTAL PROTECTION
40 Community Development and Environmental Management
44 Site Remediation and Waste Management
CAPITAL CONSTRUCTION

4815 Environmental Remediation and Monitoring

Of the unexpended balance in the Private Underground Tank Remediation-Constitutional Dedication account, an amount not to exceed \$10,000,000, as shall be determined by the Director of the Division of Budget and Accounting, shall be allocated to the Diesel Risk Mitigation Fund, established pursuant to section 28 of P.L.2005, c.219 (C.26:2C-8.53), to be used for providing grants for the costs of air pollution control equipment to reduce the levels of particulate matter emissions from diesel-powered engines, and for funding for other measures to reduce human exposure to those emissions, pursuant to the amendments effective December 8, 2005 to Article VIII, Section II, paragraph 6 of the State Constitution.

Of the amount hereinabove appropriated for the Private Underground Tank Remediation-Constitutional Dedication account, an amount not to exceed \$500,000, as shall be determined by the Director of the Division of Budget and Accounting, previously deposited into the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund and allocated to the New Jersey Economic Development Authority, shall

be transferred to the State Treasury to be appropriated to the Department of Environmental Protection to be used to administer the department's program to provide loans and grants for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, pursuant to the amendments effective December 8, 2005 to Article VIII, Section II, paragraph 6 of the State Constitution. Of the amount hereinabove appropriated for the Hazardous Substance Discharge Remediation-Constitutional Dedication account, \$6,309,000 shall be allocated to the Diesel Risk Mitigation Fund, established pursuant to section 28 of P.L.2005, c.219 (C.26:2C-8.53), to be used for providing grants for the costs of air pollution control equipment to reduce the levels of particulate matter emissions from diesel-powered engines, and for funding for other measures to reduce human exposure to those emissions, pursuant to the amendments effective December 8, 2005 to Article VIII, Section II, paragraph 6 of the State Constitution, provided however, that of that amount, \$575,000 may be used for program administrative costs for implementing the diesel program to regulate particulate matter emissions from diesel-powered engines.

Repealer.

2. Section 1 of P.L.2004, c.6 (C.58:10B-4.1) is repealed.
3. This act shall take effect on January 1, 2006, or upon enactment, whichever is later.

Approved January 12, 2006.

CHAPTER 359

AN ACT establishing the NJ STARS II Program, supplementing chapter 71B of Title 18A of the New Jersey Statutes, and making an appropriation.

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

C.18A:71B-86.1 Short title.

1. This act shall be known and may be cited as the "New Jersey Student Tuition Assistance Reward Scholarship II (NJ STARS II) Program Act."

C.18A:71B-86.2 Definitions relative to NJ STARS II Program.

2. As used in this act:
"Authority" means the Higher Education Student Assistance Authority established pursuant to N.J.S.18A:71A-3.

"Full-time course of study" in any semester means a course of study that includes at least 12 credit hours, not including any credit hours in a remedial or developmental curriculum, and leads to a degree from a New Jersey four-year public institution of higher education.

"Program" means the New Jersey Student Tuition Assistance Reward Scholarship II (NJ STARS II) Program.

C.18A:71B-86.3 NJ STARS II Program created.

3. There is hereby created the New Jersey Student Tuition Assistance Reward Scholarship II (NJ STARS II) Program. It shall be the duty of the Higher Education Student Assistance Authority to administer the program.

C.18A:71B-86.4 Eligibility for NJ STARS II; scholarship amounts.

4. a. For an eligible student enrolled in a full-time course of study at a New Jersey four-year public institution of higher education, a scholarship under the NJ STARS II Program shall be paid to the institution in the amount of \$2,000 for each semester of enrollment commencing in the 2006-2007 academic year. For each academic year thereafter, the amount of the scholarship shall be increased by one-half of the average percentage increase over the prior academic year in undergraduate tuition and fees for all four-year public institutions of higher education and shall be paid to the institution for each semester of enrollment in that academic year; except that the amount of the scholarship shall not exceed \$2,500 per semester. The scholarship amount awarded shall be in addition to any other State and federal need-based grants and merit scholarships to which the student is entitled. The four-year public institution of higher education shall waive or provide an institutional scholarship for any tuition and fee amount for the student, for up to 18 credits, that exceeds the sum of the NJ STARS II scholarship and any other State and federal grants and scholarships to which the student is entitled. The institution shall not be required to waive or provide an institutional scholarship for tuition and fees for credits in excess of 18 credit hours in any single semester.

b. A student shall be eligible for a scholarship under the NJ STARS II Program for up to four semesters, excluding summer sessions, at a New Jersey four-year public institution of higher education.

c. A student shall be eligible to receive a scholarship under the NJ STARS II Program for the student's third academic year of study if the student: attained an associate's degree from a New Jersey county college; received a scholarship under the "New Jersey Student Tuition Assistance Reward Scholarship (NJ STARS) Program Act," P.L.2004, c.59 (C.18A:71B-81 et seq.), or was eligible for but did not receive a scholarship under NJ STARS because the student's tuition and fees were fully covered

by other State or federal need-based grants or merit scholarships, for each semester of study in the county college; attains a grade point average of at least 3.0 for the second academic year of study in the county college; enrolls in a baccalaureate degree program at a New Jersey four-year public institution of higher education for the third academic year of study in the academic year immediately following the student's attainment of an associate's degree; and meets the criteria set forth in subsection e. of this section. A grade for credits earned during a summer semester shall for the purposes of this subsection be included in the calculation of the grade point average for the preceding academic year.

d. A student shall be eligible to receive a scholarship under the NJ STARS II Program for the student's fourth academic year of study if the student: received a scholarship under the NJ STARS II Program for the student's third academic year of study pursuant to subsection c. of this section; based on the student's performance during the third academic year of study, attained a grade point average of at least 3.0; and meets the criteria set forth in subsection e. of this section. A grade for credits earned during a summer semester shall for the purposes of this subsection be included in the calculation of the grade point average for the preceding academic year.

e. To be eligible to receive a scholarship under the NJ STARS II Program, a student shall:

- (1) be a State resident pursuant to guidelines established by the authority;
- (2) have applied for all other available forms of State and federal need-based grants and merit scholarships, exclusive of loans, the full amount of which grants and scholarships shall be applied to tuition and fee charges;
- (3) be enrolled in a full-time course of study at a four-year public institution of higher education; and
- (4) maintain continuous enrollment in a full-time course of study, unless on medical leave due to the illness of the student or a member of the student's immediate family or emergency leave because of a family emergency, which medical or emergency leave shall have been approved by the four-year public institution of higher education.

f. A student who is dismissed for academic or disciplinary reasons from a four-year public institution of higher education shall no longer be eligible for a scholarship under this act. If a student participating in the program is dismissed for disciplinary reasons, the student shall repay in full all amounts received under the program. The four-year public institution of higher education shall be responsible for collecting the repayment, or the amount of any overpayment or other improper payment, of any State awards under the program, in accordance with the provisions of N.J.S.18A:71B-10.

g. A student scholarship under the NJ STARS II Program may be renewed upon the student's filing of a renewal financial aid application and

providing evidence that the student has satisfied the requirements pursuant to this section.

C.18A:71B-86.5 Acceptance of academic credits.

5. A four-year public institution of higher education shall accept all academic credits awarded by a county college to an NJ STARS student who subsequently enrolls in the four-year institution and is participating in the NJ STARS II Program at the institution.

C.18A:71B-86.6 Report to Governor, Legislature; authority regulations.

6. a. Not later than September 30, 2008, the authority shall prepare and submit to the Legislature and the Governor a report on the implementation of the NJ STARS II Program at the four-year public institutions of higher education. The report shall, for each institution, set forth statistics on and include an analysis of student participation in the program at the institution, the amounts of funding provided under the program to students enrolled at the institution, the amounts of funding made available to those participating students from State sources other than the NJ STARS II Program and from federal and institutional sources, and such other factors as the authority deems to be necessary or useful to the evaluation of the program. The report shall set forth the number of students participating in the program Statewide, including such statistical and demographic information as may be relevant and appropriate.

b. The authority shall administer the provisions of this act and shall establish appropriate criteria, procedures, and guidelines for awarding New Jersey Student Tuition Assistance Reward II Scholarships to eligible students in accordance with the provisions of this act. The authority shall adopt in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to implement the provisions of this act.

C.18A:71B-86.7 Construction of act.

7. Nothing in this act shall be construed to require a four-year public institution of higher education to admit a student eligible for a scholarship under this act or to waive its admission standards and application procedures.

8. There is appropriated \$1,000,000 from the General Fund to the Higher Education Student Assistance Authority for the costs of the authority associated with the administration of tuition assistance programs.

9. This act shall take effect on June 30, 2006.

Approved January 12, 2006.

CHAPTER 360

AN ACT concerning the remediation of contaminated sites, and amending and supplementing P.L.1997, c.278.

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

C.58:10B-27.2 Entry of State into redevelopment agreement, certain circumstances.

1. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, the State may enter into a redevelopment agreement pursuant to sections 35 and 36 of P.L.1997, c. 278 (C.58:10B-27 and 58:10B-28) for a redevelopment project that was commenced prior to the effective date of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) in which the State may agree to reimburse a developer for 75% of remediation costs incurred subsequent to entering into the redevelopment agreement, provided that the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission, in consultation with the State Treasurer, finds that:

(1) the remediation that has not yet been performed on the subject real property is necessary to ensure that the public health and safety and the environment are protected; and

(2) (a) the cost or extent of remediation was unanticipated at the time the redevelopment project was commenced; (b) changes to the rules and regulations governing site remediation were adopted after the redevelopment project was commenced; (c) principles of fairness and consistency indicate that the reimbursement of remediation costs provided by P.L.1997, c.278 should be made available to the developer who agreed to remediate and redevelop a brownfield prior to the enactment of P.L.1997, c.278; (d) an estimate of the cost of the remediation to be performed subsequent to entry into the redevelopment agreement as approved by the Department of Environmental Protection exceeds \$10 million; (e) the subject real property is situated within a Planning Area 1 as designated in the State Development and Redevelopment Plan; and (f) a phase of the redevelopment project has not been commenced.

b. A developer that enters into a redevelopment agreement pursuant to this section shall be eligible for reimbursement of remediation costs pursuant to sections 36 and 37 of P.L.1997, c.278 (C.58:10B-28 and 58:10B-29), provided that:

(1) in estimating the amount of State taxes that are anticipated to be derived from a redevelopment project the director shall only consider tax revenues generated subsequent to the date of the redevelopment agreement

from a phase of the redevelopment project that has not generated tax revenues prior to January 1, 2006; and

(2) a developer has entered into a memorandum of agreement or other oversight document with the Commissioner of Environmental Protection for the remediation of a contaminated site located on the site of the redevelopment project and the developer is in compliance with the memorandum of agreement or oversight document.

c. Nothing in this section shall require that a no further action letter be obtained by a developer for remediation of groundwater beneath the subject real property prior to reimbursement of the remediation costs, provided that the developer has completed any capital construction or infrastructure required for the remediation of groundwater on the site.

2. Section 39 of P.L.1997, c.278 (C.58:10B-31) is amended to read as follows:

C.58:10B-31 Reimbursement of remediation costs.

39. a. The State Treasurer shall reimburse the developer the amount of the remediation costs agreed upon in the redevelopment agreement, and as provided in sections 35 and 36 of P.L.1997, c.278 (C.58:10B-27 and C.58:10B-28) upon issuance of the certification by the director pursuant to section 36 of P.L.1997, c.278 (C.58:10B-28). The developer shall be entitled to periodic payments from the fund in an amount, in the frequency, and over the time period as provided in the redevelopment agreement. Notwithstanding any other provision of sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through C.58:10B-31), the State Treasurer may not reimburse the developer any amount of the remediation costs from the fund until the State Treasurer is satisfied that the anticipated tax revenues from the redevelopment project have been realized by the State in an amount sufficient to pay for the cost of the reimbursements.

b. A developer shall submit to the director updated remediation costs actually incurred by the developer for the remediation of the contaminated property located at the site of the redevelopment project as provided in the redevelopment agreement. The reimbursement authorized pursuant to this section shall continue until such time as the aggregate dollar amount of the agreed upon reimbursement. To remain entitled to the reimbursement authorized pursuant to this section, the developer shall perform and complete all remediation activities as may be required pursuant to the memorandum of agreement or other oversight agreement entered into with the Commissioner of Environmental Protection pursuant to section 37 of P.L.1997, c.278 (C.58:10B-29). The Department of Environmental Protection may review

the remediation costs incurred by the developer to determine if they are reasonable.

Reimbursable remediation costs shall include costs that are incurred in preparing the area of land whereon the contaminated site is located for remediation and may include costs of dynamic compaction of soil necessary for the remediation.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 361

AN ACT concerning criteria for placing a juvenile in detention and amending P.L.1982, c.77.

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

1. Section 15 of P.L.1982, c.77 (C.2A:4A-34) is amended to read as follows:

C.2A:4A-34 Criteria for placing juvenile in detention.

15. Criteria for placing juvenile in detention.

a. Except as otherwise provided in this section, a juvenile charged with an act of delinquency shall be released pending the disposition of a case, if any, to any person or agency provided for in this section upon assurance being received that such person or persons accept responsibility for the juvenile and will bring him before the court as ordered.

b. No juvenile shall be placed in detention without the permission of a judge or the court intake service.

c. A juvenile charged with delinquency may not be placed or retained in detention under this act prior to disposition, except as otherwise provided by law, unless:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or the juvenile is subject to a current warrant for failure to appear at court proceedings which is active at the time of arrest; or

(2) The physical safety of persons or property of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult, would constitute a crime of the first, second or third degree or one of the following crimes of the fourth degree: aggravated assault; stalking; criminal sexual contact; bias intimidation; failure to control or report a dangerous fire; possession of a prohibited weapon or device in violation of N.J.S.2C:39-3; or unlawful possession of a weapon in violation of N.J.S.2C:39-5; or

(3) With respect to a juvenile charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph (2) of this subsection, or a disorderly persons or petty disorderly persons offense, and with respect to a juvenile charged with an offense enumerated in subsection c. when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody of the juvenile. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile's placement in a shelter or other non-secure placement. If, after the initial detention hearing, continued placement is necessary, the juvenile shall be returned to a shelter or other non-secure placement.

d. The judge or court intake officer prior to making a decision of detention shall consider and, where appropriate, employ any of the following alternatives:

- (1) Release to parents;
- (2) Release on juvenile's promise to appear at next hearing;
- (3) Release to parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing;
- (4) Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;
- (5) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;
- (6) Release with required participation in a home detention program;
- (7) Placement in a shelter care facility; or
- (8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

e. In determining whether detention is appropriate for the juvenile, the following factors shall be considered:

- (1) The nature and circumstances of the offense charged;
- (2) The age of the juvenile;
- (3) The juvenile's ties to the community;

- (4) The juvenile's record of prior adjudications, if any; and
- (5) The juvenile's record of appearance or nonappearance at previous court proceedings.

f. No juvenile 11 years of age or under shall be placed in detention unless he is charged with an offense which, if committed by an adult, would be a crime of the first or second degree or arson.

g. If the court places a juvenile in detention, the court shall state on the record its reasons for that detention.

h. For purposes of this section, a failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service shall be deemed recent if it occurred within the 12 months immediately preceding the detention hearing, or if it occurred within the period of 12 to 24 months preceding the detention hearing and the juvenile is unable to demonstrate a record of voluntary compliance with any subsequent court appearance and placement requirements.

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

Approved January 12, 2006.

CHAPTER 362

AN ACT concerning baseball spectator safety 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:53A-43 Short title.

1. This act shall be known and may be cited as the "New Jersey Baseball Spectator Safety Act of 2006."

C.2A:53A-44 Provision of protected seating for spectators, recognition of inherent risks, statement of intent.

2. The Legislature recognizes that baseball stadium owners and operators have a duty to provide protected seating to spectators who, seeking to avoid the risk of injury, desire protection. However, the Legislature also recognizes that persons who attend professional baseball games may be injured as a result of the risks inherent in being a spectator at such games. The Legislature further finds that attendance at such professional baseball games is a family and community based activity to be encouraged. More-

over, the State derives economic benefit from spectators attending professional baseball games. Therefore, it is the intent of the Legislature to encourage attendance at professional baseball games. Limiting the civil liability of those who own professional baseball teams and those who own the stadiums where professional baseball games are played will help contain costs, thereby keeping ticket prices affordable.

C.2A:53A-45 Definitions relative to baseball spectator safety.

3. As used in this act:

a. "Owner" means a person, including a corporation, partnership, or limited liability company, who is in lawful possession and control of a professional baseball team or a stadium in which a professional baseball game is played. "Owner" shall also include the owner's shareholders, partners, directors, officers, employees and agents.

b. "Professional baseball game" means any baseball game, whether for exhibition or competition, in which the participating baseball teams are members of a league of professional baseball clubs, commonly known as a major league or a minor league, and which teams are comprised of paid baseball players. "Professional baseball game" shall also include pregame activities and shall include any baseball game or pregame activity.

c. "Spectator" means a person who is present at a baseball game for the purpose of observing the game, whether or not a fee is paid.

C.2A:53A-46 Assumption of inherent risks by spectators, bar, defense to suit.

4. a. Notwithstanding any other provision of law, spectators of professional baseball games are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games. These risks are defined as injuries which result from being struck by a baseball or a baseball bat anywhere on the premises during a professional baseball game.

b. (1) Except as provided in section 5 of this act, the assumption of risk set forth in this section shall be a complete bar to suit and shall serve as a complete defense to a suit against an owner by a spectator for injuries resulting from the assumed risks.

(2) Except as provided in section 5 of this act, an owner shall not be liable for an injury to a spectator resulting from the inherent risks of attending a professional baseball game. Except as provided in section 5 of this act, no spectator or spectator's representative shall make any claim against, maintain an action against, or recover from an owner for injury, loss, or damage to the spectator resulting from any of the inherent risks of attending a professional baseball game.

c. Nothing in this act shall preclude a spectator from bringing an action against another spectator for an injury to person or property resulting from such other spectator's acts or omissions.

C.2A:53A-47 Liability for non-compliance.

5. a. Nothing in section 4 of this act shall prevent or limit the liability of an owner who fails to post and maintain the warning signs required pursuant to section 6 of this act.

b. Nothing in section 4 of this act shall prevent or limit the liability of an owner who fails to provide protection for spectators in the most dangerous sections of the stands. This limited duty may be satisfied by having a net behind home plate.

C.2A:53A-48 Posting, maintenance of signs; warning.

6. a. Every owner of a stadium where professional baseball games are played shall post and maintain signs which contain the warning notice set forth in subsection b. of this section. Such signs shall be posted in conspicuous places at the entrances outside the stadium and at stadium facilities where tickets to professional baseball games are sold.

b. The signs described in subsection a. of this section shall contain the following warning notice:

WARNING

UNDER NEW JERSEY LAW, A SPECTATOR OF PROFESSIONAL BASEBALL ASSUMES THE RISK OF ANY INJURY TO PERSON OR PROPERTY RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF SUCH ACTIVITY AND MAY NOT RECOVER FROM AN OWNER OF A BASEBALL TEAM OR AN OWNER OF A STADIUM WHERE PROFESSIONAL BASEBALL IS PLAYED FOR INJURY RESULTING FROM THE INHERENT DANGERS AND RISKS OF OBSERVING PROFESSIONAL BASEBALL, INCLUDING BEING STRUCK BY A BASEBALL OR A BASEBALL BAT ANYWHERE ON THE PREMISES DURING A PROFESSIONAL BASEBALL GAME.

7. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 363

AN ACT to amend and supplement "An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 2006 and regulating the disbursement thereof," approved July 2, 2005 (P.L.2005, c.132).

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.2005, c.132, the fiscal year 2006 appropriations act, there is appropriated out of the General Fund the following sum for the purpose specified:

26 DEPARTMENT OF CORRECTIONS
10 Public Safety and Criminal Justice
16 Detention and Rehabilitation
7025 System-Wide Program Support
GRANTS-IN-AID

13-7025 Institutional Program Support	<u>\$22,000,000</u>
Total Grants-in-Aid Appropriation, System-Wide	
Program Support	<u>\$22,000,000</u>
<i>Grant-in-Aid:</i>	
13 Purchase of Services for Inmates	
Incarcerated in County Penal Facilities	(\$22,000,000)
Total Appropriation, Department of Corrections	<u>\$22,000,000</u>

2. The following language provisions of section 1 of P.L.2005, c.132, the annual appropriations act for fiscal year 2006, are amended to read as follows:

46 DEPARTMENT OF HEALTH AND SENIOR SERVICES
20 Physical and Mental Health
26 Senior Services
GRANTS-IN-AID
24-4275 Pharmaceutical Assistance to the Aged and Disabled

Notwithstanding the provisions of any other law or regulation to the contrary, no funds appropriated in the Pharmaceutical Assistance to the Aged and Disabled program classification and the Senior Gold Prescription Discount Program account shall be expended except under the following conditions: (a) reimbursement for prescription drugs shall be based on the Average Wholesale Price less a 12.5% discount; (b) the current prescription drug dispensing fee structure set as a variable rate of \$3.73 to \$4.07 in effect on June 30, 2005 shall remain in effect through fiscal year 2006, including the current increments for patient consultation, impact allowances and allowances for 24-hour emergency services; and (c) multisource generic and single source brand name drugs shall be dispensed without prior authoriza-

tion but multisource brand name drugs shall require prior authorization issued by the Department of Health and Senior Services or its authorizing agent, however, a 10-day supply of the multisource brand name drug shall be dispensed pending receipt of prior authorization. Certain multisource brand name drugs with a narrow therapeutic index, other drugs recommended by the Drug Utilization Review Board or brand name drugs with a lower cost per unit than the generic may be excluded from prior authorization by the Department of Health and Senior Services. The funds appropriated for the Pharmaceutical Assistance to the Aged and Disabled program and the Senior Gold Prescription Discount Program may also be expended for a temporary program to provide additional compensation to pharmacies which serve a disproportionate share of PAAD and Senior Gold participants due to a significant decline in a pharmacy's total prescription drug dispensing fee compensation resulting from changes in federal law. A pharmacy shall be eligible for such additional compensation if it: (a) is classified by the Division of Medical Assistance and Health Services during calendar year 2005 as a pharmacy receiving an impact allowance pursuant to N.J.A.C.10:51-1.7(a)(3); (b) is not considered a long-term care pharmacy; and (c) has not filled more than 10,443 PAAD or Senior Gold prescriptions during calendar year 2005. The additional compensation shall equal \$2 for each PAAD and Senior Gold prescription filled between January 1, 2005 and June 30, 2005.

*24-4275 Pharmaceutical Assistance to the Aged and Disabled
Casino Revenue Fund*

Notwithstanding the provisions of any other law or regulation to the contrary, no funds appropriated in the Pharmaceutical Assistance to the Aged and Disabled program classification and the Senior Gold Prescription Discount Program account shall be expended except under the following conditions: (a) reimbursement for prescription drugs shall be based on the Average Wholesale Price less a 12.5% discount; (b) the current prescription drug dispensing fee structure set as a variable rate of \$3.73 to \$4.07 in effect on June 30, 2005 shall remain in effect through fiscal year 2006, including the current increments for patient consultation, impact allowances and allowances for 24-hour emergency services; and (c) multisource generic and single source brand name drugs shall be dispensed without prior authorization but multisource brand name drugs shall require prior authorization issued by the Department of Health and Senior Services or its authorizing agent, however, a 10-day supply of the multisource brand name

drug shall be dispensed pending receipt of prior authorization. Certain multisource brand name drugs with a narrow therapeutic index, other drugs recommended by the Drug Utilization Review Board or brand name drugs with a lower cost per unit than the generic may be excluded from prior authorization by the Department of Health and Senior Services. The funds appropriated for the Pharmaceutical Assistance to the Aged and Disabled program and the Senior Gold Prescription Discount Program may also be expended for a temporary program to provide additional compensation to pharmacies which serve a disproportionate share of PAAD and Senior Gold participants due to a significant decline in a pharmacy's total prescription drug dispensing fee compensation resulting from changes in federal law. A pharmacy shall be eligible for such additional compensation if it: (a) is classified by the Division of Medical Assistance and Health Services during calendar year 2005 as a pharmacy receiving an impact allowance pursuant to N.J.A.C.10:51-1.7(a)(3); (b) is not considered a long-term care pharmacy; and (c) has not filled more than 10,443 PAAD or Senior Gold prescriptions during calendar year 2005. The additional compensation shall equal \$2 for each PAAD and Senior Gold prescription filled between January 1, 2005 and June 30, 2005.

54 DEPARTMENT OF HUMAN SERVICES

24 Special Health Services

7540 Division of Medical Assistance and Health Services

GRANTS-IN-AID

22-7540 General Medical Services

Notwithstanding the provisions of any other law or regulation to the contrary, and subject to the notice provisions of 42 CFR 447.205 where applicable, no funds appropriated for prescription drugs in the Payments for Medical Assistance Recipients-Prescription Drugs or General Assistance Medical Services account shall be expended except under the following conditions: (a) reimbursement for the cost of legend, and non-legend drugs, and nutritional supplements, shall not exceed their Average Wholesale Price (AWP) less a 12.5% discount; (b) the current prescription drug dispensing fee structure set as a variable rate of \$3.73 to \$4.07 in effect on June 30, 2005 shall remain in effect through fiscal year 2006, including the current increments for patient consultation, impact allowances, and allowances for 24-hour emergency services; and (c) multisource generic and single source brand name drugs shall be dispensed without prior authoriza-

tion but multisource brand name drugs shall require prior authorization issued by the Division of Medical Assistance and Health Services or its authorizing agent, however, a 10-day supply of the multisource brand name drug shall be dispensed pending receipt of prior authorization. Certain multisource brand name drugs with a narrow therapeutic index, other drugs recommended by the Drug Utilization Board or brand name drugs with lower cost per unit than the generic, may be excluded from prior authorization by the Division of Medical Assistance and Health Services. The funds appropriated for the Payments for Medical Assistance Recipients-Prescription Drugs may also be expended for a temporary program to provide additional compensation to pharmacies which serve a disproportionate share of Medicaid participants due to a significant decline in a pharmacy's total prescription drug dispensing fee compensation resulting from changes in federal law. A pharmacy shall be eligible for such additional compensation if it: (a) is classified by the Division of Medical Assistance and Health Services during calendar year 2005 as a pharmacy receiving an impact allowance pursuant to N.J.A.C.10:51-1.7(a)(3); (b) is not considered a long-term care pharmacy; and (c) has not filled more than 8,562 Medicaid prescriptions during calendar year 2005. The additional compensation shall equal \$2 for each Medicaid prescription filled between January 1, 2005 and June 30, 2005.

74 DEPARTMENT OF STATE

30 Educational, Cultural and Intellectual Development

36 Higher Educational Services

2410 Rutgers, The State University

GRANTS-IN-AID

82-2410 Institutional Support

Of the sums hereinabove appropriated for Rutgers, The State University, \$180,000 is appropriated for the Masters in Government Accounting Program, \$105,000 is appropriated for the Tomato Technology Transfer Program, \$95,000 is appropriated for the Haskin Shellfish Research Laboratory, \$200,000 is appropriated for the Camden Law School Clinical Legal Programs for the Poor, \$200,000 is appropriated for the Newark Law School Clinical Legal Programs for the Poor, \$740,000 is appropriated for the Civic Square Project-Debt Service, \$75,000 is appropriated for the Walter Rand Institute for Public Affairs, \$700,000 is appropriated for In Lieu of Taxes to New Brunswick, \$500,000 is appropriated for capital projects or maintenance for Division of Inter-

collegiate Athletic facilities at Rutgers, New Brunswick, \$500,000 for the Gubernatorial Project, \$18,000,000 is appropriated for Rutgers-Newark School of Business, \$135,000 for E3CO, Inc. and \$515,000 is appropriated for the New Jersey EcoComplex, Burlington County. These accounts shall be considered special purpose appropriations for accounting and reporting purposes.

3. This act shall take effective immediately.

Approved January 12, 2006.

CHAPTER 364

AN ACT establishing a civil penalty for persons who contribute to a high school student-athlete's loss of amateur-athlete status 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:36-37 "Student-athlete" defined, rules for maintenance of amateur status; violations, penalties.

1. a. As used in this section, "student-athlete" means any student enrolled in a public or nonpublic secondary school in this State who is a participant in an interscholastic athletic program governed by the rules of the New Jersey State Interscholastic Athletic Association.

b. No person shall give, offer, promise or attempt to give to any student-athlete, whether directly or indirectly, any gift, favor, service, employment or other thing of value which the person knows or has reason to know would, if accepted, subject that student-athlete to being ruled ineligible to participate as an amateur-athlete under the rules established by the New Jersey State Interscholastic Athletic Association. A person who violates the provisions of this subsection shall be subject to a civil penalty of not less than \$1,000 and not more than \$10,000, for each violation, which shall be collected in a summary manner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in the Superior Court or any municipal court.

c. The board of education of each school district or the chief school administrator of each nonpublic school shall annually notify each student-athlete under the jurisdiction of the school district or nonpublic school of

the provisions of this section and of the New Jersey State Interscholastic Athletic Association's rules regarding eligibility.

d. The notice required by subsection c. of this section shall be:

- (1) written;
- (2) in language understandable by a secondary school student;
- (3) based on model language developed by the New Jersey State Interscholastic Athletic Association; and
- (4) communicated via regular or electronic mail, sent home with the student or published in a student handbook.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 365

AN ACT concerning identification of brownfield sites, supplementing P.L.1997, c.278 (C.58:10B-1.1 et al.), and making an appropriation.

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

C.58:10B-23.1 Findings, declarations relative to redevelopment of brownfield sites.

1. The Legislature finds and declares that the redevelopment of brownfield sites provides an alternative to the development of undeveloped land; that the redevelopment of brownfield sites would reinvigorate the surrounding areas, provide additional tax revenues to municipal government, and create jobs; and that it is vital that State, county and local governments concerned with the economic growth in the State have available an accurate and comprehensive list of known brownfield sites so that growth can be directed away from sensitive areas and into already developed areas or currently underutilized areas. The Legislature further finds and declares that landowners should be encouraged to list their property on the State's inventory of brownfield sites in order to enhance opportunities for reusing brownfield sites to the benefit of all redevelopment stakeholders and to promote a cleaner environment, a more robust economy, and a better quality of life.

C.58:10B-23.2 Preparation of inventory of brownfield sites; definitions.

2. a. In accordance with section 5 of P.L.1997, c.278 (C.58:10B-23), the Brownfields Redevelopment Task Force shall continue to prepare an inventory of brownfield sites in the State, and shall expedite its efforts to

compile a State inventory of brownfield sites for listing on the New Jersey Brownfields Site Mart. Within 12 months after the effective date of this act, and annually thereafter, the Brownfields Redevelopment Task Force shall submit a progress report to the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, summarizing the efforts employed during the past 12 months toward compilation of an inventory of known brownfield sites in the State.

b. The inventory of brownfield sites shall include a list of known brownfield sites in the State, and at least the following information for each site:

- (1) the street address, lot and block number, municipality and county;
- (2) the size of the site;
- (3) the last known municipal zoning classification for the site;
- (4) the name and address of the owner of record of the site;
- (5) an assessment of the contaminants known or suspected by the Department of Environmental Protection to have been discharged at the site;
- (6) the extent and status of any remediation known by the Department of Environmental Protection to have been performed on the site; and
- (7) the planning area designation and any center designation as shown on the State Plan Policy Map prepared by the State Planning Commission pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.).

c. As used in this section, "brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or is suspected to have been, a discharge of a contaminant and "New Jersey Brownfields Site Mart" means an interactive database accessible on the Internet that provides information to developers, property owners, and State and local planners and officials, about brownfield sites in order to facilitate the sale and redevelopment of those properties.

3. There is hereby appropriated to the Department of Community Affairs the sum of \$285,000 from the General Fund for the Brownfields Redevelopment Task Force established pursuant to section 5 of P.L.1997, c.278 (C.58:10B-23) to expedite and continue its inventory of brownfields sites and other functions as provided in section 5 of P.L.1997, c.278, including efforts to promote the cleanup and redevelopment of brownfield sites. Use of these moneys shall be memorialized by formal Task Force Resolutions, which shall be a matter of public record.

4. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 366

AN ACT requiring permanent full-time county fire marshals and assistant fire marshals who are authorized by counties to coordinate, control or extinguish fires to be enrolled in PFRS and amending N.J.S.40A:14-1 and N.J.S.40A:14-2.

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

1. N.J.S.40A:14-1 is amended to read as follows:

County fire marshal; appointment; salary.

40A:14-1. County fire marshal; appointment; salary.

The board of chosen freeholders of any county, by resolution, may create the office of county fire marshal and such assistant fire marshals as deemed necessary and appoint a person or persons to hold such office on a permanent, full-time basis or on a part-time basis for a term of three years commencing January 15, except that the first appointee's term of office shall terminate on January 15 following his appointment. The board of chosen freeholders shall fix the amount of the annual salary of the county fire marshal and the assistant fire marshals, if any.

Any permanent, full-time county fire marshal and any such assistant fire marshal given approval by the board of chosen freeholders to engage in activities provided in N.J.S.40A:14-2b.(8) shall be enrolled as members in the Police and Firemen's Retirement System of New Jersey, P.L.1944, c.255 (C.43:16A-1 et seq.), as long as the person or persons holding such office meet all other requirements for membership. Any current fire marshals and assistant county fire marshals engaged in activities provided in N.J.S.40A:14-2b.(8) at the time that this amendment takes effect shall be exempt from any age requirement for enrollment in the Police and Firemen's Retirement System of New Jersey. Any permanent, full-time county fire marshal and assistant fire marshal given approval by the board of chosen freeholders on or after October 1, 2001 to engage in activities provided in N.J.S.40A:14-2b.(8) shall be enrolled as a member in the Police and Firemen's Retirement System effective upon the date when such approval by the board of chosen freeholders was given.

The cost of enrollment of a full-time county fire marshal or assistant fire marshal in the Police and Firemen's Retirement System of New Jersey pursuant to the provisions of this section shall not be the responsibility of the State.

2. N.J.S.40A:14-2 is amended to read as follows:

County fire marshal; powers and duties.**40A:14-2. County Fire Marshal; powers and duties.**

The county fire marshal shall: act in an advisory capacity to all of the fire companies in the county, conduct or assist in, when requested by the incident commander or fire chief of the department having jurisdiction, investigations pertaining to the cause and origins of fires, conduct or review studies pertaining to the elimination of fire hazards and, subject to the approval of the board of chosen freeholders, have authority to enforce the provisions of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.). The county fire marshal shall report to the appropriate authority, as determined by the entity with control over the executive functions of the county. The term "entity with control over the executive functions of the county" means:

a. in counties other than those that have adopted a form of government pursuant to the provisions of P.L.1972, c.154 (C.40:41A-1 et seq.), the board of freeholders, unless such a county has created the position of county administrator pursuant to (N.J.S.40A:9-42), in which case the term means the county administrator;

b. in counties that have adopted a form of government pursuant to the provisions of P.L.1972, c.154 (C.40:41A-1 et seq.), the county executive, the county manager, the county supervisor or the board president, depending upon the county form of government.

The county fire marshal, subject to the approval of the board of chosen freeholders, may:

- (1) (Deleted by amendment, P.L.1999, c.351).
- (2) (Deleted by amendment, P.L.1999, c.351).
- (3) (Deleted by amendment, P.L.1999, c.351).
- (4) accept the responsibility to be the enforcing agency for a municipality or fire district under the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) if requested to do so by ordinance of the municipality or resolution of the fire district;
- (5) act as training administrator of county fire training facilities and coordinate training programs with fire departments, agencies and established training committees;
- (6) offer assistance to families, units of government and mental health agencies including law enforcement for intervention in juvenile fire setting incidents;
- (7) provide for the prevention of fire hazards and initiate programs for public awareness; and
- (8) provide municipal fire departments with such assistance as necessary to coordinate, control or extinguish any fire situation or other emergency situation for which a fire department has responsibility by local

ordinance when requested by the incident commander or fire chief of the department having jurisdiction. If a permanent, full-time county fire marshal or assistant fire marshal is given authorization by the board of chosen freeholders to conduct activities as provided in this paragraph, such county fire marshal and assistant fire marshal shall be enrolled as a member in the Police and Firemen's Retirement System of New Jersey as set forth in N.J.S.40A:14-1.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 367

AN ACT concerning State contracts for the purchase of goods and services involving wood and paper products, and supplementing Title 52 of the Revised Statutes.

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

C.52:32-45 Preference in contracts for wood, paper products derived from sustainably managed forests, procurement systems.

1. a. Notwithstanding the provisions of any other law to the contrary, the Director of the Division of Purchase and Property in the Department of the Treasury, the Director of the Division of Property Management and Construction in the Department of the Treasury, or any State agency having authority to contract for the purchase of goods or services, shall whenever possible give preference to wood or paper products derived from sustainably managed forests or procurement systems when entering into or renewing a contract for the purchase of such goods or related services. Any preference provided pursuant to this subsection may not supersede any preference given to recycled paper and paper products pursuant to P.L.1987, c.102 (C.13:1E-99.11 et seq.).

In preparing the specifications for any contract for the purchase of goods and services the Director of the Division of Purchase and Property, the Director of the Division of Property Management and Construction, or any State agency having authority to contract for the purchase of goods or services shall include in the invitation to bid, where relevant, a statement that any response to the invitation that proposes or calls for the use

of wood or paper products derived from sustainably managed forests or procurement systems shall receive preference whenever possible.

b. The provisions of subsection a. of this section shall not apply:

(1) To any binding contractual obligations for the purchase of goods or services entered into prior to the effective date of this act;

(2) To bid packages advertised and made available to the public, or to any competitive and sealed bids received by the State, prior to the effective date of this act; or

(3) To any amendment, modification, or renewal of a contract, which contract was entered into prior to the effective date of this act where the application would delay timely completion of a project or involve an increase in the total moneys to be paid by the State under that contract.

c. For the purposes of this act, "derived from sustainably managed forests or procurement systems" means the source of the wood or paper product is a forest or system for procuring wood or paper products that is certified by an independent third party using one or more of the following certification programs or standards:

(1) The Sustainable Forestry Initiative program;

(2) The American Forest Foundation American Tree Farm System program;

(3) The sustainable forest management system standards of the Canadian Standards Association;

(4) The Forest Stewardship Council certification program;

(5) The Pan-European forest certification system;

(6) The Finnish Forest Certification System;

(7) The United Kingdom Woodland Assurance Standard;

(8) The International Organization for Standardization (ISO) standard 14001; or

(9) Any other certification program or standard that the State Treasurer or the Commissioner of Environmental Protection determines may be used to certify that wood or paper products are derived from sustainably managed forests or procurement systems.

C.52:32-46 Procedures, review; rules, regulations.

2. a. The State Treasurer, in consultation with the Commissioner of Environmental Protection, shall establish any procedures or conduct any review necessary to determine that wood or paper products are derived from sustainably managed forests or procurement systems for the purposes of implementing the provisions of section 1 of this act and ensuring proper compliance with the requirements therein.

b. The State Treasurer, in conjunction with the Commissioner of Environmental Protection, may adopt, pursuant to the "Administrative

Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to implement the provisions of this act.

3. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 368

AN ACT concerning leaves of absence for certain public employees, service credit in the Public Employees' Retirement System of New Jersey during a leave of absence, amending N.J.S.11A:6-12 and supplementing Title 40A of the New Jersey Statutes and P.L.1954, c.84.

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

1. N.J.S.11A:6-12 is amended to read as follows:

Leaves of absence for certain elected and appointed union officials.

11A:6-12. Leaves of absence for elected and appointed union officials. An appointing authority may grant an unpaid leave of absence to any employee elected or appointed as an officer or representative of a local, county or State labor organization which represents, or is affiliated with a local, county or State labor organization which represents, public employees.

An appointing authority may grant a paid leave of absence to any such employee, (1) provided the employer is reimbursed in advance for compensation and benefit costs including retirement system contributions and health benefit premiums or periodic charges paid during the period of absence, or (2) in accordance with the terms of a collective bargaining agreement.

The maximum period for such paid and unpaid leaves shall be a subject of negotiation between the employer and union.

C.40A:9-7.3 Unpaid leaves of absence for union officers, representatives of certain public employees.

2. Any employee, except a policeman or firefighter, elected or appointed as an officer or representative of a local, county or State labor organization which represents, or is affiliated with a local, county or State labor organization which represents, public employees may be granted, by a county, municipality or agency thereof, an unpaid leave of absence.

A county, municipality or agency thereof may grant a paid leave of absence to any such employee, (1) provided the employer is reimbursed in advance for compensation and benefit costs including retirement system contributions and health benefit premiums or periodic charges paid during the period of absence, or (2) in accordance with the terms of a collective bargaining agreement.

The maximum period for such paid and unpaid leaves shall be a subject of negotiation between the employer and union.

C.43:15A-39.1 Credit in retirement system for members on approved leave of absence.

3. Any member who serves, while on an approved leave of absence from regular duties, as an officer or representative of a local, county or State labor organization which represents, or is affiliated with an organization which represents, public employees shall have the option to receive credit in the retirement system for the service. Any member who chooses to receive the credit shall be liable, with respect to the service to be credited, for payment to the retirement system of both the contributions that would have been required under section 25 of P.L.1954, c.84 (C.43:15A-25) and section 30 of P.L.1954, c.84 (C.43:15A-30) and the contributions that would have been required under section 24 of P.L.1954, c.84 (C.43:15A-24) if that service had been rendered as regular service to the employer granting the leave of absence. The contributions shall be based upon the compensation that would have been received by the member under the negotiated salary guide of the employer granting the leave had that member remained in service with that employer, including applicable normal increments and negotiated wage increases occurring during the period of the leave.

4. Any member who, prior to the effective date of P.L.2005, c.368, had been granted and had taken an approved unpaid leave of absence and who has not received credit in the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), for that service may elect, within one year after that effective date, to purchase credit for the service. The cost of the purchase shall be computed by applying the factor, supplied by the actuary as being applicable to the member's age at the time of the purchase and necessary to provide for the full cost, as considered in developing the purchase factors for military service, attributable to the purchased credit, to the member's salary at that time for a member in regular service with the employer. All other terms of the purchase and the credit granted shall be as stipulated for the purchase of previous membership service by section 8 of P.L.1954, c.84 (C.43:15A-8).

5. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 369

AN ACT concerning the awarding of State college and university contracts, amending N.J.S.18A:64-6, P.L.1986, c.43 and P.L.1992, c.61 and repealing section 20 of P.L.1986, c.43.

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

1. N.J.S.18A:64-6 is amended to read as follows:

Powers, duties of boards.

18A:64-6. The board of trustees of a State college shall have general supervision over and shall be vested with the conduct of the college. It shall have the power and duty to:

- a. Adopt and use a corporate seal;
- b. Determine the educational curriculum and program of the college consistent with the programmatic mission of the institution or approved by the Commission on Higher Education;
- c. Determine policies for the organization, administration and development of the college;
- d. Study the educational and financial needs of the college; annually acquaint the Governor and Legislature with the condition of the college; and prepare and present the annual budget to the Governor, the Division of Budget and Accounting in the Department of the Treasury and the Legislature in accordance with law;
- e. Disburse all moneys appropriated to the college by the Legislature and all moneys received from tuition, fees, auxiliary services and other sources;
- f. Direct and control expenditures and transfers of funds appropriated to the college and tuition received by the college, in accordance with the provisions of the State budget and appropriation acts of the Legislature, reporting changes and additions thereto and transfers thereof to the Director of the Division of Budget and Accounting in the State Department of the Treasury and as to funds received from other sources, direct and control expenditures and transfers in accordance with the terms of any applicable trusts, gifts, bequests, or other special provisions. All accounts of the college shall be subject to audit by the State at any time;

New Jersey State Library

g. In accordance with the provisions of the State budget and appropriation acts of the Legislature, appoint and fix the compensation of a president of the college, who shall be the executive officer of the college and an ex officio member of the board of trustees, without vote, and shall serve at the pleasure of the board of trustees;

h. Notwithstanding the provisions of Title 11, Civil Service, of the Revised Statutes, upon nomination by the president appoint a treasurer and such deans and other professional members of the academic, administrative and teaching staffs as defined in section 13 of P.L.1986, c.42 (C.18A:64-21.2) as shall be required and fix their compensation and terms of employment in accordance with salary ranges and policies which shall prescribe qualifications for various classifications and shall limit the percentage of the educational staff that may be in any given classification;

i. Upon nomination by the president, appoint, remove, promote and transfer such other officers, agents or employees as may be required for carrying out the purposes of the college and assign their duties, determine their salaries and prescribe qualifications for all positions, all in accordance with the provisions of Title 11, Civil Service, of the Revised Statutes;

j. Grant diplomas, certificates and degrees;

k. Pursuant to the provisions of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.) enter into contracts and agreements for the purchase of lands, buildings, equipment, materials, supplies and services; enter into contracts and agreements with the State or any of its political subdivisions or with the United States, or with any public body, department or other agency of the State or the United States or with any individual, firm, or corporation, which are deemed necessary or advisable by the board for carrying out the purposes of the college;

l. If necessary, take and condemn land and other property in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), whenever authorized by law to purchase land or other property;

m. Adopt, after consultation with the president and faculty, bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this article, that are necessary and proper for the administration and operation of the college and the carrying out of its purposes;

n. Establish fees for room and board sufficient for the operation, maintenance, and rental of student housing and food service facilities;

o. Fix and determine tuition rates and other fees to be paid by students;

p. Accept from any government or governmental department, agency or other public or private body or from any other source grants or contributions of money or property, which the board may use for or in aid of any of its purposes;

q. Acquire by gift, purchase, condemnation or otherwise, own, lease, dispose of, use and operate property, whether real, personal or mixed, or any interest therein, which is necessary or desirable for college purposes;

r. Employ architects to plan buildings; secure bids for the construction of buildings and for the equipment thereof; make contracts for the construction of buildings and for equipment; and supervise the construction of buildings;

s. Manage and maintain, and provide for the payment of all charges and expenses in respect to all properties utilized by the college;

t. Borrow money for the needs of the college, as deemed requisite by the board, in such amounts, and for such time and upon such terms as may be determined by the board, provided that this borrowing shall not be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, or be payable out of property or funds, other than moneys appropriated for that purpose, of the State;

u. Authorize any new program, educational department or school consistent with the institution's programmatic mission or approved by the commission;

v. (Deleted by amendment, P.L.1994, c.48);

w. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered; and

x. Pursuant to the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), award contracts and agreements for the construction of buildings and other improvements to the lowest responsible bidder, whose bid, conforming to the invitation for bids, will be the most advantageous to the State college.

2. Section 2 of P.L.1986, c.43 (C.18A:64-53) is amended to read as follows:

C.18A:64-53 Definitions.

2. As used in this article, unless the context otherwise indicates:

a. "Board of trustees" means the board of a State college;

b. "Contracting agent" means the business officer of the State college having the power to prepare advertisements, to advertise for and receive bids, and to make awards for the State college in connection with the purchases, contracts or agreements permitted by this article or the officer, committee or employee to whom the power has been delegated by the State college;

c. "Contracts" means contracts or agreements for the performance of work or the furnishing or hiring of services, materials or supplies, as distinguished from contracts of employment;

d. "Legal newspaper" means a newspaper circulating in this State which has been printed and published in the English language at least once a week for at least one year continuously;

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

f. "Extraordinary unspecifiable services" means services or products which cannot be reasonably described by written specifications;

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

h. "Project" means any work, undertaking, construction or alteration;

i. "Purchases" are transactions, for a valuable consideration, creating or acquiring an interest in goods, services and property except real property or any interest therein;

j. "State college" means an institution of higher education established pursuant to chapter 64 of Title 18A of the New Jersey Statutes;

k. "Work" includes services and any other activity of a tangible or intangible nature performed or assumed pursuant to a contract or agreement with a State college;

l. "Information technology" means telecommunication goods and services, including, but not limited to, software, hardware and systems implementation and support for voice, data and video.

3. 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 \$26,200 or, commencing January 1, 2005, 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, 2005 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 36 consecutive months, notwithstanding that the 36 -month period does not coincide with the fiscal year.

4. 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 \$26,200 or, commencing January 1, 2005, 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.

5. Section 5 of P.L.1986, c.43 (C.18A:64-56) is amended to read as follows:

C.18A:64-56 Exceptions.

5. Any purchase, contract or agreement of the character described in section 4 of P.L.1986, c.43 (C.18A:64-55) may be made, negotiated or awarded by the State college by resolution at a public meeting of its board of trustees without public advertising for bids or bidding therefor if:

a. The subject matter thereof consists of:

(1) Professional services; or

(2) Extraordinary unspecifiable services and products which cannot reasonably be described by written specifications, subject, however, to procedures consistent with open public bidding whenever possible; or

(3) Materials or supplies which are not available from more than one potential bidder, including without limitation materials or supplies which are patented or copyrighted; or

(4) The doing of any work by employees of the State college; or

(5) The printing of all legal notices and legal briefs, records and appendices to be used in any legal proceeding to which the State college may be a party and the use of electronic data or media services, including the internet, for the printing of these legal notices and legal briefs, records and appendices; or

(6) Textbooks, copyrighted materials, student produced publications and services incidental thereto, library materials including without limitation books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials and specialized library services, including electronic databases and digital formats; or

(7) Food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias; or

(8) The supplying of any product or the rendering of any service by the public utility which is subject to the jurisdiction of the Board of Public Utilities, in accordance with tariffs and schedules of charges made, charged and exacted, filed with that board; or

(9) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with the services; or

(10) Specialized machinery or equipment of a technical nature which will not reasonably permit the drawing of specifications, and the procurement thereof without advertising is in the public interest; or

(11) Insurance, including the purchase of insurance coverage and consulting services, which exceptions shall be in accordance with the requirements for extraordinary unspecifiable services; or

(12) Publishing of legal notices in newspapers as required by law and the use of electronic data or media services, including the internet, for the publication of the legal notices; or

(13) The acquisition of artifacts or other items of unique intrinsic, artistic or historic character; or

(14) The collection of amounts due on student loans, including without limitation loans guaranteed by or made with funds of the United States of America, and amounts due on other financial obligations to the State college, including but not limited to, the amounts due on tuition and fees and room and board; or

(15) Professional consulting services; or

(16) Entertainment, including without limitation theatrical presentations, band and other concerts, movies and other audiovisual productions; or

(17) Contracts employing funds created by student activities fees charged to students or otherwise raised by students and expended by student organizations; or

(18) Printing, including without limitation catalogs, yearbooks and course announcements and the production and reproduction of such material in electronic and digital formats, including compact discs; or

(19) Information technology; or

(20) Personnel recruitment and advertising, including without limitation advertising seeking student enrollment; or

(21) Educational supplies, books, articles of clothing and other miscellaneous articles purchased by a State college for resale to college students and employees; or

(22) Purchase or rental of graduation caps and gowns and award certificates or plaques; or

(23) Items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions; or

(24) Management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations; or

(25) Consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security; or

(26) Construction management services for construction, alteration or repair of any building or improvement; or

(27) Purchase or rental of equipment of a technical nature when the procurement thereof without advertising is necessary in order to assure

standardization of equipment and interchangeability of parts in the public interest.

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

c. The State college has advertised for bids pursuant to section 4 of P.L.1986, c.43 (C.18A:64-55) on two occasions and (i) has received no bids on both occasions in response to its advertisement, or (ii) has rejected the bids on two occasions because the State college has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the State college prior to the advertising therefor, or have not been independently arrived at in open competition, or (iii) on one occasion no bids were received pursuant to (i) and on one occasion all bids were rejected pursuant to (ii), in whatever sequence; any contract or agreement may then be negotiated by a two-thirds affirmative vote of the authorized membership of the board of trustees authorizing the contract or agreement; provided that:

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

(2) The terms, conditions, restrictions and specifications set forth in the negotiated contract or agreement are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of this article; and

(3) 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.1986, c.43 (C.18A:64-55), shall be stated in the resolution awarding the contract or agreement; except that if on the second occasion the bids received are rejected as unreasonable as to price, the State college 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 State college shall not award the 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 reasonable vendor, and is a reasonable price for the work, materials, supplies or services. Whenever a State college shall determine that a bid was not arrived at independently in open competition pursuant to subsection c. (ii) of this section, it shall thereupon notify the 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.

6. 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 \$26,200 or, commencing January 1, 2005, 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.

7. Section 9 of P.L.1986, c.43 (C.18A:64-60) is amended to read as follows:

C.18A:64-60 State College purchases through State or local agency; procedure.

9. a. Any State college, without advertising for bids, or after having rejected all bids obtained pursuant to advertising therefor, may purchase any materials, supplies, goods, services or equipment pursuant to a contract or contracts for those materials, supplies, goods, services or equipment entered into on behalf of the State by the Division of Purchase and Property or any municipality or county in this State.

b. A State college may also use, without advertising for bids, or having rejected all bids obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

(2) the State college receives the benefit of federally mandated price reductions during the term of the contract and is protected from price increases during that time; and

(3) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under any State contract, unless the State college determines that because of factors other than price, selection of a vendor from the Federal Supply Schedules would be more advantageous to the State college.

c. Whenever a purchase is made pursuant to this section, the State college shall place its order with the vendor offering the lowest price, including delivery charges, that best meets the requirements of the State college. Prior to placing such an order, the State college shall document with specificity that the materials, supplies, goods, services or equipment selected best meet the requirements of the State college.

8. Section 14 of P.L.1986, c.43 (C.18A:64-65) is amended to read as follows:

C.18A:64-65 Advertisement for bids; notice of revisions.

14. a. 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 that date for any construction projects or any other contract or purchase. In addition to being published in a legal newspaper, advertisements may also be posted using electronic data or media services, including the internet. The advertisement shall designate the manner of submitting and 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 State college shall be sealed and shall be opened only at such time and place as all bids received are unsealed and announced. At that time and place, the contracting agent of the State college 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. A proper record of the prices and terms shall be made. No bids shall be received after the time designated in the advertisement.

b. Notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a legal newspaper or newspapers no later than seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date. The notice shall be provided to any person who has submitted a bid or who has received a bid package, in one of the following ways: (a) in writing by certified mail or (b) 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 (c) by a delivery service that provides certification of delivery to the sender. Failure to advertise or provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the acceptance of bids and require the readvertisement for bids.

Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the State college shall not be considered failure by the State college to provide notice.

9. Section 16 of P.L.1986, c.43 (C.18A:64-67) is amended to read as follows:

C.18A:64-67 Guaranty.

16. There may be required from any person bidding on any purchase, contract or agreement, advertised in accordance with law, that the bid be accompanied by a guaranty payable to the State college that, if the purchase, contract or agreement is awarded to him, he will enter into a contract therefor. The guaranty shall be in the amount of 10% of the bid but not in excess of \$20,000.00, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. For a construction contract the guaranty shall be in the amount of 10% of the bid. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any State college, which condition requires a guaranty in an amount other than 10% of the bid or in excess of \$20,000.00, the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

The college may require a bid guaranty alone without also requiring a performance bond or other security in the contract.

10. Section 17 of P.L.1986, c.43 (C.18A:64-68) is amended to read as follows:

C.18A:64-68 Provision of surety company bond, other security.

17. a. In addition to or independently of the guaranty which may be required pursuant to this article, the State college may require that the successful bidder provide a surety company bond or other security acceptable to the State college:

(1) For the faithful performance of all provisions of the advertisement for bids, the specifications and any other documents issued to bidders or a repair or maintenance bond; and

(2) In a form which may be required in the specifications or other documents issued to bidders.

b. In every case in which a performance bond is required, the requirement shall be set forth in the specifications or other documents issued to all bidders.

c. The State college shall require that all performance bonds be issued by a surety which meets the following standards:

(1) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(2) With respect to all payment and performance bonds in the amount of \$850,000 or more, (a) if the amount of the bond is at least \$850,000 but not more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Banking and Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (b) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Banking and Insurance by regulation adopted pursuant to the "Adminis-

trative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Banking and Insurance through regulation which is at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.s.9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384 (N.J.S.2A:44-143 et al.), certify to the appropriate State college that it meets that equivalent set of standards set forth by the commissioner as promulgated.

d. A State college shall not accept more than one payment and performance bond to cover a single construction contract. The State college may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Banking and Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

e. A board, officer or agent contracting on behalf of a State college shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Banking and Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, ____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

 _____; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for the reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent), as (title of agent) for (name of surety), a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile), DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)

11. Section 18 of P.L.1986, c.43 (C.18A:64-69) is amended to read as follows:

C.18A:64-69 Time limit, return of bid guaranty.

18. The State college shall award the contract or reject all bids within such time as may be specified in the specifications or other documents issued to all bidders, but in no case more than 60 days, except the bids of any bidders who consent thereto, either before or after the 60-day period, may, at the request of the State college, be held for consideration for such longer period of time as may be agreed. Within three days, Sundays and holidays excepted, after the awarding of the contract and the approval of the successful bidder's performance bond, if any, the bid guaranty of the remaining bidders shall be returned to them.

12. Section 19 of P.L.1986, c.43 (C.18A:64-70) is amended to read as follows:

C.18A:64-70 Awards to responsible bidder whose bid is most advantageous.

19. All contracts or agreements for the purchase of goods and services, as distinct from contracts or agreements for the construction of buildings and other improvements, which require public advertisement for bids shall be awarded by the board of trustees to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State college, price and other factors considered.

Prior to the award of any contract or agreement which does not require public advertisement, the estimated cost of which is 20% or more of the amount set forth in this act or, commencing January 1, 1985, 20% of the amount determined by the Governor pursuant to subsection b. of section 3 of this act, the contracting agent shall, except in the case of professional services, solicit quotations therefor whenever practicable, and the award thereof shall be made, in accordance with section 3 of this article, on the basis of the quotation, conforming to the request for proposals, which is most advantageous to the State college, price and other factors considered; however, if the contracting agent deems it impractical to solicit competitive quotations or having sought the quotations determines that the award should not be made on that basis, the contracting agent shall file a statement of explanation of the reason or reasons therefor, which shall be placed on file with the purchase, contract, or agreement.

13. Section 2 of P.L.1992, c.61 (C.18A:64-76.1) is amended to read as follows:

C.18A:64-76.1 Advertisements by contracting agent for bids; award of contracts.

2. a. Whenever the entire cost for the construction, alteration or repair of any building by a State college will exceed the amount determined pursuant to subsection b. of section 3 of P.L.1986, c.43 (C.18A:64-54), 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 all subcontractors to whom the bidder will subcontract the work described in the foregoing categories (a) through (e).

b. Contracts shall be awarded to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the State college. Whenever two or more bids of equal amounts are the lowest bids submitted by responsible parties, the college may award the contract to any of the parties, as, in its discretion, it may determine.

14. Section 26 of P.L.1986, c.43 (C.18A:64-77) is amended to read as follows:

C.18A:64-77 Deduction for costs of completion.

26. All specifications for the doing of any construction work for a State college shall fix the date before which the work shall be completed, or the number of working days to be allowed for its completion, and every contract shall contain a provision that if the construction work is not completed by the date fixed for completion or in the number of days allowed for completion, as set forth in the specifications, there shall be a deduction from the contract price for any moneys paid by the college to other contractors for the completion of the project. This requirement shall not preclude the State college from seeking liquidated damages or other remedies.

15. Section 27 of P.L.1986, c.43 (C.18A:64-78) is amended to read as follows:

C.18A:64-78 Sale of surplus 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 \$26,200 or, commencing January 1, 2005, 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 \$26,200 or, commencing January 1, 2005, 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.

16. Section 28 of P.L.1986, c.43 (C.18A:64-79) is amended to read as follows:

C.18A:64-79 Multi-year contracts.

28. A State college may only enter a contract exceeding 36 consecutive months for the:

- a. Supplying of fuel and oil for heating and other purposes and utilities for any term not exceeding in the aggregate five years; or
- b. Plowing and removal of snow and ice for any term not exceeding in the aggregate five years; or
- c. Collection and disposal of garbage and refuse for any term not exceeding in the aggregate five years; or
- d. Purchase, lease or servicing of information technology for any term of not more than five years; or
- e. Insurance for any term of not more than five years; or
- f. Leasing or service of automobiles, motor vehicles, machinery and equipment of every nature and kind for any term not exceeding in the aggregate five years; or
- g. (Deleted by amendment, P.L.2005, c.369).

h. Providing of food supplies and services, including food supplies and management contracts for student centers, dining rooms, vending operations, and cafeterias, for a term not exceeding five years; or

i. Performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not exceeding 10 years; provided that a contract is entered into only subject to and in accordance with rules and regulations adopted and guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings; or

j. Any single project for the construction, reconstruction or rehabilitation of a public building, structure or facility, or a public works project, including the retention of the services of an architect, engineer, construction manager, or other consultant in connection with the project, for the length of time necessary for the completion of the actual construction; or

k. The management and operation of bookstores, performing arts centers, residence halls, parking facilities and building operations for a term not exceeding five years; or

l. The provision of banking, financial services, and e-commerce services for a term not exceeding five years; or

m. The provision of services for maintenance and repair of building systems, including, but not limited to, fire alarms, fire suppression systems, security systems, and heating, ventilation, and air conditioning systems for a term not exceeding five years; or

n. Purchase of alternative energy or the purchase or lease of alternative energy services or equipment for conservation or cost saving purposes for a term not exceeding 10 years.

All multiyear leases and contracts entered into pursuant to this section, except contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation and authorized pursuant to subsection i. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligation or contain an annual cancellation clause.

Repealer.

17. Section 20 of P.L.1986, c.43 (C.18A:64-71) is repealed.

18. This act shall take effect on the 60th day after enactment and apply to contracts for which bids are solicited on and after the effective date.

Approved January 12, 2006.

CHAPTER 370

AN ACT concerning guardianship for elderly or other incapacitated adults, supplementing Titles 9, 52 and 53 of the Revised Statutes, amending N.J.S.3B:12-25 and N.J.S.22A:2-30 and making an appropriation therefor.

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

C.52:27G-32 Findings, declarations relative to elderly, incapacitated adults.

1. The Legislature finds and declares that:
 - a. As the elderly and other incapacitated adult populations in the State continue to grow, the need for an increasing number of qualified individuals to be available to serve as court-appointed guardians for this population increases;
 - b. New Jersey has established the Office of the Public Guardian for Elderly Adults to perform guardian services for adults age 60 years or older who do not have family or friends willing or able to furnish guardian services. The registration of professional guardians, to be available when family, friends or the Office of the Public Guardian for Elderly Adults are unable to act, will enhance the quality of care given to vulnerable adults;
 - c. To the extent that many elderly and other incapacitated adults in the State do not have family or friends available to serve as guardians, it is prudent, after giving first consideration for guardianship of elderly adults to the Office of the Public Guardian for Elderly Adults, or when that office is not available, to develop other qualified individuals who can serve as professional guardians; and
 - d. The establishment of standards for professional guardians will help protect adults who are adjudicated mentally incapacitated and need guardianship services.

C.52:27G-33 Requirements for service as guardian.

2. a. A person shall not serve as a professional guardian of five or more wards who are incapacitated adults unless that person has been granted letters of guardianship under N.J.S.3B:12-25 and is:
 - (1) a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), heir or friend of the incapacitated adult;
 - (2) the public guardian appointed pursuant to section 5 of P.L.1985, c.298 (C.52:27G-24); or
 - (3) a registered professional guardian.
- b. A person shall not serve as a registered professional guardian for any incapacitated adult who is a resident or confined to any facility or institution

where the registered professional guardian is employed by, or has any duties or responsibilities in connection with, the facility or institution, with the exception of an employee who has duties and responsibilities at the facility or institution and is a relative of the ward.

c. Nothing herein shall affect the authority of the court to appoint a financial institution qualified pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28) as a fiduciary, or a person designated as a testamentary guardian.

d. A person may serve as a professional guardian of an incapacitated adult if that person has been registered by the Office of the Public Guardian for Elderly Adults as a professional guardian pursuant to this act. The Office of the Public Guardian for Elderly Adults shall not register a person as a professional guardian unless that person:

(1) is a full-time New Jersey resident or maintains an office in New Jersey;

(2) has, prior to the effective date of this act, had a minimum of five years of work experience as a court-appointed guardian of five or more persons not related to the guardian; or, on or after the effective date of this act, has received a bachelor's degree and has two years of work experience in the field of care management, case management or other relevant work experience involving the management and care of elderly adults;

(3) has supplied proof of current professional liability insurance coverage to the Office of the Public Guardian for Elderly Adults;

(4) has submitted a credit check to the Office of the Public Guardian for Elderly Adults from one national credit reporting agency, which has been issued within one month of the date of the application for registration as a professional guardian;

(5) has satisfied the criminal history record background, child abuse registry and domestic violence central registry check requirements of this act;

(6) is not subject to any outstanding warrants for arrest;

(7) has completed approved initial training and biennial continuing education courses, as provided for in section 5 of this act, relating to guardianship law, procedures and ethics; and

(8) is not otherwise ineligible as set forth in section 3 of this act.

e. Except for legal services authorized by a court, a person serving as a registered professional guardian: (1) shall only provide guardianship services to a ward and shall not bill the ward for other professional or licensed services while serving as guardian; and (2) shall not contract for professional or licensed services with a person, organization or agency with which the guardian has a vested interest.

C.52:27G-34 Ineligibility for registration as professional guardian.

3. a. In addition to the disqualification from registration as a professional guardian pursuant to section 6 of this act, a person is ineligible for registration as a professional guardian or, if registered, may have his registration suspended or revoked pursuant to section 12 of this act, if the person:

(1) is an attorney who has been disbarred or suspended from the practice of law;

(2) was engaged in a profession or occupation for which the person was licensed, certified or registered by a board or other authorized entity in the State and his license, certification or registration was suspended or revoked by the applicable board or other authorized entity of the profession or occupation;

(3) has a criminal conviction or has been found to be civilly liable for any matter involving moral turpitude, abuse, neglect, fraud, misappropriation, misrepresentation, theft or conversion;

(4) lacks financial responsibility to serve as a registered professional guardian, as determined by the Office of the Public Guardian for Elderly Adults;

(5) is found to have committed abuse, neglect or exploitation of another person;

(6) is the subject of any other disciplinary decision or civil adjudication that would prohibit the person by law from providing services to children or vulnerable adults;

(7) fails to fulfill the initial training or biennial continuing education courses pursuant to this act;

(8) misrepresents, conceals or falsifies information on the registered guardian application form or annual renewal form;

(9) is found to have committed any act which results in a substantial change in the registered guardian's qualifications to serve as a guardian;

(10) engages in conduct which demonstrates unfitness to work as a registered professional guardian, including, but not limited to, persistent or repeated violations of a court order or engaging in any impropriety involving dishonesty, fraud, deceit or misrepresentation;

(11) fails to cooperate during the course of an investigation by the Office of the Public Guardian for Elderly Adults or any law enforcement agency;

(12) repeatedly fails to accept pro bono cases when assigned by the court; or

(13) is the subject of a court order, finding of fact or conclusion of law that indicates:

(a) a finding that the professional guardian has violated the guardian's duties to an incapacitated person or his estate;

(b) a failure to comply with an order of the court;

- (c) knowingly or negligently engaging in misconduct which: benefits the professional guardian or another; operates to deceive the court; causes serious or potentially serious injury to a party, the public or the legal system; or causes serious or potentially serious interference with a legal proceeding;
- (d) endangering an incapacitated person;
- (e) conduct outside the powers or role of a guardian;
- (f) a repeated or significant failure to perform guardian responsibilities or a dereliction of fiduciary duties;
- (g) a failure to file required reports and forms;
- (h) having engaged in inappropriate billing or fee payment; or
- (i) malfeasance, nonfeasance or misfeasance.

b. A registered professional guardian shall maintain records of all transactions and reports associated with an incapacitated adult in his care and shall be subject to audit or spot-check inspection at any reasonable time, at the discretion of the public guardian and his authorized agents, to enable the public guardian to verify satisfactory operational, fiscal and care management compliance by professional guardians.

C.52:27G-35 Existing agreements, void, exceptions.

4. a. An inter vivos gift, contract, conveyance, disposition, transfer, trust, change in beneficiary designation, appointment, or re-titling of an account or property, or a testamentary instrument affecting an incapacitated adult's money or property in favor of a registered professional guardian or a family member or business associate of the registered professional guardian, made or executed, as appropriate, during the two-year period before the establishment of a guardianship in which the registered professional guardian is appointed as guardian shall be void, unless the court determines that:

(1) the registered professional guardian or a family member or business associate of the registered professional guardian who benefits from the inter vivos transaction or testamentary instrument described in this subsection is a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) or heir at law of the incapacitated adult; or

(2) the registered professional guardian has proved by a preponderance of the evidence that the inter vivos transaction or testamentary instrument described in this subsection:

(a) was not made or executed, as appropriate, when the incapacitated adult was under the disability that caused the incapacitated adult to be subsequently declared incapacitated;

(b) was authorized and not the result of undue influence, fraud, coercion, duress, deception or misrepresentation; and

(c) was reviewed by an independent attorney, who is not associated with the registered professional guardian or a family member or business associate

of the registered professional guardian, donee, contracting party, transferee, beneficiary, title holder or devisee, and that:

(i) the independent attorney counseled the incapacitated adult about the nature and consequences of the intended inter vivos transaction or testamentary instrument described in this subsection; and

(ii) the independent attorney certified that the intended inter vivos transaction or testamentary instrument described in this subsection was not the result of undue influence, fraud, coercion, duress or misrepresentation.

The provisions of this subsection shall not be construed to affect any other right or remedy that may be available to the incapacitated adult or the estate of the incapacitated adult with respect to an inter vivos transaction or testamentary instrument described in this subsection that benefits a registered professional guardian or a family member or business associate of the registered professional guardian.

The provisions of this subsection shall not be construed to invalidate a subsequent transfer for value to a bona fide transferee from a registered professional guardian or a family member or business associate of the registered professional guardian.

b. A registered professional guardian, unless authorized by a court order after notice to all interested persons, shall not:

(1) loan an incapacitated adult's property or funds to himself or an affiliate;

(2) make, revoke or change an incapacitated adult's beneficiary designation to himself or an affiliate;

(3) purchase or participate in the purchase of property from an incapacitated adult's estate for the professional guardian's own or an affiliate's account or benefit;

(4) transfer an incapacitated adult's property or funds by inter vivos transaction to himself or an affiliate, or receive by operation of survivorship rights any of an incapacitated adult's property or funds for himself or an affiliate;

(5) engage in any transaction involving self-dealing or a conflict of interest concerning an incapacitated adult's property or funds; or

(6) make any renovation to the ward's real property in an amount greater than \$10,000, except that in extraordinary circumstances involving a catastrophic situation, the guardian may apply ex parte to the Superior Court for an order permitting the renovation.

C.52:27G-36 Application, annual registration fees.

5. a. The Office of the Public Guardian for Elderly Adults shall charge each professional guardian an initial application fee and an annual registration fee. The initial application fee shall be in addition to the cost of a credit

history report and child abuse registry and criminal history record background checks. Annual registration shall be made on forms furnished by the office and accompanied by the applicable fee, as established by the office. The initial application and annual registration fees shall not exceed \$300. Such fees shall be retained by the office for the implementation of this act.

b. The Office of the Public Guardian for Elderly Adults shall approve a vendor to provide initial training and continuing education courses biennially in accordance with procedures to be established by the office. In order to administer this program efficiently, the office may limit the number of vendors providing this service.

C.52:27G-37 Criminal background checks for professional guardians.

6. a. Upon receipt of an application for registration as a professional guardian, the Office of the Public Guardian for Elderly Adults is authorized to determine whether 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 that would disqualify the person from being registered as a professional guardian.

The Office of the Public Guardian for Elderly Adults is authorized to access the child abuse registry in the Department of Human Services and the domestic violence central registry in the Administrative Office of the Courts.

A person shall be disqualified from registration if the 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.;

(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.;

(c) involving theft as set forth in chapter 20 of Title 2C of the New Jersey Statutes, or fraud relating to any health care plan or program as set forth in section 15 of P.L.1989, c.300 (C.2C:21-4.1), sections 2 and 3 of P.L.1997, c.353 (C.2C:21-4.2 and 2C:21-4.3), P.L.1999, c.162 (C.2C:21-22.1) or section 17 of P.L.1968, c.413 (C.30:4D-17); 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.

A person shall also be disqualified from registration if a check of the child abuse registry reveals that the person has a history of child abuse.

In a case in which a check of the domestic violence central registry reveals that the person has a history of domestic violence, the public guardian shall review the record with respect to the type and date of the criminal offense or the provisions and date of the final domestic violence restraining order and make a determination as to the suitability of the person to be a registered professional guardian.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, no person shall be disqualified from registration on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act if the person has affirmatively demonstrated to the public guardian clear and convincing evidence of the applicant'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 person would hold, has held or currently holds, 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, work history, or the recommendation of those who have had the person under their supervision.

c. If a person refuses to consent to, or cooperate in, the securing of a criminal history record background check, the public guardian shall not register that person as a professional guardian and shall notify the person of that denial.

C.52:27G-38 Information provided for background checks.

7. a. A person who is required to undergo a criminal history record background, child abuse registry and domestic violence central registry check pursuant to section 6 of this act shall submit to the public guardian his name, address and fingerprints, in accordance with the applicable State and federal laws, rules and regulations. The Office of the Public Guardian 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 pursuant to this act.

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 public guardian shall, within a reasonable time, notify the person in writing of his qualification or disqualification for registration under this act. If the person is disqualified, the conviction or convictions which constitute the basis for the disqualification shall be identified in the notice to the person.

c. Upon receipt of the information for a person from the child abuse registry in the Department of Human Services or the domestic violence central registry in the Administrative Office of the Courts, the public guardian shall, within a reasonable time, notify the person in writing of his qualification or disqualification for registration under this act. If the person is disqualified, the incident or incidents which constitute the basis for the disqualification shall be identified in the notice to the person.

d. The person has a right to be heard by the Office of the Public Guardian for Elderly Adults, within 30 days from the date of the written notice of disqualification, on the accuracy of his criminal history record, child abuse registry or domestic violence central registry information or to establish his rehabilitation under subsection b. of section 6 of this act. Upon the issuance of a final decision by the public guardian, pursuant to this subsection, the Office of the Public Guardian for Elderly Adults shall notify the person as to whether he remains disqualified. A person disputing an adverse determination by the Office of the Public Guardian for Elderly Adults may file with the Office of Administrative Law for an administrative hearing.

C.53:1-20.9e Conducting of criminal history record background check for guardians.

8. a. In accordance with the provisions of sections 6 and 7 of P.L.2005, c.370 (C.52:27G-37 and C.52:27G-38), 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 person seeking registration as a professional guardian who is required to undergo a criminal history record background check pursuant to P.L.2005, c.370 (C.52:27G-32 et al.).

b. For the purpose of conducting a criminal history record background check pursuant to subsection a. of this section, 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 public guardian.

c. The Division of State Police shall promptly notify the Office of the Public Guardian for Elderly Adults in the event a person who is required to undergo a criminal history record background check pursuant to section 6 of P.L.2005, c.370 (C.52:27G-37) is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of

such notification, the public guardian shall make a determination regarding the continuation of the registration of the person as a professional guardian.

C.9:6-8.10e Check of child abuse registry for guardians.

9. a. In accordance with the provisions of sections 6 and 7 of P.L.2005, c.370 (C.52:27G-37 and C.52:27G-38), the Department of Human Services shall conduct a check of its child abuse registry for each person seeking registration as a professional guardian who is required to undergo such a check pursuant to P.L.2005, c.370 (C.52:27G-32 et al.). The department shall immediately forward the information obtained as a result of the check to the Office of the Public Guardian for Elderly Adults.

b. The department shall promptly notify the Office of the Public Guardian for Elderly Adults in the event a person who is required to undergo a check of the child abuse registry pursuant to section 6 of P.L.2005, c.370 (C.52:27G-37) is listed in the registry after the date the child abuse registry check was performed. Upon receipt of such notification, the public guardian shall make a determination regarding the continuation of the registration of the person as a professional guardian.

C.52:27G-39 Applicant to assume cost of background checks.

10. A person seeking registration as a professional guardian shall assume the cost of the criminal history record background and child abuse registry checks conducted pursuant to this act, in accordance with regulations as may be adopted by the public guardian.

C.52:27G-40 Statewide registry of registered professional guardians; information included.

11. a. The Office of the Public Guardian for Elderly Adults shall maintain a Statewide registry of registered professional guardians and make all information in the registry available to the Administrative Director of the Courts for the use of the Superior Court, or to other interested parties upon request. The registry shall include the following information for each registered guardian:

- (1) full name used within the past 10 years;
- (2) date of birth;
- (3) business address;
- (4) business telephone number;
- (5) educational background and professional experience, including work in any related field germane to furnishing of guardianship services; and
- (6) the insurance company issuing the registered guardian's professional liability insurance coverage;

b. In addition to the information listed in subsection a. of this section, if known to the public guardian, the registry shall include the following information for each registered guardian:

- (1) whether that person has ever been removed for cause or resigned as guardian in a specific case, the circumstances of the removal or resignation, and the case names, court locations and case numbers;
- (2) any judgment entered against the person as a result of the performance of services as a guardian;
- (3) any finding by a court that the person is accountable for malfeasance, nonfeasance or misfeasance;
- (4) any finding by a court that the person has violated the guardian's duties to the incapacitated adult, his estate or his insurance policy; and
- (5) any known pending or final licensing or disciplinary actions.

C.52:27G-41 Suspension, revocation of registration as professional guardian.

12. The public guardian may suspend or revoke a person's registration as a professional guardian and remove the person from the Statewide registry established pursuant to section 11 of this act if: the public guardian has reasonable cause to suspect the trustworthiness or capability of that person to perform the duties of a professional guardian; or the person is no longer in compliance with the requirements of section 2 of this act or becomes ineligible for registration as a professional guardian as provided for in subsection a. of section 3 of this act. Notice of the suspension or revocation of the registration and removal from the registry shall be sent, within 30 days, to the Administrative Office of the Courts and the known local Surrogates on behalf of the Superior Court, Chancery Division, Probate Part having jurisdiction over the professional guardian's wards.

13. N.J.S.3B:12-25 is amended to read as follows:

Appointment of guardian.

3B:12-25. Appointment of guardian.

The Superior Court may determine the incapacity of an alleged incapacitated person and appoint a guardian for the person, guardian for the estate or a guardian for the person and estate. Letters of guardianship shall be granted to the spouse or domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), if the spouse is living with the incapacitated person as man and wife or as a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3) at the time the incapacitation arose, or to the incapacitated person's heirs, or friends, or thereafter first consideration shall be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the incapacitated person or the estate, then to any other proper person as will accept the same, and if applicable, in accordance with the professional guardianship requirements of P.L.2005, c.370

(C.52:27G-32 et al.). Consideration may be given to surrogate decision-makers, if any, chosen by the incapacitated person before the person became incapacitated by way of a durable power of attorney pursuant to section 4 of P.L.2000, c.109 (C.46:2B-8.4), health care proxy or advance directive.

The Office of the Public Guardian for Elderly Adults shall have the authority to not accept guardianship in cases determined by the public guardian to be inappropriate or in conflict with the office.

14. N.J.S.22A:2-30 is amended to read as follows:

Fees of surrogate and deputy clerk of the Superior Court.

22A:2-30. Fees of surrogate and deputy clerk of the Superior Court.

Fees for services of the surrogate and deputy clerk of the Superior Court enumerated below shall be as follows and shall be for the use of the county in which the fees are collected:

PROBATE OF WILLS AND COPIES

Probate of a will of not more than two pages, \$100.00.

Each additional page, \$ 5.00.

The above fee is for all services in preparation and execution of complaint, filing proof of death, deposition of one witness, qualification of executor, filing power of attorney, surrogate's certificate, judgment for probate, letters testamentary, plain copy of will, binding, recording, microfilming or photostating, comparing, docketing, report to the Division of Taxation in the Department of the Treasury, report and transmission to the Clerk of the Superior Court.

Probate of will of not more than two pages without letters, \$50.00. Each additional page, \$ 5.00. This fee is for the same services as are enumerated in the preceding paragraph, except letters, surrogate's certificate and qualification of executor.

Probate of each codicil, not exceeding one page, \$25.00.

Where codicil requires an additional witness, \$5.00.

To reopen probate proceedings for qualification of executor or taking proof of extra witness, \$25.00.

One witness in the above probate proceedings, no charge.

Each additional witness, \$5.00.

Recording and comparing, microfilming or photostating, each additional page of will or codicil, \$5.00.

Filing, entering, issuing and recording, microfilming or photostating, proceedings in commission for deposition of foreign witness to a will or codicil, \$35.00. Plain extra copy of will, \$3.00 for each page.

Certified extra copy of will, \$5.00 for each page, plus \$5.00 for certificate.

Certified copy of will with proofs for New Jersey county, not exceeding two pages including will and codicil, \$50.00. For pages in excess of two, \$5.00 for each page.

Wills filed but not probated (as, where there are no assets), \$10.00 for first two pages, \$5.00 for each additional page, \$5.00 for cover letter stating no assets, \$5.00 for death certificate.

Exemplifying will for another state, not exceeding two pages including will and codicil, plus cost of certificate of Secretary of State when requisite, \$75.00 (not including \$9.00 fee for exemplified forms). For pages in excess of two, \$5.00 for each page.

Recording, microfilming or photostating, docketing, indexing, filing and reporting to the Division of Taxation in the Department of the Treasury an exemplified copy of will and probate proceedings from another state, \$5.00 for each page.

Recording, microfilming or photostating, docketing, indexing and filing a certified copy of will with proofs from New Jersey, \$5.00 for each page.

Recording, microfilming or photostating certified transcripts of wills admitted to probate and probate proceedings or letters of administration and administration proceedings granted by the Superior Court, \$5.00 for each page.

LETTERS OF TRUSTEESHIP

Acceptance of trustee and letters of trusteeship, including one certificate, \$50.00.

LETTERS OF ADMINISTRATION

General administration, including preparation and execution of complaint, bond, surety affidavits, necessary recording, microfilming or photostating, indexing, filing, report to the Division of Taxation, including power of attorney and death certificate, in the Department of the Treasury and the Clerk of the Superior Court and original letters including authorization to accept service of process and death certificate, \$125.00, and for other documents, \$5.00 per page.

Administration ad prosequendum, \$50.00, and for other documents, \$5.00 per page.

Exemplifying administration, \$75.00.

Certified copy of administration, \$50.00.

Affidavits of surviving spouse or next of kin where the value of the real and personal assets of the estate does not exceed \$20,000.00 or \$10,000.00, respectively, \$5.00 for each \$100.00 or part thereof. Total cost shall not exceed \$50.00. This fee is waived where the value of the assets of the estate does not exceed \$200.00.

LETTERS OF GUARDIANSHIP

Granting letters of guardianship, acceptance of guardianship and filing of power of attorney, \$50.00.

Affidavits of estates of minors where value of real and personal estate does not exceed \$5,000.00, \$5.00 per page.

Miscellaneous petitions and orders, \$5.00 per page.

INVENTORIES

For all services in appointment of appraisers, \$25.00.

Filing, entering and recording, microfilming or photostating, inventory and appraisal, not exceeding one page, and affidavits of appraisers and executor, \$25.00.

For each additional page, \$5.00.

ACCOUNTING

For filing complaint and one page of accounting, \$175.00.

For auditing, stating, reporting and recording, microfilming or photostating, accounts of executors, administrators, guardians, trustees and assignees, including drawing judgment, but exclusive of advertising costs:

In estates up to and including \$2,000.00, no additional fee.

In estates from \$2,001.00 to and including \$10,000.00, \$100.00.

In estates from \$10,001.00 to and including \$30,000.00, \$125.00.

In estates from \$30,001.00 to and including \$65,000.00, \$150.00.

In estates from \$65,001.00 to and including \$200,000.00, 3/10 of 1% but not less than \$300.00.

In estates exceeding \$200,000.00--4/10 of 1%, but not less than \$400.00.

For each page of accounting in excess of one, \$5.00.

In computing the amount of an estate for the purpose of fixing the fees of a surrogate for auditing and reporting the account, the balance from the prior account shall be excluded.

For preparing notice of settlement of accounts and copies of the same, forwarding notice to newspaper, with directions as to publication, obtaining proofs of publication, keeping a record of notices and newspapers to which

they are sent and of the moneys received to defray the cost of advertising and transmitting advertising charges to newspaper, \$50.00.

No fees herein allowed shall be charged against the recipient of any pension, bounty or allowance, for services of the surrogate and the Probate Part of the Chancery Division of the Superior Court in respect thereof, pursuant to N.J.S.3B:13-9 to 3B:13-14.

MISCELLANEOUS PROCEEDINGS

Proceedings relative to presumption of death, filing, entering and recording, microfilming or photostating (exclusive of letters), with additional fee for advertising, \$175.00.

Sale of land to pay debts (exclusive of advertising), \$175.00.

Sale of land in fulfillment of contract made by decedent, \$175.00.

Sale of lands within one year, \$175.00.

Sale of minor's land, \$175.00.

Distribution, filing and entering complaint, recording, microfilming or photostating, and filing judgment, \$175.00.

Filing of first paper in action in the Superior Court, Chancery Division, Probate Part, \$175.00.

Filing of answering pleadings or other answering papers in Superior Court, Chancery Division, Probate Part (First paper filed by anyone other than Plaintiff), \$110.00.

Adoption of adults, filing and entering proceedings (all papers) including one judgment, \$175.00.

Adoption of minors, filing and entering proceedings (all papers) including one judgment, \$175.00.

Application for relief subsequent to final judgment in the Superior Court, Chancery Division, Probate Part, \$25.00.

Proceedings for the appointment of a conservator, with or without jury trial, \$175.00.

Proceeding for the determination of incapacity and for the appointment of a guardian for an alleged incapacitated person, with or without jury trial, \$200.00.

Proceedings in connection with payment into court of proceeds of a judgment in favor of a minor, in lieu of bond, pursuant to N.J.S.3B:15-16 and N.J.S.3B:15-17 (in addition to fees payable under Letters of Guardianship), the following fees are payable upon withdrawal of funds on deposit:

For each withdrawal including petitions and orders provided and prepared by the surrogate for withdrawal of funds for court approval:

Up to and including \$500.00, \$20.00.

From \$501.00 to and including \$1,000.00, \$25.00.

From \$1,001.00 to and including \$5,000.00, \$30.00.
From \$5,001.00 to and including \$10,000.00, \$35.00.
From \$10,001.00 to and including \$25,000, \$40.00.
From \$25,001.00 to and including \$50,000.00, \$60.00.
In excess of \$50,000.00, \$100.00.

MISCELLANEOUS CHARGES

Short certificates, \$5.00.
Validating short certificate within one year of issue of date, \$3.00.
Subpoenas, each, \$25.00.
Marking true copies, subpoenas, each, \$3.00.
Marking true copies, orders to show cause, each, \$3.00.
Marking true copies of other papers, each, \$3.00.
Authorization of process, \$5.00.
Swearing each witness, \$2.00.
Adjournment or continuance, \$15.00.
Miscellaneous orders of court, first page, \$5.00.
For each additional page, \$5.00.
Recording, microfilming or photostating all papers not herein provided for, \$5.00 for each page.
For making copies not otherwise provided for, \$3.00 for each page.
Filing transcript of death certificate, \$5.00.
Power of attorney, per page \$5.00 plus \$5.00 for certified mail.
Search fee, per estate \$10.00.
Proceedings relative to appointment of a guardian ad litem, \$25.00.
Renunciation by one person, filing, entering and recording, or photostating, \$5.00. Each additional person, \$3.00.
Caveat, filing or withdrawing, \$25.00.
Combined refunding bond and release of not more than two pages, filing, entering, microfilming and recording, or photostating, \$10.00. \$5.00 for each additional page. Additional charge for county clerk's certificate, \$5.00.
Release of not more than two pages of refunding bond and release, \$10.00. \$5.00 for each additional page. Additional charge for county clerk's certificate, \$5.00.
Assignments of legacy or interest, \$10.00 per page, plus \$5.00 where county clerk's certificate is necessary.
Filing all papers not herein provided for, \$5.00, if microfilming process is used, \$5.00 per page.
Plain copy of two-page will, \$6.00.
Each additional page, \$3.00.

Filing of motions in the Superior Court, Chancery Division, Probate Part, \$15.00.

Notice of appeal (trial court), \$10.00.

Minimum charge for all other papers or services in proceedings in the Superior Court, Chancery Division, Probate Part, \$5.00.

3B:14-48 Service of Process by Surrogate, \$25.00.

Duplicating or copying of microfiche, digital tape, high density disks, optically scanned and recorded materials or for any other media used to record or preserve records, \$150.00 per medium recorded.

Processing fee for returned check, \$20.00 plus bank fee.

C.52:27G-42 Registered Professional Guardian Fund; use, fees.

15. a. There is established in the Department of Health and Senior Services a special non-lapsing fund to be known as the Registered Professional Guardian Fund, which shall be a dedicated fund to serve as a depository for monies collected from the estate of an incapacitated adult pursuant to this section. The fund shall be administered by the Office of the Public Guardian for Elderly Adults, and all interest on monies in the fund shall be credited to the fund. The monies in the fund shall be made available to the Office of the Public Guardian for Elderly Adults to be used exclusively for the implementation of this act.

b. Sixty days after receiving plenary letters of guardianship or letters of guardianship of property, a guardian appointed by the Superior Court of New Jersey, with the exception of the appointment of the public guardian pursuant to P.L.1985, c.298 (C.52:27G-20 et seq.), a guardian for a veteran pursuant to N.J.S.3B:13-1 et seq. and guardianship services provided by the Bureau of Guardianship Services in the Division of Developmental Disabilities in the Department of Human Services pursuant to P.L.1965, c.59 (C.30:4-165.1 et seq.), shall pay out of the estate of the incapacitated adult a fee of \$150 to the Office of the Public Guardian for Elderly Adults for deposit into the fund, except that no such charge shall be made to an incapacitated adult's estate for an incapacitated adult whose income is less than 150% of the federal poverty level and whose assets are less than \$50,000.

c. If the guardian seeks an exemption from the fee based on the ward's income or assets, as set forth in subsection b. of this section, the guardian shall make an application to the Office of the Public Guardian for Elderly Adults on forms adopted by that office.

d. If a guardian who is obligated to pay an assessment imposed pursuant to subsection b. of this section fails to pay the assessment, upon application by the Office of the Public Guardian for Elderly Adults, the court shall afford the guardian notice and an opportunity to be heard on the issue of default. Failure to make the assessed payment when due shall be considered

a default. The standard of proof shall be by a preponderance of the evidence, and the burden of establishing good cause for a default shall be on the guardian who has defaulted. If the court finds that the guardian has defaulted without good cause, the court may:

- (1) compel the guardian of the estate to account and ascertain the financial condition of the incapacitated adult's estate;
- (2) remove the guardian;
- (3) enter judgment against the guardian of the estate for the amount of the assessment; or
- (4) take such other action as may be permitted by law.

C.52:27G-43 Rules, regulations; Rules of Court.

16. a. The Commissioner of Health and Senior Services, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations necessary for the implementation of this act.

b. The Supreme Court may adopt Rules of Court for the implementation of this act.

17. There is appropriated \$95,000 from the General Fund to the Office of the Public Guardian for Elderly Adults in the Department of Health and Senior Services to implement the provisions of this act.

18. This act shall take effect on the 180th day after enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action, in advance, as shall be necessary for the implementation of this act, and the Supreme Court of New Jersey may adopt Rules of Court, in advance, for the implementation of the provisions of this act.

Approved January 12, 2006.

CHAPTER 371

AN ACT authorizing the establishment of an Asian American Study Foundation, 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*:

C.52:9WW-1 Asian American Study Foundation.

1. The Secretary of State is authorized to establish a nonprofit organization to be known as the Asian American Study Foundation. The foundation shall be devoted to developing and coordinating Statewide programs recog-

nizing the continuing contributions of Asian Americans in New Jersey. It shall draw upon its members' shared knowledge and expertise in creating programs and activities designed to better educate all citizens of New Jersey as to Asian American issues and culture and to promote the spirit of Mahatma Gandhi, Aung San Suu Kyi, and Dr. Martin Luther King, Jr., by celebrating the religious, ethnic and racial diversity within this State. The foundation shall develop policies to improve the community, economic, social well-being, health and educational needs important to Asian Americans in New Jersey and increase awareness among Asian Americans as to governmental affairs and community and social service resources that may benefit Asian American individuals and communities as a whole. It shall also make recommendations for local, county and Statewide actions to follow up the foundation's recommendations and consider such other matters relating to the institutions and legacies of Asian Americans in New Jersey as the members of the foundation may deem appropriate.

The foundation shall be incorporated as a New Jersey nonprofit corporation pursuant to P.L.1983, c.127 (C.15A:1-1 et seq.), and organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status and for the receipt of tax-deductible contributions, and shall be authorized to sue and to be sued as a legal entity separate from the State of New Jersey.

C.52:9WW-2 Board of trustees.

2. The Asian American Study Foundation shall be governed by a board of trustees consisting of the following 25 members, each chosen to ensure ethnic diversity and broad geographic representation within New Jersey. Foundation members shall include persons who are leaders in Asian American organizations or communities, or have training or a verifiable interest in Asian American history or culture.

a. Legislative membership shall be as follows: the President of the Senate shall appoint one member of the Senate, who shall be a member of the same political party as the Senate President. The Minority Leader of the Senate shall appoint one member of the Senate, who shall be a member of the same political party as the Senate Minority Leader. The Speaker of the General Assembly shall appoint one member of the General Assembly, who shall be a member of the same political party as the Speaker. The Minority Leader of the General Assembly shall appoint one member of the General Assembly, who shall be a member of the same political party as the Assembly Minority Leader. Legislative members shall serve during the two-year legislative term in which appointments are made.

b. Executive membership shall be appointed by the Governor as follows: the Secretary of State or a designee; one representative from the

Governor's office; one representative from the New Jersey Asian American Chamber of Commerce; two representatives from the Department of Community Affairs; the Commissioner of Education and the Commissioner of Health and Senior Services, or their designees; the Secretary of the New Jersey Commerce and Economic Growth Commission or a designee; and a representative from the New Jersey Economic Development Authority. Each member appointed from the Executive Branch shall serve at the pleasure of the Governor during the term of office of the Governor appointing the member and until the member's successor is appointed and qualified.

c. Public membership shall be as follows and shall be persons recommended by or who represent various civic, social, business and artistic organizations committed to advancing the interest of the Asian American community in New Jersey, as well as those concerned with the issues of civil rights, human rights, social and economic justice and equality and other issues concerning the Asian American community. The Governor shall appoint 12 public members who shall be residents of the State of New Jersey and shall include: two persons having expertise or a background in policies affecting the Asian American community; two persons representing the clergy, religious organizations or communities; two persons of Asian origin or heritage, who support the work of the foundation; one person representing a post-secondary educational institution with an academic program in Asian American culture; one person representing a secondary educational institution with a large Asian American population; one person representing the legal community; one person representing the medical community; one person representing law enforcement; and one person representing the New Jersey Council on the Arts. Public members shall serve for a term of two years from the date of their appointment and until their successors are appointed and qualified; except that of the first appointments hereunder: six shall be for a term of one year and six for two years.

Vacancies resulting from causes other than by expiration of a term shall be filled for the unexpired term only and shall be filled in the same manner as the original appointments were made.

C.52:9WW-3 Employment of executive director, personnel; contract authority.

3. The foundation's board of trustees shall be authorized, within the limits of its own funds, to employ an executive director and professional, technical and administrative personnel. Employees of the foundation shall not be construed to be employees of the State of New Jersey. The board shall also be authorized to contract for such professional and administrative services as it shall deem necessary. No member of the board of trustees shall engage in any business transaction or professional activity for profit with the Department of State.

C.52:9WW-4 Secretary of state incorporator, initial chair of board.

4. The Secretary of State shall be an incorporator of the foundation. The Secretary of State shall serve as the initial chair of the board of trustees.

C.52:9WW-5 Adoption of bylaws.

5. Upon the incorporation of the foundation and the establishment of the first board of trustees, the board shall adopt bylaws setting forth the structure, offices, powers and duties of the foundation, using the following guidelines. Members of the foundation shall serve without compensation, but shall be entitled to reimbursement for necessary expenses incurred in the performance of their duties. The chairperson may appoint such subcommittees as deemed necessary or desirable, and if a subcommittee is appointed, the members of the subcommittee shall elect one of the members to serve as chair and one of the members to serve as vice-chair. The foundation shall meet no less than quarterly and at the call of the chairperson. A meeting of the foundation may also be called upon the request of 13 of the foundation's members and 13 members of the foundation shall constitute a quorum at any meeting thereof. The foundation shall hold at least four public hearings in different parts of the State, at such times and places as the foundation shall determine. All issues raised by those testifying at the hearings shall be recorded and included, together with the foundation's responses, if any, in the foundation's report to the Governor as required by section 6 of this act.

C.52:9WW-6 Reports to Governor, Legislature, public.

6. The foundation shall bi-annually report its progress and advise the Governor of the foundation's recommendations as they relate to the charge and duties set forth. The foundation shall annually report its findings and recommendations to the Governor, the Legislature and the public. The report shall address the responsibilities as set forth in section 1 of this act, along with all other issues which the foundation finds to be necessarily related.

C.52:9WW-7 Use of funds.

7. All funds received by the foundation, other than those necessary to pay the expenses of the foundation, shall be used exclusively for the establishment, support and promotion of the Asian American Study Foundation.

C.52:9WW-8 Financial assistance, eligibility for grants.

8. The Department of State is authorized to provide financial assistance and those services of employees of the State which may be required to form and incorporate the foundation within the limits of funds appropriated to the Department of State or made available to the Department of State by contribution, gift, donation or otherwise for these purposes. Once the foundation

is incorporated, it may apply for grants in aid from any department or instrumentality of the State of New Jersey.

C.52:9WW-9 Expenses payable from foundation's funds.

9. All expenses incurred by the foundation shall be payable from funds raised by the foundation, and no liability or obligation, in tort or contract, shall be incurred by the State for the operation of the foundation. The foundation shall obtain private counsel, and shall not be represented by the Attorney General or indemnified by the State of New Jersey.

C.52:9WW-10 Annual audit.

10. A certified public accountant shall be selected by the foundation to annually audit the foundation's funds. The foundation shall contract for and receive such audit annually, and shall submit the audit to the Secretary of State and the Director of the Division of Budget and Accounting in the Department of the Treasury.

11. There is appropriated to the foundation from the General Fund the sum of \$10,000 to effectuate the provisions of this act.

12. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 372

AN ACT concerning the prevention of cruelty to animals, supplementing chapter 22 of Title 4 of the Revised Statutes, and amending and repealing various parts of the statutory law.

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

C.4:22-11.1 Definitions relative to prevention of cruelty to animals.

1. As used in this chapter:

"Agent" means a member duly appointed as an agent by the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, who, upon recommendation of the Chief Humane Law Enforcement Officer of a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals, is empowered to issue summons and direct humane law enforcement officers to make arrests and enforce all laws

and ordinances enacted for the protection of animals, and to investigate alleged acts of cruelty to animals;

"Humane law enforcement officer" means an agent authorized and appointed by the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, and duly commissioned by the Superintendent of State Police in accordance with the provisions of sections 9 and 10 of P.L.2005, c.372 (C.4:22-11.9 and C.4:22-11.10), to possess, carry, or use a firearm while enforcing any law or ordinance for the protection of animals while on duty or on call, and who has satisfactorily completed the firearms training course approved by the Police Training Commission and other qualifications and training courses required pursuant to P.L.2005, c.372 (C.4:22-11.1 et al.); and

"Member" means a person who has been granted membership in a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals.

C.4:22-11.2 N.J.S.P.C.A continued to coordinate function of county societies.

2. a. (1) The New Jersey Society for the Prevention of Cruelty to Animals is continued as a parent corporation for the purposes of coordinating the functions of county societies for the prevention of cruelty to animals, and of promoting the interests of, protecting and caring for, and doing any and all things to benefit or that tend to benefit animals. The New Jersey Society for the Prevention of Cruelty to Animals shall be governed by a board of trustees consisting of 15 persons, of whom 12 shall be members of the society elected by the membership thereof and three shall be persons appointed by the Governor with the advice and consent of the Senate. Each trustee shall serve a term of six years, except as provided otherwise pursuant to paragraph (2) of this subsection. Of the 12 elected trustees, at least one shall also be a member of a county society for the prevention of cruelty to animals in the northern part of the State, at least one shall also be a member of a county society for the prevention of cruelty to animals in the central part of the State, and at least one shall also be a member of a county society for the prevention of cruelty to animals in the southern part of the State.

For the purposes of this paragraph: "northern" means the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex, or Union; "central" means the counties of Hunterdon, Mercer, Middlesex, Monmouth, Somerset, or Warren; and "southern" means the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem.

(2) Notwithstanding any provision of paragraph (1) of this subsection to the contrary, every trustee on the board governing the New Jersey Society for the Prevention of Cruelty to Animals on the day before the date of

enactment of P.L.2005, c.372 (C.4:22-11.1 et al.) shall complete the remainder of the trustee's respective assigned term on the board created pursuant to paragraph (1) of this subsection.

b. The board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals shall prepare an annual report concerning the law enforcement activity of the New Jersey Society for the Prevention of Cruelty to Animals and the county societies, and shall submit the report for each calendar year by June 1 of the next following calendar year to the Attorney General and the Legislature, and shall make the report available to the public upon request.

c. The New Jersey Society for the Prevention of Cruelty to Animals shall submit quarterly to the Attorney General statistical information concerning its law enforcement activity during that period, on a form developed in conjunction with the Attorney General.

C.4:22-11.3 Establishment of bylaws, standards, guidelines.

3. Within 120 days after the effective date of P.L.2005, c.372 (C.4:22-11.1 et al.), the board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals shall meet to establish bylaws and uniform standards and guidelines that are consistent with the provisions of Title 15A of the New Jersey Statutes as shall be necessary for the governance and operation of the New Jersey Society for the Prevention of Cruelty to Animals and the county societies for the prevention of cruelty to animals.

C.4:22-11.4 Duties, responsibilities of board of trustees.

4. The board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals shall:

a. Establish any bylaws or regulations as may be deemed necessary for governance and operation of the New Jersey Society for the Prevention of Cruelty to Animals;

b. Promote the interests of, and protect and care for, animals within the State;

c. Have the authority to grant county society for the prevention of cruelty to animals charters for the formation of county societies for the prevention of cruelty to animals in a county;

d. Have the authority, upon a majority vote of the board of trustees, to revoke, cancel, or suspend the charter of a county society for the prevention of cruelty to animals for the cause of failing to comply with any requirement of this act pertaining to the establishment or operation of a county society;

e. Appoint agents for enforcing all laws and ordinances enacted for the protection of animals and for the investigation of alleged acts of cruelty to animals within the State; appoint agents for commission as humane law enforcement officers in accordance with the provisions of sections 9 and 10

of P.L.2005, c.372 (C.4:22-11.9 and C.4:22-11.10) for the purpose of enforcing all laws and ordinances enacted for the protection of animals and for the investigation of alleged acts of cruelty to animals within the State; appoint a Chief Humane Law Enforcement Officer from among the appointed humane law enforcement officers; and adopt a badge which shall be authority for making arrests;

f. Establish, or make arrangements for the provision of, mandatory annual training courses for all humane law enforcement officers and agents of the New Jersey Society for the Prevention of Cruelty to Animals and of the county societies, which courses shall be subject to the approval of the Police Training Commission;

g. Make, alter, and use a common seal;

h. Have the authority to sue and be sued in all courts, and all actions brought by or against the New Jersey Society for the Prevention of Cruelty to Animals shall be in its corporate name;

i. Purchase and hold any real estate as may be expedient for the advancement of the purposes of the New Jersey Society for the Prevention of Cruelty to Animals, and take by devise or gift all real estate or personal property that is devised or given to it, or to a county society in a county where a chartered county society does not exist, without regard to value. The title to any real estate shall be taken in the corporate name of the society;

j. Hold in escrow any assets, after payment of any outstanding debts, of a county society that dissolves or has its charter revoked, canceled, or suspended for any reason until a new county society for that county is formed and chartered or the revoked, canceled, or suspended charter for the county is restored, at which time the board of trustees shall transfer those assets to the newly formed and chartered county society or the county society whose revoked, canceled, or suspended charter has been restored, as the case may be; and

k. Assist persons in counties without a chartered county society to obtain a charter.

C.4:22-11.5 Fees for chartering county societies.

5. The board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals may establish reasonable fees for chartering county societies for the prevention of cruelty to animals and for renewal of a charter.

C.4:22-11.6 Continuation of existing county societies.

6. a. Every county society for the prevention of cruelty to animals that is in existence on the date of enactment of P.L.2005, c.372 (C.4:22-11.1 et al.) shall be continued as a chartered county society.

b. A charter for a county society may be granted by the board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals if the

county society can demonstrate that it consists of at least 10 members. The requirements of this subsection shall not apply to a county society which is continued as a chartered county society as provided in subsection a. of this section.

c. Every county society shall submit quarterly a law enforcement report to the board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals on a form developed in conjunction with the Attorney General. Each county society shall also submit a copy of its quarterly report to the county sheriff and the county prosecutor. The New Jersey Society for the Prevention of Cruelty to Animals shall compile these reports and submit them to the Attorney General.

C.4:22-11.7 Duties, responsibilities of county society.

7. A county society for the prevention of cruelty to animals continued or established in accordance with section 6 of P.L.2005, c.372 (C.4:22-11.6) shall:

a. Elect its own board of trustees from the members of the county society for the prevention of cruelty to animals who reside within the county or who choose to be affiliated with that county society;

b. Establish bylaws or regulations necessary for the governance and operation of the county society;

c. Enforce all laws and ordinances enacted for the protection of animals;

d. Promote the interests of, and protect and care for, animals within the State;

e. Appoint agents for enforcing all laws and ordinances enacted for the protection of animals and for the investigation of alleged acts of cruelty to animals within the State; appoint up to, but not more than, three agents for commission as humane law enforcement officers in accordance with the provisions of sections 9 and 10 of P.L.2005, c.372 (C.4:22-11.9 and C.4:22-11.10) for the purpose of enforcing all laws and ordinances enacted for the protection of animals and for the investigation of alleged acts of cruelty to animals within the State, and, with the concurrence of the county prosecutor, authorize the commission of such additional humane law enforcement officers over that established maximum as may be necessary based upon population or the number, degree, or complexity of animal cruelty complaints; and appoint a Chief Humane Law Enforcement Officer from among the appointed humane law enforcement officers;

f. Investigate alleged acts of cruelty to animals and, when necessary, request legal assistance from the office of the appropriate county or municipal prosecutor, which the county or municipal prosecutor, as the case may be, shall make every reasonable effort to provide;

g. Adopt a badge, which shall be authority for making arrests and which shall be easily distinguishable from the badge adopted by the New Jersey Society for the Prevention of Cruelty to Animals;

h. Have the authority to sue and be sued in all courts, and all actions brought by or against the county society shall be in its corporate name; and

i. Purchase and hold any real estate as may be expedient for the advancement of the purposes of the county society, and take by devise or gift all real estate or personal property that is devised or given to it, without regard to value. The title to any real estate shall be taken in the corporate name of the county society.

C.4:22-11.8 Completion of training courses by officers, agents.

8. a. Each county society for the prevention of cruelty to animals shall require that its humane law enforcement officers and agents satisfactorily complete the training courses established pursuant to P.L.2005, c.372 (C.4:22-11.1 et al.).

b. Each county society shall establish training programs for the operation of the county society in accordance with mandatory uniform standards, guidelines, and procedures established for the operation of all county societies.

c. The board of trustees of a county society shall appoint officers who shall be responsible for direction of the daily operation of the county society.

C.4:22-11.9 Certain persons ineligible for service; criminal history record background check.

9. a. No person shall serve as a trustee, officer, or humane law enforcement officer or agent of, or hold any other position of authority within, the New Jersey Society for the Prevention of Cruelty to Animals or any county society for the prevention of cruelty to animals if that person has been convicted of a crime under the laws of the State or under any similar statutes of the United States or any other state, or convicted of a violation of any provision of chapter 22 of Title 4 of the Revised Statutes or a violation of any similar statutes of the United States or any other state, as indicated by a criminal history record background check performed pursuant to this section. The fingerprints of each such person and the written consent of the person shall be submitted to the Superintendent of State Police for a criminal history record background check to be performed. The superintendent shall compare these fingerprints with fingerprints on file with the Bureau of Identification in the Division of State Police, Department of Law and Public Safety, and the Federal Bureau of Investigation, consistent with State and federal laws, rules, and regulations. The cost for the criminal history record background check, including all costs administering and processing the check, shall be borne by either the person or the board of trustees of the New

Jersey Society for the Prevention of Cruelty to Animals or of a county society for the prevention of cruelty to animals, as the case may be. The superintendent shall inform the board of trustees of the New Jersey Society for the Prevention of Cruelty to Animals or of a county society for the prevention of cruelty to animals, as the case may be, of whether the person's criminal history background check reveals a conviction of a disqualifying crime as specified in this section.

The superintendent shall complete the criminal history record background check required pursuant to this subsection within 90 days after receipt of a request therefor.

b. (1) No person shall serve as a trustee, officer, or humane law enforcement officer or agent of, or hold any other position of authority within, the New Jersey Society for the Prevention of Cruelty to Animals or any county society if that person has been convicted of, or found civilly liable for, a violation of any provision of chapter 22 of Title 4 of the Revised Statutes or a violation of any similar statutes of the United States or any other state.

(2) The New Jersey Society for the Prevention of Cruelty to Animals or county society shall rescind the authorization or appointment of any member, humane law enforcement officer, or agent convicted of, or found civilly liable for, a violation of any provision of chapter 22 of Title 4 of the Revised Statutes or a violation of any similar statutes of the United States or any other state, and that person shall immediately surrender to the New Jersey Society for the Prevention of Cruelty to Animals or county society any badge, identification card, or indicia of authority issued to the member, humane law enforcement officer, or agent, as the case may be.

C.4:22-11.10 Application for commission as humane law enforcement officer.

10. a. An application to be commissioned as a humane law enforcement officer shall be submitted to the Superintendent of State Police by the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, as the case may be.

b. The superintendent shall investigate and determine the character, competency, integrity, and fitness of the person or persons designated in the application.

c. No person shall be commissioned as a humane law enforcement officer under the provisions of this section if that person has been convicted of a crime or violation, as indicated by a criminal history background check performed pursuant to the provisions of section 9 of P.L.2005, c.372 (C.4:22-11.9), or has been convicted of, or found civilly liable for, a violation of chapter 22 of Title 4 of the Revised Statutes or a violation of any similar statutes of the United States or any other state.

d. (1) The superintendent, when satisfied with the examination of any application and such further inquiry and investigations as the superintendent shall deem proper as to the good character, competency, integrity, and fitness of the applicant, shall approve the commission of the applicant as a humane law enforcement officer. A commission issued under this section shall be renewable every two years.

(2) The board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, as the case may be, may dismiss or suspend a humane law enforcement officer in its employ for any reason, including but not limited to (a) a violation of any provision of P.L.2005, c.372 (C.4:22-11.1 et al.), and (b) upon the recommendation of the Superintendent of State Police. A dismissal or suspension shall be subject to the provisions of subsection h. of this section.

(3) The superintendent may revoke or suspend a commission issued pursuant to this section for a violation of any provision of P.L.2005, c.372 (C.4:22-11.1 et al.) or for other good cause, and the commission may be rescinded for good cause at the direction of the Attorney General or upon request of the board of trustees of a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals, as the case may be; provided, however, that a person whose commission is rescinded at the direction of the Attorney General may still be eligible for appointment as an agent unless prohibited otherwise by P.L.2005, c.372 (C.4:22-11.1 et al.) or any other law. A revocation, suspension, or rescission shall be subject to the provisions of subsection h. of this section.

e. A humane law enforcement officer shall not be authorized to possess, carry, or use a firearm while enforcing the laws and ordinances enacted for the protection of animals unless the officer (1) has satisfactorily completed a firearms training course as defined in subsection j. of N.J.S.2C:39-6 and approved by the Police Training Commission, and (2) annually qualifies in the use of a revolver or similar weapon.

f. The superintendent shall, within 90 days after receipt of an application submitted pursuant to this section, or as soon thereafter as may be reasonably practicable, approve or disapprove an application for commission as a humane law enforcement officer.

g. Every person serving as a law enforcement officer appointed by a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals on the date of enactment of this act for whom an application has been submitted to be commissioned as a humane law enforcement officer shall be permitted to serve in that capacity unless and until the application for commission is disapproved or

the person is otherwise disqualified pursuant to section 9 of P.L.2005, c.372 (C.4:22-11.9) and this section.

h. (1) In the case of refusal to commission an applicant to be a humane law enforcement officer, the superintendent shall submit to the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, as the case may be, a statement setting forth the reasons for disqualification.

(2) A disqualified applicant, or a humane law enforcement officer who has been dismissed or suspended or whose commission has been revoked or suspended, shall have the right to submit statements under oath and documentation that contest the findings of the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, or of the superintendent, as the case may be. If, upon receipt of such statements and documentation, the board of trustees of a county society for the prevention of cruelty to animals or of the New Jersey Society for the Prevention of Cruelty to Animals, or the superintendent, as the case may be, maintains that the disqualification, dismissal, revocation, or suspension was neither arbitrary nor capricious, the disqualified applicant, or humane law enforcement officer who has been dismissed or suspended or whose commission has been revoked or suspended, shall have the right to an administrative hearing and decision, and the matter shall be treated as a contested case, under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.4:22-11.11 Training course for animal protection law enforcement.

11. a. The Police Training Commission, in collaboration with the New Jersey Society for the Prevention of Cruelty to Animals, shall develop or approve a training course for animal protection law enforcement, which shall include but need not be limited to instruction in:

(1) the law, procedures, and enforcement methods and techniques of investigation, arrest, and search and seizure, specifically in connection with violations of State and local animal cruelty laws and ordinances;

(2) information and procedures related to animals, including animal behavior and traits and evaluation of animals at a crime scene;

(3) methods to identify and document animal abuse, neglect, and distress; and

(4) investigation of animal fighting.

The course developed or approved pursuant to this subsection shall be the same or substantially similar to the course developed and approved for certified animal control officers who are authorized as animal cruelty investigators pursuant to sections 3 and 4 of P.L.1983, c.525 (C.4:19-15.16a and C.4:19-15.16b) and P.L.1997, c.247 (C.4:19-15.16c. et al.).

b. Every agent and humane law enforcement officer appointed after the date of enactment of P.L.2005, c.372 (C.4:22-11.1 et al.) shall satisfactorily complete the animal protection law enforcement training course within one year after the date of the agent's or officer's appointment.

c. The Chief Humane Law Enforcement Officer of a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals may request from the Police Training Commission an exemption from applicable law enforcement parts of the animal protection law enforcement training course on behalf of a current or prospective agent or humane law enforcement officer who demonstrates successful completion of a police training course conducted by a federal, state, or other public or private agency, the requirements of which are substantially equivalent to or which exceed the corresponding requirements of the animal protection law enforcement training course curriculum established through the Police Training Commission.

C.4:22-11.12 Effort to assist humane law enforcement officers, agents by governmental entities.

12. All State, county, and municipal law enforcement agencies and all county and municipal health agencies shall, upon request, make every reasonable effort to assist the humane law enforcement officers and agents of a county society for the prevention of cruelty to animals or the New Jersey Society for the Prevention of Cruelty to Animals in the enforcement of all laws and ordinances enacted for the protection of animals.

C.4:22-11.13 Annual audit of societies.

13. In addition to any requirement imposed by P.L.1994, c.16 (C.45:17A-18 et seq.) or any other law, the New Jersey Society for the Prevention of Cruelty to Animals and each county society for the prevention of cruelty to animals shall cause to be prepared an annual audit of all of its financial transactions, which shall be prepared in accordance with generally accepted accounting principles and standards by an independent New Jersey licensed certified public accountant. The audit for each calendar year shall be submitted by June 1 of the next following calendar year to the Attorney General, and shall be made available to the public upon request.

14. 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 police officer, 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;

(10) A designated employee or designated licensed agent for a nuclear power plant under license of the Nuclear Regulatory Commission, while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties. Any firearm utilized by an employee or agent for a nuclear power plant pursuant to this paragraph shall be returned each day at the end of the employee's or agent's authorized official duties to the employee's or agent's supervisor. All firearms returned each day pursuant to this paragraph shall be stored in locked containers located in a secure area.

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) A humane law enforcement officer of the New Jersey Society for the Prevention of Cruelty to Animals or of a county 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) (Deleted by amendment, P.L.2003, c.168).

(12) A transit police officer of the New Jersey Transit Police Department, at all times while in the State of New Jersey, provided the officer has satisfied the training requirements of the Police Training Commission, pursuant to subsection c. of section 2 of P.L.1989, c.291 (C.27:25-15.1);

(13) A parole officer employed by the State Parole Board at all times. Prior to being permitted to carry a firearm, a parole officer shall take and successfully complete a basic course for regular police officer training

administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm;

(14) A Human Services police officer at all times while in the State of New Jersey, as authorized by the Commissioner of Human Services;

(15) A person or employee of any person who, pursuant to and as required by a contract with a governmental entity, supervises or transports persons charged with or convicted of an offense;

(16) A housing authority police officer appointed under P.L.1997, c.210 (C.40A:14-146.19 et al.) at all times while in the State of New Jersey; or

(17) A probation officer assigned to the "Probation Officer Community Safety Unit" created by section 2 of P.L.2001, c.362 (C.2B:10A-2) while in the actual performance of the probation officer's official duties. Prior to being permitted to carry a firearm, a probation officer shall take and successfully complete a basic course for regular police officer training administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. (1) Subsections c. and d. of N.J.S.2C:39-5 do not apply to antique firearms, provided that such antique firearms are unloaded or are being fired for the purposes of exhibition or demonstration at an authorized target range or in such other manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the control of a particular municipality, the superintendent.

(2) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an antique cannon that is capable of being fired but that is unloaded and immobile, provided that the antique cannon is possessed by (a) a scholastic institution, a museum, a municipality, a county or the State, or (b) a person who obtained a firearms purchaser identification card as specified in N.J.S.2C:58-3.

(3) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to an unloaded antique cannon that is being transported by one eligible to possess it, in compliance with regulations the superintendent may promulgate, between its permanent location and place of purchase or repair.

(4) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to antique cannons that are being loaded or fired by one eligible to possess an antique cannon, for purposes of exhibition or demonstration at an authorized target range or in the manner as has been approved in writing by the chief law enforcement officer of the municipality in which the exhibition or demonstration is held, or if not held on property under the

control of a particular municipality, the superintendent, provided that performer has given at least 30 days' notice to the superintendent.

(5) Subsection a. of N.J.S.2C:39-3 and subsection d. of N.J.S.2C:39-5 do not apply to the transportation of unloaded antique cannons directly to or from exhibitions or demonstrations authorized under paragraph (4) of subsection d. of this section, provided that the transportation is in compliance with safety regulations the superintendent may promulgate. Nor do those subsections apply to transportation directly to or from exhibitions or demonstrations authorized under the law of another jurisdiction, provided that the superintendent has been given 30 days' notice and that the transportation is in compliance with safety regulations the superintendent may promulgate.

e. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.

f. Nothing in subsections b., c. and d. of N.J.S.2C:39-5 shall be construed to prevent:

(1) A member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, carrying such firearms as are necessary for said target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in subsection g. of this section;

(2) A person carrying a firearm or knife in the woods or fields or upon the waters of this State for the purpose of hunting, target practice or fishing, provided that the firearm or knife is legal and appropriate for hunting or fishing purposes in this State and he has in his possession a valid hunting license, or, with respect to fresh water fishing, a valid fishing license;

(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried

in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated thereunder; or

(c) In the case of a firearm, directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club, provided, however, that not less than 30 days prior to the exhibition or display, notice of the exhibition or display shall be given to the Superintendent of the State Police by the sponsoring organization or club, and the sponsor has complied with such reasonable safety regulations as the superintendent may promulgate. Any firearms transported pursuant to this section shall be transported in the manner specified in subsection g. of this section;

(4) A person from keeping or carrying about a private or commercial aircraft or any boat, or from transporting to or from such vessel for the purpose of installation or repair a visual distress signalling device approved by the United States Coast Guard.

g. All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

h. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any employee of a public utility, as defined in R.S.48:2-13, doing business in this State or any United States Postal Service employee, while in the actual performance of duties which specifically require regular and frequent visits to private premises, from possessing, carrying or using any device which projects, releases or emits any substance specified as being noninjurious to canines or other animals by the Commissioner of Health and Senior Services and which immobilizes only on a temporary basis and produces only temporary physical discomfort through being vaporized or otherwise dispensed in the air for the sole purpose of repelling canine or other animal attacks.

The device shall be used solely to repel only those canine or other animal attacks when the canines or other animals are not restrained in a fashion sufficient to allow the employee to properly perform his duties.

Any device used pursuant to this act shall be selected from a list of products, which consist of active and inert ingredients, permitted by the Commissioner of Health and Senior Services.

i. Nothing in N.J.S.2C:39-5 shall be construed to prevent any person who is 18 years of age or older and who has not been convicted of a felony, from possession for the purpose of personal self-defense of one pocket-sized device which contains and releases not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, but rather, is intended to produce temporary physical discomfort or disability through being vaporized or otherwise dispensed in the air. Any person in possession of any device in violation of this subsection shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than \$100.00.

j. A person shall qualify for an exemption from the provisions of N.J.S.2C:39-5, as specified under subsections a. and c. of this section, if the person has satisfactorily completed a firearms training course approved by the Police Training Commission.

Such exempt person shall not possess or carry a firearm until the person has satisfactorily completed a firearms training course and shall annually qualify in the use of a revolver or similar weapon. For purposes of this subsection, a "firearms training course" means a course of instruction in the safe use, maintenance and storage of firearms which is approved by the Police Training Commission. The commission shall approve a firearms training course if the requirements of the course are substantially equivalent to the requirements for firearms training provided by police training courses which are certified under section 6 of P.L.1961, c.56 (C.52:17B-71). A person who is specified in paragraph (1), (2), (3) or (6) of subsection a. of this section shall be exempt from the requirements of this subsection.

k. Nothing in subsection d. of N.J.S.2C:39-5 shall be construed to prevent any financial institution, or any duly authorized personnel of the institution, from possessing, carrying or using for the protection of money or property, any device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or temporary identification.

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 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 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.

15. R.S.4:22-13 is amended to read as follows:

Right to amend charter to include enumerated powers and purposes.

4:22-13. A county society for the prevention of cruelty to animals may amend its charter or certificate of incorporation as originally enacted or filed or as amended so that the county society, in addition to its other powers and purposes, shall have the following powers and purposes: to promote the interests of, and to protect and care for, animals; to maintain and operate one or more rest farms, kennels, pounds, shelters, or hospitals, or any or all of them, for animals in the custody of the county society by reason of impoundment, seizure or relinquishment by the owner; and to do any and all things which would benefit or tend to benefit animals.

16. R.S.4:22-26 is amended to read as follows:

Penalties for various acts constituting cruelty.

4:22-26. A person who shall:

a. (1) Overdrive, overload, drive when overloaded, overwork, deprive of necessary sustenance, abuse, or needlessly kill a living animal or creature, or cause or procure, by any direct or indirect means, including but not limited to through the use of another living animal or creature, any such acts to be done;

(2) Torment, torture, maim, hang, poison, unnecessarily or cruelly beat, or needlessly mutilate a living animal or creature, or cause or procure, by any direct or indirect means, including but not limited to through the use of another living animal or creature, any such acts to be done;

(3) Cruelly kill, or cause or procure, by any direct or indirect means, including but not limited to through the use of another living animal or creature, the cruel killing of, a living animal or creature, or otherwise cause or procure, by any direct or indirect means, including but not limited to through the use of another living animal or creature, the death of a living

animal or creature from commission of any act described in paragraph (2) of this subsection;

b. (Deleted by amendment, P.L.2003, c.232).

c. Inflict unnecessary cruelty upon a living animal or creature, by any direct or indirect means, including but not limited to through the use of another living animal or creature; or unnecessarily fail to provide a living animal or creature of which the person has charge either as an owner or otherwise with proper food, drink, shelter or protection from the weather; or leave it unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal or creature;

d. Receive or offer for sale a horse that is suffering from abuse or neglect, or which by reason of disability, disease, abuse or lameness, or any other cause, could not be worked, ridden or otherwise used for show, exhibition or recreational purposes, or kept as a domestic pet without violating the provisions of this article;

e. Keep, use, be connected with or interested in the management of, or receive money or other consideration for the admission of a person to, a place kept or used for the purpose of fighting or baiting a living animal or creature;

f. Be present and witness, pay admission to, encourage, aid or assist in an activity enumerated in subsection e. of this section;

g. Permit or suffer a place owned or controlled by him to be used as provided in subsection e. of this section;

h. Carry, or cause to be carried, a living animal or creature in or upon a vehicle or otherwise, in a cruel or inhumane manner;

i. Use a dog or dogs for the purpose of drawing or helping to draw a vehicle for business purposes;

j. Impound or confine or cause to be impounded or confined in a pound or other place a living animal or creature, and shall fail to supply it during such confinement with a sufficient quantity of good and wholesome food and water;

k. Abandon a maimed, sick, infirm or disabled animal or creature to die in a public place;

l. Willfully sell, or offer to sell, use, expose, or cause or permit to be sold or offered for sale, used or exposed, a horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the health or life of human beings or animals, or who shall, when any such disease is beyond recovery, refuse, upon demand, to deprive the animal of life;

m. Own, operate, manage or conduct a roadside stand or market for the sale of merchandise along a public street or highway; or a shopping mall, or a part of the premises thereof; and keep a living animal or creature confined,

or allowed to roam in an area whether or not the area is enclosed, on these premises as an exhibit; except that this subsection shall not be applicable to: a pet shop licensed pursuant to P.L.1941, c.151 (C.4:19-15.1 et seq.); a person who keeps an animal, in a humane manner, for the purpose of the protection of the premises; or a recognized breeders' association, a 4-H club, an educational agricultural program, an equestrian team, a humane society or other similar charitable or nonprofit organization conducting an exhibition, show or performance;

n. Keep or exhibit a wild animal at a roadside stand or market located along a public street or highway of this State; a gasoline station; or a shopping mall, or a part of the premises thereof;

o. Sell, offer for sale, barter or give away or display live baby chicks, ducklings or other fowl or rabbits, turtles or chameleons which have been dyed or artificially colored or otherwise treated so as to impart to them an artificial color;

p. Use any animal, reptile, or fowl for the purpose of soliciting any alms, collections, contributions, subscriptions, donations, or payment of money except in connection with exhibitions, shows or performances conducted in a bona fide manner by recognized breeders' associations, 4-H clubs or other similar bona fide organizations;

q. Sell or offer for sale, barter, or give away living rabbits, turtles, baby chicks, ducklings or other fowl under two months of age, for use as household or domestic pets;

r. Sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl, or rabbits, turtles or chameleons under two months of age for any purpose not prohibited by subsection q. of this section and who shall fail to provide proper facilities for the care of such animals;

s. Artificially mark sheep or cattle, or cause them to be marked, by cropping or cutting off both ears, cropping or cutting either ear more than one inch from the tip end thereof, or half cropping or cutting both ears or either ear more than one inch from the tip end thereof, or who shall have or keep in the person's possession sheep or cattle, which the person claims to own, marked contrary to this subsection unless they were bought in market or of a stranger;

t. Abandon a domesticated animal;

u. For amusement or gain, cause, allow, or permit the fighting or baiting of a living animal or creature;

v. Own, possess, keep, train, promote, purchase, or knowingly sell a living animal or creature for the purpose of fighting or baiting that animal or creature;

w. Gamble on the outcome of a fight involving a living animal or creature;

x. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat, unless such fur or hair for sale or barter is from a commercial grooming establishment or a veterinary office or clinic or is for use for scientific research;

y. Knowingly sell or barter or offer for sale or barter, at wholesale or retail, for human consumption, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat;

z. Surgically debark or silence a dog in violation of section 1 or 2 of P.L.2002, c.102 (C.4:19-38 or C.4:19-39);

aa. Use a live pigeon, fowl or other bird for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship, except that this subsection and subsections bb. and cc. shall not apply to the shooting of game;

bb. Shoot at a bird used as described in subsection aa. of this section, or is a party to such shooting; or

cc. Lease a building, room, field or premises, or knowingly permit the use thereof for the purposes of subsection aa. or bb. of this section --

Shall forfeit and pay a sum according to the following schedule, to be sued for and recovered, with costs, in a civil action by any person in the name of the New Jersey Society for the Prevention of Cruelty to Animals or a county society for the prevention of cruelty to animals, as appropriate, or, in the name of the municipality if brought by a certified animal control officer or animal cruelty investigator:

For a violation of subsection e., f., g., u., v., w., or z. of this section or of paragraph (3) of subsection a. of this section, or for a second or subsequent violation of paragraph (2) of subsection a. of this section, a sum of not less than \$3,000 nor more than \$5,000;

For a violation of subsection l. of this section or for a first violation of paragraph (2) of subsection a. of this section, a sum of not less than \$1,000 nor more than \$3,000;

For a violation of subsection x. or y. of this section, a sum of not less than \$500 nor more than \$1,000 for each domestic dog or cat fur or fur or hair product or domestic dog or cat carcass or meat product;

For a violation of subsection t. of this section, a sum of not less than \$500 nor more than \$1,000, but if the violation occurs on or near a highway, a mandatory sum of \$1,000;

For a violation of subsection c., d., h., j., k., aa., bb., or cc. of this section or of paragraph (1) of subsection a. of this section, a sum of not less than \$250 nor more than \$1,000; and

For a violation of subsection i., m., n., o., p., q., r., or s. of this section, a sum of not less than \$250 nor more than \$500.

17. R.S.4:22-44 is amended to read as follows:

Arrests with, without warrant.

4:22-44. Any humane law enforcement officer of the New Jersey Society for the Prevention of Cruelty to Animals or of a county 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 humane law enforcement officer, 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.

18. R.S.4:22-47 is amended to read as follows:

Warrentless 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 humane law enforcement officer of the New Jersey Society for the Prevention of Cruelty to Animals or of a county 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.

19. 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 (1) the county society for the prevention of cruelty to animals of the county where the fines, penalties or moneys were imposed and collected, if the county society brought the action or it was brought on behalf of the county society, to be used by the county society in aid of the benevolent objects for which it was incorporated, or (2) in all other cases, the New

Jersey Society for the Prevention of Cruelty to Animals, to be used by the State 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 county society or to the New Jersey Society for the Prevention of Cruelty to Animals, as applicable to the particular enforcement action.

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 or other animal enforcement related training authorized by law for municipal employees.

20. Section 10 of P.L.1997, c.247 (C.4:22-56) is amended to read as follows:

C.4:22-56 SPCA, municipality, county, 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 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 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 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 county society or an officer thereof was not involved.

21. Section 3 of P.L.2003, c.67 (C.4:22-57) is amended to read as follows:

C.4:22-57 Notice to commissioner of persons ineligible to be certified animal control officers.

3. a. For the purposes of establishing the list of persons not eligible to be certified animal control officers as required pursuant to subsections b. and c. of section 3 of P.L.1983, c.525 (C.4:19-15.16a), notice shall be provided, within 90 days after the effective date of this section, to the Commissioner of Health and Senior Services of any person who has been convicted of, or found civilly liable for, a violation of any provision of chapter 22 of Title 4 of the Revised Statutes, by any court or other official administrative entity maintaining records of such violations adjudged on or before the effective date of this section.

b. For the purposes of maintaining the list of persons not eligible to be certified animal control officers as established pursuant to subsections b. and c. of section 3 of P.L.1983, c.525 (C.4:19-15.16a), the court or other official adjudging the guilt or liability for a violation of any provision of chapter 22 of Title 4 of the Revised Statutes, shall charge the prosecutor, officer of the New Jersey Society for the Prevention of Cruelty to Animals or the county society for the prevention of cruelty to animals, or other appropriate person, other than a certified animal control officer, with the responsibility to notify within 30 days the commissioner, in writing, of the full name of the person found guilty of, or liable for, an applicable violation, and the violation for which or of which that person was found guilty or liable, and the person charged with the responsibility shall provide such notice.

Repealer.

22. R.S.4:22-1 through R.S.4:22-11, inclusive, R.S.4:22-14, and R.S.4:22-43 are repealed.

23. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 373

AN ACT authorizing the establishment of a Foundation for Technology Advancement and supplementing chapter 27C of Title 52 of the Revised Statutes.

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

C.52:27C-96 Foundation for Technology Advancement; purpose.

1. a. The New Jersey Commerce and Economic Growth Commission is authorized to establish a nonprofit organization to be known as the Foun-

dation for Technology Advancement. The foundation shall be devoted to developing and coordinating programs to support initiatives of the advanced technology industry in New Jersey. The foundation shall develop policies to improve the research, economic, and educational needs important to the advanced technology industry in New Jersey and increase awareness among advanced technology companies as to governmental, community and private resources that may benefit this industry as a whole. The foundation shall discuss the status of the advanced technology industry and anticipate its needs for the future with the purpose of preparing the industry and its workforce to meet these needs. The foundation shall make policy recommendations to the Governor and Legislature as well as recommendations for local and State actions to follow up the foundation's recommendations and consider such other matters relating to advanced technology in New Jersey as the members of the foundation may deem appropriate.

b. The foundation shall be incorporated as a New Jersey nonprofit corporation pursuant to P.L.1983, c.127 (C.15A:1-1 et seq.), and organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status and for the receipt of tax-deductible contributions, and shall be authorized to sue and to be sued as a legal entity separate from the State of New Jersey.

C.52:27C-97 Foundation's board of trustees.

2. The Foundation for Technology Advancement shall be governed by a 23 member board of trustees who are appointed as follows:

a. The Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission; the Executive Director of the New Jersey Economic Development Authority; the Executive Director of the New Jersey Commission on Science and Technology; and the Chief Technology Officer in the Office of Information Technology; or their designees, all of whom shall serve ex officio;

b. A faculty member appointed by the president of each of the following academic institutions: The New Jersey Institute of Technology; Rutgers, the State University; The University of Medicine and Dentistry of New Jersey; and Princeton University, all of whom shall serve ex officio; and

c. Fifteen public members appointed by the Governor as follows: a representative of each of the following organizations: the New Jersey Technology Council, the Biotechnology Council of New Jersey, the Forum for Academicians, Scientists and Technologists of New Jersey, the Strengthening the Mid-Atlantic Region for Tomorrow States Organization, the New Jersey Business and Industry Association, the Commerce and Industry Association of New Jersey, the New Jersey State Chamber of Commerce, the New Jersey Tooling and Manufacturing Association, the Research and

Development Council of New Jersey, the American Electronics Association - New Jersey/Pennsylvania Council, and a representative employed by a corporation from each of the following industry sectors: pharmaceuticals, financial services, advanced technology, information technology, and nanotechnology.

Of the public members first appointed, four shall serve for a term of two years, four for a term of three years, four for a term of four years, and three for a term of five years.

Members appointed thereafter shall serve five-year terms, and any vacancy shall be filled by appointment for the unexpired term only. A member is eligible for reappointment. Vacancies in the membership of the foundation shall be filled in the same manner as the original appointments were made.

The members shall elect a chair and vice chair from the membership of the board of trustees.

C.52:27C-98 Executive director, personnel; contracts.

3. The board of trustees of the Foundation for Technology Advancement shall be authorized, within the limits of its own funds, to employ an executive director and professional, technical and administrative personnel. Employees of the foundation shall not be construed to be employees of the State of New Jersey. The board shall also be authorized to contract for such professional and administrative services as it shall deem necessary. No member of the board of trustees shall engage in any business transaction or professional activity for profit with the State of New Jersey.

C.52:27C-99 Commission as incorporator of foundation.

4. The New Jersey Commerce and Economic Growth Commission shall be an incorporator of the Foundation for Technology Advancement.

C.52:27C-100 Adoption of bylaws.

5. Upon the incorporation of the Foundation for Technology Advancement and the establishment of the first board of trustees, the board shall adopt bylaws setting forth the structure, offices, powers and duties of the foundation using the following guidelines. Members of the board of trustees shall serve without compensation, but shall be entitled to reimbursement for necessary expenses incurred in the performance of their duties. The chair may appoint such subcommittees as deemed necessary or desirable, and if a subcommittee is appointed, the members of the subcommittee shall elect one of the members to serve as chair and one of the members to serve as vice-chair.

The foundation shall meet no less than quarterly and at the call of the chair. The foundation shall hold at least four public hearings in different

parts of the State, at such times and places as the foundation shall determine. All issues raised by those testifying at the hearings shall be recorded and included, together with the foundation's responses, if any, in the foundation's report to the Governor and the Legislature as required by section 6 of this act.

C.52:27C-101 Bi-annual report to Governor, Legislature.

6. The Foundation for Technology Advancement shall bi-annually report its findings and recommendations to the Governor and the Legislature. The report shall address the responsibilities as set forth in section 1 of this act, along with all other issues which the foundation finds to be necessarily related.

C.52:27C-102 Use of funds by foundation; receipt of gifts.

7. All funds received by the Foundation for Technology Advancement, other than those necessary to pay the expenses of the foundation, shall be used exclusively for the establishment, support and promotion of the foundation. The foundation is authorized to receive and administer gifts, contributions, and funds from public and private sources to be expended solely for the purposes provided in section 1 of this act.

C.52:27C-103 Assistance, services by Department of the Treasury.

8. The State Treasurer is authorized to provide financial assistance and those services of employees of the State which may be required to form and incorporate the Foundation for Technology Advancement within the limits of funds appropriated to the State Treasurer or made available to the Department of the Treasury by contribution, gift, donation or otherwise for these purposes. Once the foundation is incorporated, it may apply for grants in aid from any department or instrumentality of the State of New Jersey.

C.52:27C-104 Payment of expenses.

9. All expenses incurred by the Foundation for Technology Advancement shall be payable from funds raised by the foundation, and no liability or obligation, in tort or contract, shall be incurred by the State for the operation of the foundation. The foundation shall obtain private counsel, and shall not be represented by the Attorney General or indemnified by the State of New Jersey.

C.52:27C-105 Annual audit.

10. A certified public accountant shall be selected by the Foundation for Technology Advancement to annually audit the foundation's funds. The foundation shall contract for and receive such audit annually and shall submit the audit to the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury.

11. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 374

AN ACT extending the eligibility for the sales and use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones and certain counties with reduced sales tax and amending P.L.2004, c.65.

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

1. Section 23 of P.L.2004, c.65 (C.52:27H-87.1) is amended to read as follows:

C.52:27H-87.1 Exemption for some retail sales of energy and utility service.

23. a. Retail sales of energy and utility service to:

(1) a qualified business that employs at least 250 people within an enterprise zone, at least 50% of whom are directly employed in a manufacturing process, for the exclusive use or consumption of such business within an enterprise zone, and

(2) a group of two or more persons: (a) each of which is a qualified business that are all located within a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.); (b) that collectively employ at least 250 people within an enterprise zone, at least 50% of whom are directly employed in a manufacturing process; (c) are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product; and (d) collectively use the energy and utility service for the exclusive use or consumption of each of the persons that comprise a group within an enterprise zone; are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.).

A qualified business will continue to be subject to applicable Board of Public Utilities tariff regulations except that its bills from utility companies and third party suppliers for energy and utility service shall not include charges for sales and use tax.

b. A business that meets the requirements of subsection a. of this section shall not be allowed the exemption granted pursuant to this section until it has complied with such requirements for obtaining the exemption as may be provided pursuant to P.L.1983, c.303 (C.52:27H-60 et seq.) and P.L.1966, c.30 (C.54:32B-1 et seq.). The Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission shall provide prompt notice to the President of the Board of Public Utilities and to the Director of the Division of Taxation in the Department of the Treasury, of a qualified business that has qualified for the exemption under this subsection, shall provide the president and the director an annual list of all businesses that qualify.

c. (1) Retail sales of energy and utility service to a business facility located within a county that is designated for the 50% tax exemption under section 1 of P.L.1993, c.373 (C.54:32B-8.45) are exempt from the taxes imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.); provided that the business certifies that it employs at least 50 people at that facility, at least 50% of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility.

(2) A business facility that meets the requirements of paragraph (1) of this subsection may file an application for the energy and utility service sales tax exemption with the Chief Executive Officer and Secretary of the Commerce, Economic Growth and Tourism Commission, who shall promulgate regulations and forms for that purpose. The Chief Executive Officer and Secretary of the Commerce, Economic Growth and Tourism Commission shall process an application submitted under this paragraph within 20 business days of receipt thereof. An exemption shall commence for a business upon notice of approval of its application and shall expire for any year in which the business fails to meet the requirements of paragraph (1) of this subsection. Upon approval, the Chief Executive Officer and Secretary of the Commerce, Economic Growth and Tourism Commission shall provide prompt notice to the applicant and also shall provide prompt notice to the President of the Board of Public Utilities and to the Director of the Division of Taxation in the Department of the Treasury. The Chief Executive Officer and Secretary of the Commerce, Economic Growth and Tourism Commission also shall provide the president and the director with an annual list of all businesses that have been approved under this subsection.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 375

AN ACT concerning health insurance coverage for certain dependents and supplementing various parts of the statutory law.

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

C.17:48-6.19 Coverage for certain dependents until age 30 by hospital service corporation.

1. a. As used in this section, "dependent" means a subscriber's child by blood or by law who:

- (1) is less than 30 years of age;
- (2) is unmarried;
- (3) has no dependent of his own;
- (4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and
- (5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A hospital service corporation contract that provides coverage for a subscriber's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to P.L.1938, c.366 (C.17:48-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this section, shall, upon application of the dependent as set forth in subsection c. of this section, provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by a subscriber's contract, which coverage under the contract terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the contract;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the contract previously terminated; or

(c) during an open enrollment period, as provided pursuant to the contract, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the open enrollment period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under a subscriber's contract terminated under the terms of the contract prior to the effective date of this section, may make a written election to reinstate coverage under that contract as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which is identical to the coverage provided to that dependent prior to the termination of coverage at the specific age provided in the contract. If coverage is modified under the contract for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the contract, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The subscriber's contract may require payment of a premium by the subscriber or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The payment shall not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the contract prior to the termination of coverage at the specific age provided in the contract.

(2) The applicable portion of the premium previously paid for the dependent's coverage under the contract shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the contract's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments of the premium may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the contract by reason of a failure to make a timely payment of any premium required under the contract by the subscriber or dependent for coverage provided pursuant to this section. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the contract; or

(3) the date upon which the employer under whose contract coverage is provided to a dependent ceases to provide coverage to the subscriber.

Nothing herein shall be construed to permit a hospital service corporation to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to a subscriber:

(1) in the certificate of coverage prepared for subscribers by the hospital service corporation on or about the date of commencement of coverage; and

(2) by the subscriber's employer:

(a) on or before the coverage of a subscriber's dependent terminates at the specific age as provided in the contract;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before any open enrollment period permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of the section, to make a written election to reinstate coverage under a contract pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those contracts in which the hospital service corporation has reserved the right to change the premium.

C.17:48A-7.13 Coverage for certain dependents until age 30 by medical service corporation.

2. a. As used in this section, "dependent" means a subscriber's child by blood or by law who:

(1) is less than 30 years of age;

(2) is unmarried;

(3) has no dependent of his own;

(4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and

(5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A medical service corporation contract that provides coverage for a subscriber's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this section, shall, upon application of the dependent as set forth in subsection c. of this section, provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by a subscriber's contract, which coverage under the contract terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the contract;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the contract previously terminated; or

(c) during an open enrollment period, as provided pursuant to the contract, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the open enrollment period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under a subscriber's contract terminated under the terms of the contract prior to the effective date of this section, may make a written election to reinstate coverage under that contract as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which is identical to the coverage provided to that dependent prior to the termina-

tion of coverage at the specific age provided in the contract. If coverage is modified under the contract for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the contract, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The subscriber's contract may require payment of a premium by the subscriber or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The premium shall not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the contract prior to the termination of coverage at the specific age provided in the contract.

(2) The applicable portion of the premium previously paid for the dependent's coverage under the contract shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the contract's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments of the premium may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the contract by reason of a failure to make a timely payment of any premium required under the contract by the subscriber or dependent for coverage provided pursuant to this section. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the contract; or

(3) the date upon which the employer under whose contract coverage is provided to a dependent ceases to provide coverage to the subscriber.

Nothing herein shall be construed to permit a medical service corporation to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to a subscriber:

(1) in the certificate of coverage prepared for subscribers by the medical service corporation on or about the date of commencement of coverage; and

(2) by the subscriber's employer:

(a) on or before the coverage of a subscriber's dependent terminates at the specific age as provided in the contract;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before any open enrollment period permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of the section, to make a written election to reinstate coverage under a contract pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those contracts in which the medical service corporation has reserved the right to change the premium.

C.17:48E-30.1 Coverage for certain dependents until age 30 by health service corporation.

3. a. As used in this section, "dependent" means a subscriber's child by blood or by law who:

(1) is less than 30 years of age;

(2) is unmarried;

(3) has no dependent of his own;

(4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and

(5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A health service corporation contract that provides coverage for a subscriber's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.), or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this section, shall, upon application of the dependent as set forth in subsection

c. of this section, provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by a subscriber's contract, which coverage under the contract terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the contract;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the contract previously terminated; or

(c) during an open enrollment period, as provided pursuant to the contract, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the open enrollment period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under a subscriber's contract terminated under the terms of the contract prior to the effective date of this section, may make a written election to reinstate coverage under that contract as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which is identical to the coverage provided to that dependent prior to the termination of coverage at the specific age provided in the contract. If coverage is modified under the contract for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the contract, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The subscriber's contract may require payment of a premium by the subscriber or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The premium shall not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the

contract prior to the termination of coverage at the specific age provided in the contract.

(2) The applicable portion of the premium previously paid for the dependent's coverage under the contract shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the contract's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments of the premium may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the contract by reason of a failure to make a timely payment of any premium required under the contract by the subscriber or dependent for coverage provided pursuant to this section. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the contract; or

(3) the date upon which the employer under whose contract coverage is provided to a dependent ceases to provide coverage to the subscriber.

Nothing herein shall be construed to permit a health service corporation to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to a subscriber:

(1) in the certificate of coverage prepared for subscribers by the health service corporation on or about the date of commencement of coverage; and

(2) by the subscriber's employer:

(a) on or before the coverage of a subscriber's dependent terminates at the specific age as provided in the contract;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before any open enrollment period permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of the section, to make a written election to reinstate coverage under a contract pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those contracts in which the health service corporation has reserved the right to change the premium.

C.17B:27-30.5 Coverage for certain dependents until age 30 by group health insurance policy.

4. a. As used in this section, "dependent" means an insured's child by blood or by law who:

- (1) is less than 30 years of age;
- (2) is unmarried;
- (3) has no dependent of his own;
- (4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and
- (5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A group health insurance policy that provides coverage for an insured's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to chapter 27 of Title 17B of the New Jersey Statutes, or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this section, shall, upon application of the dependent as set forth in subsection c. of this section, provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by an insured's policy, which coverage under the policy terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the policy;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the policy previously terminated; or

(c) during an open enrollment period, as provided pursuant to the policy, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the open enrollment period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under an insured's policy terminated under the terms of the policy prior to the effective date of this section, may make a written election to reinstate coverage under that policy as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which is identical to the coverage provided to that dependent prior to the termination of coverage at the specific age provided in the policy. If coverage is modified under the policy for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the policy, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The insured's policy may require payment of a premium by the insured or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The premium shall not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the policy prior to the termination of coverage at the specific age provided in the policy.

(2) The applicable portion of the premium previously paid for the dependent's coverage under the policy shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the policy's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments of the premium may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the policy by reason of a failure to make a timely payment of any premium required under the policy by the insured or dependent for coverage provided pursuant to this section. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the policy; or

(3) the date upon which the employer under whose policy coverage is provided to a dependent ceases to provide coverage to the insured.

Nothing herein shall be construed to permit an insurer to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to an insured:

(1) in the certificate of coverage prepared for insureds by the insurer on or about the date of commencement of coverage; and

(2) by the insured's employer:

(a) on or before the coverage of an insured's dependent terminates at the specific age as provided in the policy;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before any open enrollment period permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of the section, to make a written election to reinstate coverage under a policy pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those policies in which the insurer has reserved the right to change the premium.

C.17B:27A-19.16 Coverage for certain dependents until age 30 by small employer health benefits plan.

5. a. As used in this section, "dependent" means a covered person's child by blood or by law who:

(1) is less than 30 years of age;

(2) is unmarried;

(3) has no dependent of his own;

(4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and

(5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A small employer health benefits plan that provides coverage for a covered person's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.) or approved for issuance or renewal in this State by the Commissioner of Banking and Insurance on or after the effective date of this section, shall, upon application of the dependent as set forth in subsection c. of this section, provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by a covered person's plan, which coverage under the plan terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the plan;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the plan previously terminated; or

(c) during a 30-day period in each year following the year coverage terminates at the specific age as provided in the plan, which period shall begin on the anniversary date on which the dependent's coverage terminates at the specific age as provided in the plan, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the 30-day period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under a covered person's plan terminated under the terms of the plan prior to the effective date of this section, may make a written election to reinstate coverage under that plan as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which

is identical to the coverage provided to that dependent prior to the termination of coverage at the specific age provided in the plan. If coverage is modified under the plan for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the plan, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The covered person's plan may require payment of a premium by the covered person or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The premium shall not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the plan prior to the termination of coverage at the specific age provided in the plan.

(2) The applicable portion of the premium previously paid for the dependent's coverage under the plan shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the plan's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments of the premium may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the plan by reason of a failure to make a timely payment of any premium required under the plan by the covered person or dependent for coverage provided pursuant to this section. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the plan; or

(3) the date upon which the employer under whose plan coverage is provided to a dependent ceases to provide coverage to the covered person.

Nothing herein shall be construed to permit a carrier to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to a covered person:

(1) in the certificate of coverage prepared for covered persons by the carrier on or about the date of commencement of coverage; and

(2) by the covered person's employer:

(a) on or before the coverage of a covered person's dependent terminates at the specific age as provided in the plan;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before the 30 day period in each year following the year coverage terminates at the specific age as provided in the plan, permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of this section, to make a written election to reinstate coverage under a plan pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those plans in which the carrier has reserved the right to change the premium.

C.26:2J-10.3 Coverage for certain dependents until age 30 by health maintenance organization.

6. a. As used in this section, "dependent" means an enrollee's child by blood or by law who:

(1) is less than 30 years of age;

(2) is unmarried;

(3) has no dependent of his own;

(4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and

(5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. (1) A health maintenance organization contract that provides coverage for an enrollee's dependent under which coverage of the dependent terminates at a specific age before the dependent's 30th birthday, and is delivered, issued, executed or renewed in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.) on or after the effective date of this section, shall, upon the application of the dependent as set forth in subsection c. of this section,

provide coverage to the dependent after that specific age, until the dependent's 30th birthday.

(2) Nothing herein shall be construed to require:

(a) coverage for services provided to a dependent before the effective date of this section; or

(b) that an employer pay all or part of the cost of coverage for a dependent as provided pursuant to this section.

c. (1) A dependent covered by an enrollee's contract, which coverage under the contract terminates at a specific age before the dependent's 30th birthday, may make a written election for coverage as a dependent pursuant to this section, until the dependent's 30th birthday:

(a) within 30 days prior to the termination of coverage at the specific age provided in the contract;

(b) within 30 days after meeting the requirements for dependent status as set forth in subsection a. of this section, when coverage for the dependent under the contract previously terminated; or

(c) during an open enrollment period, as provided pursuant to the contract, if the dependent meets the requirements for dependent status as set forth in subsection a. of this section during the open enrollment period.

(2) For 12 months after the effective date of this section, a dependent who qualifies for dependent status as set forth in subsection a. of this section, but whose coverage as a dependent under an enrollee's contract terminated under the terms of the contract prior to the effective date of this section, may make a written election to reinstate coverage under that contract as a dependent pursuant to this section.

d. (1) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall consist of coverage which is identical to the coverage provided to that dependent prior to the termination of coverage at the specific age provided in the contract. If coverage is modified under the contract for any similarly situated dependents for coverage prior to the termination of coverage at the specific age provided in the contract, the coverage shall also be modified in the same manner for the dependent.

(2) Coverage for a dependent who makes a written election for coverage pursuant to subsection c. of this section shall not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

e. (1) The enrollee's contract may require payment under the schedule of charges by the enrollee or dependent, as appropriate, subject to the approval of the Commissioner of Banking and Insurance, for any period of coverage relating to a dependent's written election for coverage pursuant to subsection c. of this section. The payment shall not exceed 102% of the applicable portion of the schedule of charges previously paid for that depend-

ent's coverage under the contract prior to the termination of coverage at the specific age provided in the contract.

(2) The applicable portion of the schedule of charges previously paid for the dependent's coverage under the contract shall be determined pursuant to regulations promulgated by the Commissioner of Banking and Insurance, based upon the difference between the contract's rating tiers for adult and dependent coverage or family coverage, as appropriate, and single coverage, or based upon any other formula or dependent rating tier deemed appropriate by the commissioner which provides a substantially similar result.

(3) Payments under the schedule of charges may, at the election of the payor, be made in monthly installments.

f. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(1) the dependent is disqualified for dependent status as set forth in subsection a. of this section;

(2) the date on which coverage ceases under the contract by reason of a failure to make a timely payment under any schedule of charges required under the contract by the enrollee or dependent for coverage provided pursuant to this section. The payment under any schedule of charges shall be considered to be timely if made within 30 days after the due date or within a longer period as may be provided for by the contract; or

(3) the date upon which the employer under whose contract coverage is provided to a dependent ceases to provide coverage to the enrollee.

Nothing herein shall be construed to permit a health maintenance organization to refuse a written election for coverage by a dependent pursuant to subsection c. of this section, based upon the dependent's prior disqualification pursuant to paragraph (1) of this subsection.

g. Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to an enrollee:

(1) in the certificate of coverage prepared for enrollees by the health maintenance organization on or about the date of commencement of coverage; and

(2) by the enrollee's employer:

(a) on or before the coverage of an enrollee's dependent terminates at the specific age as provided in the contract;

(b) at the time coverage of the dependent is no longer provided pursuant to this section because the dependent is disqualified for dependent status as set forth in subsection a. of this section, except this employer notice shall not be required when a dependent no longer qualifies based upon paragraph (1) or (3) of subsection a. of this section;

(c) before any open enrollment period permitting a dependent to make a written election for coverage pursuant to subsection c. of this section; and

(d) immediately following the effective date of this section, with respect to information concerning a dependent's opportunity, for 12 months after the effective date of the section, to make a written election to reinstate coverage under a contract pursuant to paragraph (2) of subsection c. of this section.

h. This section shall apply to those contracts in which the health maintenance organization has reserved the right to change the schedule of charges.

C.52:14-17.29k Coverage for certain dependents until age 30 by insurers covered by SHBP.

7. a. As used in this section, "dependent" means a covered person's child by blood or by law who:

- (1) is less than 30 years of age;
- (2) is unmarried;
- (3) has no dependent of his own;
- (4) is a resident of this State or is enrolled as a full-time student at an accredited public or private institution of higher education; and
- (5) is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C. s.1395 et seq.).

b. The State Health Benefits Commission shall ensure that every contract purchased or renewed by the commission on or after the effective date of P.L.2005, c.375 (C.17:48-6.19 et al.), prohibits the termination of coverage of a dependent before the dependent's 23rd birthday by reason of age, and complies with the provisions of P.L.2005, c.375 (C.17:48-6.19 et al.) concerning the coverage of a dependent by written election until the dependent's 30th birthday. The cost of coverage pursuant to this section shall be reimbursed by the employee to the New Jersey State Health Benefits Program, in accordance with a rate to be determined by the commission.

c. Nothing within this section shall be construed to: (1) prevent any contract purchased or renewed by the commission from providing coverage for a dependent which terminates at a specific age after the dependent child's 23rd birthday; or (2) require coverage for services provided to a dependent before the effective date of P.L.2005, c.375 (C.17:48-6.19 et al.).

8. This act shall take effect on the 120th day after enactment, and shall apply to all contracts, policies, or plans that are delivered, issued, executed or renewed, or approved for issuance or renewal in this State on or after the effective date

Approved January 12, 2006.

CHAPTER 376

AN ACT concerning the regulation of bounty hunters and supplementing Title 45 of the Revised Statutes.

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

C.45:19-28 Short title.

1. This act shall be known and may be cited as the "Bounty Hunter Licensing Act."

C.45:19-29 Definitions relative to regulation of bounty hunters.

2. As used in this act:

a. "Bounty hunter" means and includes any bail runner, bail recovery agent, bail enforcement agent, fugitive recovery agent or any other person who, for fee, hire or reward: makes any investigation or investigations as to the location or whereabouts of any person who has violated the provisions of N.J.S.2C:29-7 or has failed to appear in any court of law in this State or any other state, when so required by law, or has failed to answer any charge, subpoena or court ordered inquiry, when so required by law; engages in or assists in the apprehension, arrest, detention, confinement, surrender or securing of any such person; or keeps any such person under surveillance.

The term shall mean and include any person who owns or operates any agency, firm, association, corporation or other entity which is organized primarily for the purpose of engaging in any of the above enumerated activities, and to any employee, agent, associate or subcontractor of any such agency, firm, association, corporation or other entity who performs any of the functions, activities or services of a bounty hunter as described in this subsection.

The term shall not mean or include, and nothing in this act shall apply to, law enforcement officers of this State, or of any political subdivision of this State, while in the actual performance of their duties, nor to officers or employees of any law enforcement agency of the United States or of any State, Territory or Possession of the United States, while in the actual performance of their duties.

b. "Superintendent" means the Superintendent of the Division of State Police in the Department of Law and Public Safety.

C.45:19-30 Licensure required, violation, fourth degree crime.

3. No person shall engage in the business of, or perform, or offer to perform, the functions, activities or services of a bounty hunter, or advertise or hold a business out to be that of a bounty hunter, unless the person is licensed by the superintendent as set forth in this act. Any person who

violates the provisions of this section shall be guilty of a crime of the fourth degree.

C.45:19-31 Application for licensure.

4. a. An application for licensure as a bounty hunter shall be submitted to the superintendent by the applicant on a form and in a manner prescribed by the superintendent and shall contain the following information:

(1) the full name, age, which shall be at least 25 years, and residence of the applicant;

(2) the full and complete employment history of the applicant;

(3) verification that the applicant has had at least five years of law enforcement experience as a law enforcement officer with an organized law enforcement agency of this State, or of any political subdivision of this State, or of the United States or of any state, territory or possession of the United States, and is no longer employed by or attached in any capacity whatsoever to any law enforcement agency, or that the applicant is a licensed private detective or has been employed by a licensed private detective for at least five years;

(4) the location of the applicant's proposed principal place of business and any office, bureau, agency or subdivision; and

(5) such further information as the superintendent may require to show the good character, competency and integrity of the applicant.

Each application shall be accompanied by the written approval of not fewer than five reputable citizens who have known the applicant for at least three years preceding the date of application and who shall certify that the applicant is a person of good moral character and behavior.

b. Any person who shall knowingly make a false statement in or knowingly omit any material information from the application required by this section shall be guilty of a crime of the fourth degree in addition to any other crime or offense specified by law.

C.45:19-32 Fingerprinting, criminal history record background check for applicants.

5. a. Each applicant for licensure as a bounty hunter shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations for the purpose of a criminal history record background check to be performed by the superintendent. No check of criminal history record background information shall be performed pursuant to this section unless the applicant has furnished written consent to such check. An applicant who refuses to consent to, or cooperate in, the securing of a check of criminal history record background information shall not be considered for licensure as a bounty hunter. Each applicant shall bear the cost of the criminal history record background check, including all costs of administering and processing the check. The superintendent shall compare the applicant's fingerprints

with information on file with the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations.

b. No person shall be licensed as a bounty hunter under the provisions of this act if the person has been convicted, as indicated by a criminal history record background check performed pursuant to the provisions of this section, of:

- (1) a crime of the first, second, third or fourth degree;
- (2) an offense involving the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2; or
- (3) an offense where the issuance of a license would be contrary to the public interest, as determined by the superintendent.

C.45:19-33 Issuance of license, fee.

6. The superintendent, when satisfied with the examination of any application, and such further inquiry and investigations as he shall deem proper as to the good character, competency and integrity of the applicant, and upon proof of satisfactory completion by the applicant of the education and training program if required, shall issue a bounty hunter license to an applicant upon payment of a fee in an amount established by the superintendent by rule and regulation and execution of a bond in a manner, form and amount satisfactory to the superintendent as established by rule and regulation. The license shall be renewable every two years upon payment of a renewal fee in an amount established by the superintendent by rule and regulation.

C.45:19-34 Issuance of identification card.

7. a. The superintendent shall cause to be issued to a licensed bounty hunter an identification card containing such information as the superintendent shall prescribe.

b. A person who is issued an identification card pursuant to subsection a. of this section shall be responsible for its safekeeping and shall not lend, let or allow any other person to use, possess, exhibit or display the card.

c. No person shall use, possess, exhibit or display any license or identification card purporting to authorize such person to act as a bounty hunter, unless such person is the holder of a valid bounty hunter license issued pursuant to the provisions of this act.

d. If it is established to the satisfaction of the superintendent that a license or identification card has been lost or destroyed, the superintendent shall, upon payment of an appropriate fee, cause to be issued a duplicate license or identification card.

e. Any person who violates the provisions of this section shall be guilty of a crime of the fourth degree in addition to any other crime or offense specified by law.

C.45:19-35 Employees of license holder, "employee's statement" required.

8. a. The holder of any license issued under the provisions of this act may employ as many persons as the licensee may deem necessary to assist the licensee in the licensee's work and in the conduct of the licensee's business. The licensee shall be liable, accountable and responsible for the actions and conduct in connection with his or her business of each person so employed.

b. The holder of any license issued under the provisions of this act shall require each person employed to execute and furnish a verified statement, to be known as an "employee's statement," which shall set forth the employee's full name, residence, place and date of birth and such other information as the superintendent shall require by rule or regulation. The licensee shall retain in safe keeping, and the superintendent shall at all times have access to and may from time to time examine, each "employee's statement." The holder of any license issued under the provisions of this act shall pay to the superintendent an additional fee, in an amount established by the superintendent by rule or regulation, for each person employed by the licensee.

c. A licensee who fails to comply with any of the provisions of this section shall be guilty of a crime of the fourth degree in addition to any other crime or offense specified by law. Any person who shall knowingly make a false statement in or knowingly omit any material information from the "employee's statement" required by this section shall be guilty of a crime of the fourth degree in addition to any other crime or offense specified by law.

C.45:19-36 Fingerprinting, criminal history record background check for employees of licensed bounty hunter.

9. a. Each person seeking employment by a licensed bounty hunter pursuant to the provisions of this act shall submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations for the purpose of a criminal history record background check to be performed by the superintendent. No check of criminal history record background information shall be performed pursuant to this section unless the person has furnished written consent to such check. Anyone who refuses to consent to, or cooperate in, the securing of a check of criminal history record background information shall not be considered for employment by the licensee. The prospective employee shall bear the cost of the criminal history record background check, including all costs of administering and processing the check. The superintendent shall compare the person's fingerprints with information on file with the State Bureau of Identification in the Division

of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations.

b. A person who is required to be licensed pursuant to the provisions of this act shall not knowingly employ in any capacity whatsoever any person who has been convicted, as indicated by a criminal history record background check performed pursuant to the provisions of this section, of:

- (1) a crime of the first, second, third or fourth degree;
- (2) an offense involving the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2; or
- (3) an offense where employment of the person by the licensee would be contrary to the public interest, as determined by the superintendent.

c. A person who is required to be licensed pursuant to the provisions of this act who employs any person for whom a criminal history record background check required by this section has not been performed or whom the licensee knows has been convicted of a disqualifying crime or offense as set forth in this section shall be guilty of a crime of the fourth degree in addition to any other crime or offense specified by applicable law. Each violation of this section shall constitute a separate offense.

C.45:19-37 "Unlawful force" defined, penalties for use.

10. a. Any person who is required to be licensed pursuant to the provisions of this act who enters any premises or dwelling without license or privilege or who employs the use of unlawful force in engaging in or assisting in the apprehension, arrest, detention, confinement, surrender, securing or surveillance of any person who has violated the provisions of N.J.S.2C:29-7 or has failed to appear in any court of law in this State or any other state, when so required by law, or has failed to answer any charge, subpoena or court ordered inquiry, when so required by law, shall, in addition to any other criminal penalties provided under law, be guilty of a crime of the fourth degree.

As used in this section, the term "unlawful force" shall have the same meaning as set forth in N.J.S.2C:3-11.

b. A person who is required to be licensed pursuant to the provisions of this act shall not purchase, possess or carry a handgun, firearm or other weapon unless otherwise permitted under chapter 39 or 58 of Title 2C of the New Jersey Statutes. A person who violates the provisions of this subsection shall, in addition to any other criminal penalties provided under law, be guilty of a crime of the fourth degree.

C.45:19-38 Powers of superintendent.

11. For the purpose of investigating whether a person has engaged in, or is engaging in, any act or practice declared unlawful under this act, or for the purpose of investigating the character, competency, integrity or methods

of operation of applicants or licensees hereunder, the superintendent shall have the power to:

- a. require any person to file on such form as may be prescribed by the superintendent, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning any matter being investigated;
- b. administer oaths or affirmations and examine any person in connection with any investigation;
- c. inspect any premises and examine any record, book, computer, electronic database, recording device, document, account, paper or other tangible thing, without prior notification, in connection with any investigation;
- d. upon court order or warrant, seize and impound any record, book, computer, electronic database, recording device, document, account, paper or other tangible thing in connection with any investigation, except that nothing in this subsection shall be construed to prohibit the seizure and impoundment of any of the foregoing items in the absence of a court order or warrant:
 - (1) with the consent of the applicant, licensee or other person being investigated or the employee, agent or other individual who is in control of the premises upon which an investigation is being conducted;
 - (2) when circumstances presenting an imminent danger to the public health or safety exist; or
 - (3) when any other legally recognized exception to the warrant requirement exists and a court order or warrant is not constitutionally required;
- e. hold investigative hearings and issue subpoenas to compel the attendance of any person or the production of any record, book, computer, electronic database, recording device, document, account, paper or other tangible thing in connection with any investigation; and
- f. apply to the Superior Court for an order compelling compliance with any subpoena or other request for information.

Nothing contained in this section shall be construed to limit, waive or abrogate the scope or effect of any statutory or common law privilege, including but not limited to, the attorney-client privilege.

C.45:19-39 Violation, revocation, suspension of license.

12. a. A violation of any of the provisions of this act shall be cause for revocation or suspension of any license issued hereunder, notwithstanding that the same violation may constitute a crime or other offense under the laws of this State or any other state or jurisdiction. An indictment, prosecution and conviction arising out of any of the provisions of this act shall not be construed to preclude, if the evidence so warrants, an indictment, prosecu-

tion and conviction for any other crime or offense in this State or any other state or jurisdiction.

b. In addition to any other penalties prescribed by this act or any other law, a person who violates any of the provisions of this act shall be liable to a civil penalty not to exceed \$1,000 for a first offense and not to exceed \$2,500 for a second or subsequent offense. Each violation shall constitute a separate offense for the purposes of this section. A penalty imposed pursuant to this section shall be recovered in a civil action pursuant to "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.45:19-40 Rules, regulations.

13. The superintendent shall promulgate rules and regulations necessary to carry out the provisions of this act.

C.45:19-41 Licensing of existing bounty hunters, conditions.

14. A person who, for at least five years prior to the effective date of this act, has engaged in the business of or performed the functions, activities or services of a bounty hunter, or has held a business out to be that of a bounty hunter, and who fulfills all the requirements of this act, except for the requirements set forth in paragraph (3) of subsection a. of section 4 of this act, may make application to the superintendent to be licensed pursuant to the provisions of this act, provided such application shall be received by the superintendent within 60 days of the effective date of this act.

C.45:19-42 Education and training program for bounty hunters.

15. a. The superintendent, through rule and regulation, shall establish an education and training program for bounty hunters who make application to be licensed pursuant to the provisions of section 14 of this act. The program shall consist of such subjects and courses as the superintendent may deem appropriate and shall include a minimum number of hours of classroom or other instruction.

b. In implementing and administering the education and training program required in subsection a. of this section, the superintendent shall have the power:

(1) to implement and administer or approve the minimum courses of study and training;

(2) to issue certificates of approval to schools approved by the superintendent and to withdraw certificates of approval from those schools disapproved by the superintendent;

(3) to certify instructors pursuant to the minimum qualifications established by the superintendent;

(4) to consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses for bounty hunters;

(5) to consult and cooperate with departments and agencies of this State, other states and the federal government concerned with training of bounty hunters;

(6) to certify those persons who have satisfactorily completed basic educational and training requirements;

(7) to visit and inspect approved schools;

(8) to establish reasonable charges for training and education provided by the superintendent; and

(9) to make such rules and regulations and to perform such other duties as may be reasonably necessary or appropriate to implement the education and training program.

16. This act shall take effect on the first day of the 13th month after enactment, except that the superintendent may take, prior to the effective date, such anticipatory administrative action as shall be necessary for the implementation of this act.

Approved January 12, 2006.

CHAPTER 377

AN ACT to promote cooperation, partnerships and the exchange of information across the Mid-Atlantic region, ratifying on behalf of the State of New Jersey a compact therefor and making an appropriation.

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

C.52:9X-11 Short title.

1. This act shall be known and may be cited as the "SMART Research and Development Compact Act."

C.52:9X-12 SMART Research and Development Compact ratified.

2. The State of New Jersey hereby ratifies the SMART Research and Development Compact with any other state legally joining therein, which compact is substantially as follows:

ARTICLE I

a. The shared borders, similar economic, environmental, and socioeconomic traits as well as the common historical attributes between the residents of Delaware, Maryland, New Jersey, and Pennsylvania, bind the four states into a common Mid-Atlantic region.

b. This region presents a rich framework of approximately 618 colleges and universities, including approximately 38 leading engineering colleges with a variety of technical expertise and ingenious research and development programs within every field of science and technology.

c. This region contains a variety of federally owned and generated laboratories or organizations assigned with the task of performing needed research and development in most of our Nation's technical areas, highlighted by defense, transportation, health, energy, and communications.

d. This region possesses a great wealth of private manufacturers, laboratories, and nonprofit organizations in each of the scientific and technological pursuits, such as homeland security, defense, aerospace, manufacturing, information systems, materials, chemicals, medical applications, and pharmaceuticals.

e. Increased cooperation between the above-mentioned institutions and the four Mid-Atlantic State governments may effectively enhance the region's contribution to the United States in all fields of science and technology and promote academic, private and public research and development, technical enterprise, and intellectual vitality.

f. A multi-state organization assigned with the task of linking various institutions across different jurisdictions and promoting working partnerships may further assist the United States by providing a model for the rest of the nation for the effective use of limited national, State, and local funding resources.

ARTICLE II

There is created the SMART (Strengthening the Mid-Atlantic Region for Tomorrow) Research and Development Compact (hereinafter referred to as "the compact"). The purpose of the compact is to promote the contribution of the Mid-Atlantic region to the nation's research and development in science and technology, and to create a multi-state organization, the purpose of which is to oversee and help facilitate the acquisition of research and development funding, and to enhance the cooperation, formation of partnerships, and sharing of information among businesses, academic institutions, federal and state governmental agencies, laboratories, federally owned and operated

laboratories, and nonprofit entities, within the Mid-Atlantic region comprised of the states of Delaware, Maryland, New Jersey, and Pennsylvania.

ARTICLE III

a. The states eligible to become parties to the compact shall be the four states of Delaware, Maryland, New Jersey and Pennsylvania.

b. Each state eligible to become a party state to the compact shall be declared a "party state" upon enactment of the compact into law by the state.

ARTICLE IV

a. The party states agree to establish a multi-state organization as a joint organization to be known as the SMART Organization (hereinafter referred to as "the organization").

b. The organization shall be headed by a Board of Directors that shall consist of a representative from each party state, appointed as provided by the law of that state, and representatives from the party states for each technology class described in ARTICLE V of the compact. The Board of Directors may also include representatives of any business, academic institution, nonprofit agency, federal or state governmental agency, laboratory, and federally owned and operated laboratory within the party states.

c. The Board of Directors shall oversee and direct the projects, administration, and policies of the organization and may create and utilize the services of technology-designated working groups to identify goals and sources of funding, establish research and development projects, detect new technology advances for the Mid-Atlantic region to pursue, and facilitate cooperation among regional entities. The Board of Directors and working groups in the organization shall serve without compensation and shall hold regular quarterly meetings and such special meetings as their business may require.

d. The organization shall adopt bylaws and any other such rules or procedures as may be needed. The organization may hold hearings and conduct studies and surveys to carry out its purpose. The organization may acquire by gift or otherwise and hold and dispose of such money and property as may be provided for the proper performance of its functions, may cooperate with other public or private groups, whether local, state, regional, or national, having an interest in economic or technology development, and may exercise such other powers as may be appropriate to accomplish its functions and duties in connection with the development of the organization and to carry out the purpose of the compact.

ARTICLE V

Not including state representatives, the Board of Directors of the organization and technology working groups may represent and originate from the following technology classes: information technology, sensors, rotorcraft technology, manufacturing technology, fire and emergency medical services, financial technology, alternative fuels, nanotechnology, electronics, environmental, telecommunications, chemical and biological, biomedical, opto-electric, materials and aerospace, and defense systems including directed energy, missile defense, future combat systems, and unmanned aerial vehicles. The organization may at any time, upon approval by the Board of Directors, designate and assign new technology classes and may at any time remove an existing technology class from this list and the organization's activities.

ARTICLE VI

The Board of Directors shall appoint a full-time paid executive director, who shall be a person familiar with the nature of the procedures and the significance of scientific funding, research and development, economic development, and the informational, educational, and publicity methods of stimulating general interest in such developments. The duties of the executive director are to carry out the goals and directives of the Board of Directors and administer the actions of each working group as chairman. The executive director may hire a staff and shall be the administrative head of the organization, whose term of office shall be at the pleasure of the Board of Directors.

ARTICLE VII

The State of New Jersey recognizes that the compact shall continue in force and remain binding upon each party state until such time as the party state takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by a party state desiring to withdraw to all the other party states.

ARTICLE VIII

The State of New Jersey recognizes the express right of the Congress to alter, amend or repeal the federal act granting consent of the Congress to the SMART Research and Development Compact.

ARTICLE IX

The compact shall become operative in a party state upon enactment by that state. The compact shall become initially effective in the Mid-Atlantic region upon enactment of the compact into law by two or more party states and consent has been given to it by Congress.

C.52:9X-13 Transmission of authenticated copies of act.

3. Duly authenticated copies of this act shall, upon its approval, be transmitted to the Governor of each of the states of Delaware, Maryland and Pennsylvania, to the President of the Senate of the United States, to the Speaker of the House of Representatives and to the Secretary of State of the United States.

4. There is appropriated from the General Fund to the SMART Organization the sum of \$25,000 to effectuate the purposes of this act.

5. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 378

AN ACT concerning tourism, amending and supplementing P.L.1977, c.225 (C.34:1A-45 et seq.) and amending P.L.1998, c.44.

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

1. Section 2 of P.L.1977, c.225 (C.34:1A-46) is amended to read as follows:

C.34:1A-46 Legislative findings and declarations.

2. The Legislature hereby finds and declares that:

a. Increased revenues for this State and more employment opportunities for its citizens will result from the proper promotion throughout the United States and the world of the many tourist attractions which New Jersey has to offer to vacationers and travelers.

b. Such proper promotion--and the desired expansion of tourism in New Jersey--will be enhanced by the formulation of a master plan for the development of the tourist industry throughout New Jersey.

c. The objective of State policy through its programs, agencies, and resources shall be to provide an optimum of satisfaction and high-quality service to visitors, to protect the natural beauty of New Jersey, and to sustain, promote, and expand the economic health of the tourist industry in a manner and to the extent compatible with such goals.

d. To implement this policy, the Commerce, Economic Growth and Tourism Commission shall create advertisements for use on television, radio, the Internet and in print, to promote the State's diverse appeal to prospective national and international vacationers and travelers as part of its advertising, public relations, and marketing campaign. In addition, as required pursuant to section 9 of P.L.1977, c.225 (C.34:1A-53), the Division of Travel and Tourism shall annually review the 10-year master plan developed pursuant to section 8 of P.L.1977, c.225 (C.34:1A-52) by the director of the division with the assistance of the New Jersey Tourism Policy Council, and submit a report to the Governor and Legislature containing an evaluation of the preceding year's activities and developments in tourism and the revisions recommended in the master plan.

e. In the advancement and promotion of New Jersey's tourism industry, it is necessary to change the name of the New Jersey Commerce and Economic Growth Commission to the New Jersey Commerce, Economic Growth and Tourism Commission and to require that the division report semiannually to the Governor and the Legislature on the efforts of the commission to promote tourism in New Jersey and on the expenditure of funds allocated to tourism advertising and promotion from hotel and motel occupancy fees pursuant to section 2 of P.L.2003, c.114 (C.54:32D-2). As tourism may be particularly sensitive to changing economic conditions, a frequent review of the State's tourism planning and activities may necessitate revisions in the State's tourism policy to further encourage tourism promotion and to otherwise meet the challenges of implementing this policy.

2. Section 3 of P.L.1977, c.225 (C.34:1A-47) is amended to read as follows:

C.34:1A-47 Definitions.

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

"Commission" means the New Jersey Commerce, Economic Growth and Tourism Commission established pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

"Council" means the New Jersey Tourism Policy Council.

"Director" means the Director of the Division of Travel and Tourism.

"Division" means the Division of Travel and Tourism in the New Jersey Commerce, Economic Growth and Tourism Commission.

"Elected local official" means the county executive of any county wherein that office is established, a member of the governing body of a county, or a mayor or member of the governing body of a municipality.

"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.

"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.

3. Section 4 of P.L.1977, c.225 (C.34:1A-48) is amended to read as follows:

C.34:1A-48 Division of Travel and Tourism, establishment; director, appointment.

4. There is hereby established in the New Jersey Commerce, Economic Growth and Tourism Commission ("commission") the Division of Travel and Tourism. The division shall be under the supervision of a director, who shall be a person qualified by training and experience to direct the work of such division. The director shall be appointed by the Governor after consultation with the council and with the advice and consent of the Senate. The director shall serve during the term of office of the Governor appointing the director and until the director's successor is appointed and qualified. The director shall receive such salary as shall be provided by law and shall devote the director's entire time and attention to the duties of the director's office and shall not, while in office, engage in any other gainful pursuit. The Governor may remove the director from office for cause, upon notice and opportunity to be heard.

4. Section 7 of P.L.1977, c.225 (C.34:1A-51) is amended to read as follows:

C.34:1A-51 New Jersey Tourism Policy Council.

7. a. There is created in the division the New Jersey Tourism Policy Council which shall consist of 23 members:

(1) Two members of the Senate, who shall serve as ex officio, non-voting members to be appointed by the President thereof, not more than one of whom shall be of the same political party, and two members of the General Assembly, who shall serve as ex officio, non-voting members to be appointed by the Speaker thereof, not more than one of whom shall be of the same political party;

(2) Nine public members, who shall be residents of this State, not more than five of whom shall be of the same political party, who shall be appointed by the Governor with the advice and consent of the Senate, who shall include persons who by experience or training represent the areas of the tourist industry as follows:

- One representative of the lodging sector;
- One representative of the food service sector;
- One representative of the eco-tourism sector;
- One representative of the cultural arts sector;
- One representative of the convention and visitor bureaus or tour/receptive services sectors;
- One representative of the entertainment or amusement sector;
- One representative of the outdoor recreation sector;
- One representative of the historical community; and
- One representative of a Statewide travel and tourism association representing the various sectors of the tourism industry;

(3) The Chief Executive Officer and Secretary of the commission, who shall serve ex officio as a voting member and chair of the council;

(4) Six elected local officials, not more than three of whom shall be of the same political party, who shall be appointed by the Governor with the advice and consent of the Senate, and of whom one shall be a resident of Cape May or Cumberland County, one shall be a resident of Atlantic County, one shall be a resident of Burlington, Camden, Gloucester, Mercer or Salem County, one shall be a resident of Monmouth or Ocean County, one shall be a resident of Bergen, Essex, Hudson, Middlesex, Passaic or Union County, and one shall be a resident of Hunterdon, Morris, Somerset, Sussex or Warren County; and

(5) The executive directors of the New Jersey Sports and Exposition Authority, the Casino Reinvestment Development Authority, and the Atlantic City Convention Center Authority, or their designees, all of whom shall serve ex officio and as voting members.

b. (1) The public members of the council shall be appointed to three-year terms, except that public members initially appointed on or after the effective date of P.L.2005, c.378, representing the lodging, food service, and eco-tourism sectors shall be appointed to a two-year term, and public members representing the cultural arts and outdoor recreation sectors and the historical community shall be appointed to a one-year term. Public members shall serve until their successors are appointed and qualified. Vacancies occurring other than by expiration of term shall be filled for the unexpired term only.

(2) The term of appointment, as a member of the council, of an elected local official appointed pursuant to paragraph 4 of subsection a. of this

section shall be the same as the term of office, as an elected local official, that the person is serving at the time of such appointment. In the event that a member of the council appointed pursuant to that paragraph no longer serves as an elected local official, the term of appointment for that member shall cease and the Governor may, with the advice and consent of the Senate, appoint a replacement to serve for the remainder of the unexpired term. In the case of a person who, at the time of such appointment, serves as an elected local official in two different offices, the term of the person's appointment to the council shall be measured by the longer of the terms as an elected local official. Nothing in this paragraph shall preclude the reappointment as an elected local official member of the council of a person whose term of office as such elected local official has expired, but who has been reelected to succeed himself in the same local office.

c. (Deleted by amendment, P.L.1991, c.280).

d. (Deleted by amendment, P.L.1991, c.280).

e. The members of the council shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties as members.

f. (Deleted by amendment, P.L.1991, c.280).

g. The council shall meet at the call of the chair and not less than once every month.

h. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the New Jersey Tourism Advisory Council, the same shall mean and refer to the New Jersey Tourism Policy Council in the Division of Travel and Tourism.

5. Notwithstanding the provisions of any other law to the contrary, the term of office of any of the public members of the New Jersey Tourism Advisory Council serving on the effective date of P.L.2005, c.378 (C.34:1A-53.1 et al.) shall cease as of that effective date and the resulting vacancies shall be filled in the manner provided by section 7 of P.L.1977, c.225 (C.34:1A-51). However, a public member whose term of office has ceased pursuant to this section shall continue in office until a successor is appointed and qualified.

6. Section 9 of P.L.1977, c.225 (C.34:1A-53) is amended to read as follows:

C.34:1A-53 Powers and duties of division.

9. In the pursuance and promotion of a State policy on tourism, the division, at the direction of the Chief Executive Officer and Secretary of the commission, shall:

- a. Provide and promote adequate opportunities for county and municipal participation, Federal agency participation, and private citizens' involvement in the decision-making process of tourism planning and policy formulation;
- b. Encourage all State, county, and municipal governmental and private agencies to do their utmost to assure the personal safety of residents and tourists both within and without tourist destination areas;
- c. Take whatever administrative, litigable, and legislative steps as are necessary to minimize the problems of tourists in not receiving contracted services, including transportation, tours, hotels;
- d. Attempt to reconcile and balance the activities and accommodations of the tourist with the daily pursuits and lifestyles of the residents;
- e. Develop an understanding among all citizens of the role of tourism in New Jersey, both in terms of its economic and social importance and the problems it presents, through appropriate formal and informal learning experiences;
- f. Cooperate with the Department of Education to promote throughout the educational system of New Jersey an awareness of New Jersey history and culture;
- g. Ensure that the growth of the tourist industry is consistent with the attainment of economic, social, physical, and environmental objectives in any State plan and county plans that are adopted;
- h. Continuously monitor and evaluate the social costs of growth of the tourist industry against the social benefits;
- i. Emphasize in the State's tourism promotional efforts the high quality of the State's natural and cultural features;
- j. Promote the tourist industry through such activities as Visitors Bureaus and similar county and municipal agencies, and assure that the tourist industry contributes its fair share of the cost of such promotion;
- k. Request and receive from any department, division, board, bureau, commission, or other agency of the State, or any political subdivision or public authority thereof, such assistance and data as may be necessary to enable the division to carry out its responsibilities under this act;
- l. In consultation with the council, review annually and, if necessary, revise or update the 10-year master plan developed pursuant to section 8 of P.L.1977, c.225 (C.34:1A-52), and submit a report to the Governor and the Legislature containing an evaluation of the preceding year's activities and developments in tourism and the revisions recommended in the master plan;
- m. At the direction of the council, operate the commission's Travel and Tourism Cooperative Marketing Campaign Program; and
- n. Establish and operate the commission's Travel and Tourism Advertising and Promotion Program.

7. Section 10 of P.L.1977, c.225 (C.34:1A-54) is amended to read as follows:

C.34:1A-54 Duties of council.

10. The council shall:
 - a. Aid the division in the formulation and updating of the 10-year master plan developed pursuant to section 8 of P.L.1977, c.225 (C.34:1A-52) and the annual review thereof;
 - b. Consider all matters referred to it by the Chief Executive Officer and Secretary of the commission;
 - c. Make recommendations to the division on any matter relating to tourism and the tourist industry in New Jersey and to those objectives and responsibilities specified in sections 8 and 9 of P.L.1977, c.225 (C.34:1A-52 and C.34:1A-53);
 - d. Direct the division to review the spending of funds by the regional tourism councils and provide comments and recommendations to such councils on the spending of funds when appropriate;
 - e. Direct the division to encourage the development of local marketing organizations, including but not limited to destination marketing organizations and convention and visitor bureaus;
 - f. Direct the division to ensure that a recipient of funding by the commission for tourism promotion is in compliance with all terms of the funding agreement, and that the recipient's promotional message is consistent with the promotional message for the State established by the Chief Executive Officer and Secretary of the commission;
 - g. Direct the division on the operation of the commission's Travel and Tourism Cooperative Marketing Campaign Program;
 - h. Commission the New Jersey Center for Hospitality and Tourism at Richard Stockton College of New Jersey to conduct an annual survey and analysis of New Jersey's tourism industry for the purpose of providing data to improve the effectiveness of tourism promotion. The council shall direct the division to make the survey and analysis results available to tourism groups throughout the State. In a year during which the New Jersey Center for Hospitality and Tourism is unable or unavailable to conduct the survey and analysis, the council shall choose another entity to conduct the survey and analysis for that year; and
 - i. Perform other duties as assigned by the Chief Executive Officer and Secretary of the commission.

C.34:1A-53.1 Reports required from division.

8. In addition to the powers and duties of the division as provided in section 9 of P.L.1977, c.225 (C.34:1A-53), the division shall submit a report no later than January 31 and July 31 of every year on the tourism marketing

campaigns of the commission and the expenditure of funds appropriated to the commission for tourism promotion to the Governor, the President of the Senate, the Speaker of the General Assembly, the Senate Wagering, Tourism and Historic Preservation Committee and the Assembly Tourism and Gaming Committee, or their successors. The report shall include, but not be limited to, the following information:

a. A description of the efforts of the commission to promote New Jersey tourism in the six-month period ending on December 31 and June 30 preceding the respective dates on which the report is due. The report shall list: (1) the type of each promotion made, including but not limited to, promotions in the form of print, radio, Internet or television advertisements, tourism information or reference guides, tourism event calendars or the attendance by commission employees at conferences relevant to tourism promotion, (2) the content of each such advertisement, guide, calendar or other promotional aid made, or conference attended, (3) the dates and locations where tourism advertisements were shown, when such guides, calendars or other promotional aids were made available, or when such conferences took place, and (4) the aggregate amount of money expended on each advertisement, guide, calendar, promotional aid or conference listed;

b. A list of entities that received, in the six-month period ending on December 31 and June 30 preceding the respective dates on which the report is due, State matching funds under the commission's Travel and Tourism Cooperative Marketing Campaign Program and the commission's Advertising and Promotion Program, the amount of funds each entity received from either program, and the amount of each of the recipient entity's expenditures made from the funds of either program; and

c. A general description of the potential tourism promotion efforts the commission is considering for the six-month period beginning on January 1 and July 1 preceding the respective dates on which the report is due. Such description shall be distributed to the members of the council. A member of the public may receive a copy of such description upon request.

The report shall identify whether or not each of the efforts to promote tourism listed in the report is consistent with the provisions of the 10-year master plan developed pursuant to section 8 of P.L.1977, c.225 (C.34:1A-52), identify the relevant provisions of the master plan with which the effort to promote tourism is consistent or inconsistent, and provide an explanation of the consistency or inconsistency.

9. Section 1 of P.L.1998, c.44 (C.52:27C-61) is amended to read as follows:

C.52:27C-61 Short title.

1. This act shall be known and may be cited as the "New Jersey Commerce, Economic Growth and Tourism Commission Act."

10. Section 2 of P.L.1998, c.44 (C.52:27C-62) is amended to read as follows:

C.52:27C-62 Findings, declarations relative to New Jersey Commerce, Economic Growth and Tourism Commission.

2. The Legislature finds and declares that:
 - a. New Jersey is in a fierce competition for jobs and businesses, not only with other states, but throughout the world; and
 - b. The State must do all it can to increase opportunities for New Jersey citizens to enjoy economic success and prosperity; and
 - c. To attract business, New Jersey must think and act like a business, by utilizing the best available personnel, without consideration of political affiliation, selected on the basis of the skills, ability and experience, needed to provide enhanced customer service, and by responding to the needs of the business community with flexibility and agility; and
 - d. Commerce and economic development are priorities for New Jersey because success in these endeavors means the creation of jobs for our citizens. As such, commerce and economic development deserve a unique and dynamic role in our State government; and
 - e. Because we soon will be entering the 21st century, New Jersey must now boldly transform its economic development mission to be market driven, mobile and responsive enough to the future's challenges to empower New Jersey to undertake new commercial and economic ventures as the economic engine of the Northeast; and
 - f. The State and its citizens will benefit from a more sharply focused economic development vision, in which the State's efforts are coordinated under one organization, the New Jersey Commerce, Economic Growth and Tourism Commission, that coordinates economic development activities for the State with all related entities, including, but not limited to, the New Jersey Economic Development Authority, the New Jersey Commission on Science and Technology, the New Jersey Urban Enterprise Zone Authority, the Motion Picture and Television Development Commission, and the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises; and
 - g. Just as the Legislature 25 years ago could not have predicted the technological and business changes that have taken place since then, this Legislature recognizes that it, too, cannot predict the future and must, therefore, ensure that the Commerce, Economic Growth and Tourism Commis-

sion has the agility and ability to retool its focus and priorities to ensure the State's capability to respond to the technological and business changes yet to come; and

h. Economic growth and prosperity are still the number one priorities for our citizens, and by creating an innovative and independent economic development entity, the New Jersey Commerce, Economic Growth and Tourism Commission, the Legislature reaffirms that it is also a priority of government; and

i. The board of directors of the commission appointed pursuant to this act should assist the Chief Executive Officer and Secretary of the commission appointed pursuant to this act in assuring that persons appointed to the staff of the commission, because they will no longer be in the classified civil service pursuant to Title 11A of the New Jersey Statutes, will be selected on the basis of qualification and professional and technical competence, avoiding political considerations to the maximum extent possible; and

j. The New Jersey Commerce, Economic Growth and Tourism Commission promotes economic vitality and builds a foundation for world economic leadership in the 21st century and stimulates dynamic economic growth by providing resources and services to citizens, businesses and institutions, in partnership with other government agencies and the private sector, to create jobs. Because of the crucial importance tourism plays in New Jersey's economy, the commission is therefore charged with the mandate to increase tourism through promotional, informational, educational, and developmental programs. These initiatives are to be designed to maintain and increase New Jersey's standing as a premier national and international travel destination by nurturing, expanding and attracting industry, commerce, and tourism, in order to achieve the highest quality of life and ensure economic security for all our citizens.

11. Section 3 of P.L.1998, c.44 (C.52:27C-63) is amended to read as follows:

C.52:27C-63 "New Jersey Commerce, Economic Growth and Tourism Commission."

3. There is established a body corporate and politic, with corporate succession, to be known as the "New Jersey Commerce, Economic Growth and Tourism Commission" (hereinafter "the commission").

The commission shall be established in the Executive Branch of the State Government and for the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated, in but not of, the Department of the Treasury, but notwithstanding this allocation, the commission shall be independent of any supervision and control by the department or by any board or officer thereof.

12. Section 5 of P.L.1998, c.44 (C.52:27C-65) is amended to read as follows:

C.52:27C-65 Appropriations, moneys continued.

5. All appropriations and other moneys available and to become available to any department, division, bureau, board, commission, or other entity or agency, the functions, powers and duties of which have been assigned or transferred to the Department of Commerce and Economic Development, are hereby continued in the commission, except as herein otherwise provided, and shall be available for the objects and purposes for which such moneys are appropriated subject to any terms, restrictions, limitations, or other requirements imposed by State or federal law. Nothing herein shall alter the provisions of section 4 of P.L.1983, c.190 (C.34:1B-39). Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Department of Commerce and Economic Development or the New Jersey Commerce and Economic Growth Commission, the same shall mean and refer to the "New Jersey Commerce, Economic Growth and Tourism Commission" in but not of the Department of the Treasury.

13. This act shall take effect immediately; sections 1 through 12 shall remain inoperative until the 90th day after enactment, but the New Jersey Commerce and Economic Growth Commission may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 12, 2006.

CHAPTER 379

AN ACT establishing prevailing wage standards for State building service contracts and supplementing chapter 11 of Title 34 of the Revised Statutes.

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

C.34:11-56.58 Prevailing wage levels for employees furnishing State building services.

1. It is declared to be the public policy of this State to establish prevailing wage levels for the employees of contractors and subcontractors furnishing building services for any property or premises owned or leased by the State in order to safeguard the efficiency and general well-being of those

employees and to protect them and their employers from the effects of serious and unfair competition based on low wage levels which are detrimental to efficiency and well-being.

C.34:11-56.59 Definitions relative to prevailing wage levels for employees furnishing State building services.

2. As used in this act:

"Commissioner" means the Commissioner of Labor and Workforce Development or the commissioner's duly authorized representatives.

"Building services" means any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling, or other work in connection with the care, securing, or maintenance of an existing building, except that "building services" shall not include any maintenance work or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

"Leased by the State" means that not less than 55% of the property or premises is leased by the State, provided that the portion of the property or premises that is leased by the State measures more than 20,000 square feet.

"Prevailing wage for building services" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal "Service Contract Act of 1965" (41 U.S.C. s.351 et seq.), for the appropriate localities and classifications of building service employees.

"The State" means the State of New Jersey and all of its departments, bureaus, boards, commissions, agencies and instrumentalities, including any State institutions of higher education, but does not include political subdivisions.

"State institutions of higher education," means Rutgers, The State University of New Jersey, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology, and any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, but does not include any county college established pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

C.34:11-56.60 Contract to contain provision for prevailing wage, building services rates.

3. Every contract to furnish building services for any property or premises owned or leased by the State shall contain a provision stating the prevailing wage for building services rates that are applicable to the workers employed in the performance of the contract and shall contain a stipulation that those workers shall be paid not less than the indicated prevailing wage for building services rates. The contract shall provide for annual adjustments

of the prevailing wage for building services during the term of the contract, and shall provide that if it is found that any worker employed by the contractor or any subcontractor covered by the contract, has been paid less than the required prevailing wage, the State Treasurer may terminate the contractor or subcontractor's right to proceed with the work, and the contractor and his sureties shall be liable to the State for any excess costs occasioned by the termination.

C.34:11-56.61 Record of employee wages, benefits.

4. Each contractor and subcontractor shall keep an accurate record showing the name, classification, and actual hourly rate of wages and any benefits paid to each worker employed by him to perform building services pursuant to a State contract or subcontract, and shall preserve those records for two years after the date of payment. The record shall be open at all reasonable hours to inspection by the Director of the Division of Purchase and Property and the commissioner.

C.34:11-56.62 Civil action to recover prevailing wage for building services.

5. Any worker paid less than the prevailing wage for building services to which the worker is entitled by the provisions of this act may recover in a civil action the full amount of the prevailing wage for building services less any amount actually paid to the worker by the employer together with any costs and reasonable attorney's fees allowed by the court, and an agreement between the worker and the employer to work for less than the prevailing wage for building services shall not be a defense to the action. The worker shall be entitled to maintain an action for and on behalf of the worker or other workers similarly situated and the worker or workers may designate an agent or representative to maintain such actions for and on behalf of all workers similarly situated. At the request of any worker paid less than the prevailing wage for building services required under the provisions of this act, the commissioner may take an assignment of the wage claim in trust for the assigning worker or workers and may bring any legal action necessary to collect the claim, and the employer shall be required to pay any costs and such reasonable attorney's fee as are allowed by the court.

C.34:11-56.63 Authority of commissioner.

6. The commissioner shall have the authority to:
 - a. investigate and ascertain the wages of any employees of a contractor or subcontractor furnishing building services for any property or premises owned or leased by the State;
 - b. enter and inspect the place of business or employment of any contractor or subcontractor furnishing building services for any property or premises owned or leased by the State, for the purpose of examining and

inspecting any or all books, registers, payrolls, and other records of any such contractor or subcontractor that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees of such contractor or subcontractor; copy any or all of such books, registers, payrolls, and other records as the commissioner may deem necessary or appropriate; and question the employees of such contractor or subcontractor for the purpose of ascertaining whether the provisions of this act have been and are being complied with;

c. require from such contractor or subcontractor full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and other information pertaining to the contractor or subcontractor's workers and their employment as the commissioner may deem necessary or appropriate; and

d. require any contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in subsections b. and c. of this section, sworn as to their validity and accuracy. If the contractor or subcontractor fails to provide the requested records within 10 days, the State Treasurer may immediately withhold from payment to the employer up to 25% of the amount, not to exceed \$100,000, to be paid to the employer under the terms of the contract pursuant to which the building services work is being performed. The amount withheld shall be immediately released upon receipt by the State Treasurer of a notice from the commissioner indicating that the request for records has been satisfied.

C.34:11-56.64 Violations; fines, penalties.

7. Any contractor or subcontractor who willfully hinders or delays the commissioner in the performance of the commissioner's duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000 or be imprisoned for not less than 10 nor more than 90 days, or by both such fine and imprisonment. Each week, in any day of which a worker is paid less than the rate applicable to that worker under this act and each worker so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a

contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

C.34:11-56.65 Alternative, additional sanctions.

8. As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act, the commissioner is authorized to supervise the payment of amounts due to workers under this act, and the contractor or subcontractor may be required to make these payments to the commissioner to be held in a special account in trust for the workers, and paid on order of the commissioner directly to the worker or workers affected. The contractor or subcontractor shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the

Division of Workplace Standards in the Department of Labor and Workforce Development.

C.34:11-56.66 Retaliation against complaining worker, disorderly persons offense.

9. Any contractor or subcontractor who discharges or in any other manner discriminates against any worker because the worker has made any complaint to the worker's employer, to the State Treasurer or to the commissioner that the worker has not been paid wages in accordance with the provisions of this act, or because the worker has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because the worker has testified or is about to testify in any such proceeding shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000.

As an alternative to or in addition to any other sanctions provided by law for violations of any provision of this act, if the commissioner finds that a contractor or subcontractor has violated the act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the contractor or subcontractor, the seriousness of the violation, the good faith of the contractor or subcontractor and the size of the contractor's or subcontractor's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or the commissioner's designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty shall be due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor and Workforce Development.

C.34:11-56.67 Collective bargaining rights unaffected.

10. Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of workers to bargain collectively through representatives of their own choosing in order to establish wages in excess of any applicable minimum under this act.

C.34:11-56.68 Severability.

11. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

C.34:11-56.69 Rules, regulations.

12. The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations as may be required for the administration and enforcement of the provisions of this act.

C.34:11-56.70 Special license authorizing employment at less than prevailing wage for building services rates.

13. For any occupation for which prevailing wage for building services rates are established by or pursuant to this act, the commissioner or the Director of Wage and Hour Compliance in the Department of Labor and Workforce Development may cause to be issued to any employee, including a learner, apprentice, or student, whose earning capacity is impaired by age or physical or developmental disability or injury, a special license authorizing employment at wages less than the prevailing wage for building services for a period of time as shall be fixed by the commissioner or the Director of Wage and Hour Compliance and stated in the license.

Nothing in this section is intended to undermine the purposes of this act.

14. This act shall take effect on the 60th day following enactment and apply to contracts entered or renewed on or after that date.

Approved January 12, 2006.

CHAPTER 380

AN ACT concerning collective negotiation agreement provisions for grievance arbitration and amending P.L.1968, c.303.

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

1. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to read as follows:

C.34:13A-5.3 Employee organizations; right to form or join; collective negotiations; grievance procedures.

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employees who signs it.

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and

conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered

by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:1-10, the grievance and disciplinary review procedures established by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 381

AN ACT extending the mandatory retirement age in the Police and Firemen's Retirement System of New Jersey in certain circumstances and amending P.L.1944, c.255.

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

1. Section 5 of P.L.1944, c.255 (C.43:16A-5) is amended to read as follows:

C.43:16A-5 Members 55 years old; 65 years old; 68 years old, certain; allowance; death benefits.

5. (1) Any member in service who has attained age 55 years may retire on a service retirement allowance upon filing a written and duly executed

application to the retirement system, setting forth at what time, not less than one month subsequent to the filing thereof, he desires to be retired. Any member in service who attains age 65 years shall be retired on a service retirement allowance forthwith on the first day of the next calendar month, except that a member hired prior to January 1, 1987 may remain a member of the system until the member attains age 68 years or 25 years of creditable service, whichever comes first.

(2) Upon retirement for service a member shall receive a service 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 one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, or 2% of his average final compensation multiplied by the number of years of his creditable service up to 30 plus 1% of his average final compensation multiplied by the number of years of creditable service over 30, or 50% of his final compensation if the member has established 20 or more years of creditable service, whichever is greater.

(3) Any member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement shall be entitled to receive a retirement allowance equal to 50% of the member's final compensation plus, in the case of a member required to retire pursuant to the provisions of subsection (1) of this section, 3% of final compensation multiplied by the number of years of creditable service over 20 but not over 25.

(4) Upon the receipt of proper proofs of the death of a member who has retired on a service retirement allowance, there shall be paid to his beneficiary an amount equal to one-half of the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service.

2. This act shall take effect immediately.

Approved January 12, 2006.

CHAPTER 382

AN ACT concerning ethics and the Executive Commission on Ethical Standards, amending and supplementing various parts of the statutory law and repealing P.L.2004, c.35 (C.52:14-7.1).

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

1. Section 10 of P.L.1971, c.182 (C.52:13D-21) is amended to read as follows:

C.52:13D-21 State Ethics Commission; membership; powers; duties; penalties.

10. (a) The Executive Commission on Ethical Standards created pursuant to P.L.1967, c.229, is continued and established in the Department of Law and Public Safety and shall constitute the first commission under P.L.1971, c.182 (C.52:13D-12 et al.).

Upon the effective date of P.L.2005, c.382, the Executive Commission on Ethical Standards shall be renamed, and thereafter referred to, as the State Ethics Commission. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the State Ethics Commission is allocated in, but not of, the Department of Law and Public Safety, but notwithstanding that allocation, the commission shall be independent of any supervision and control by the department or by any board or officer thereof.

(b) The commission shall be composed of seven members as follows: three members appointed by the Governor from among State officers and employees serving in the Executive Branch; and four public members appointed by the Governor, not more than two of whom shall be of the same political party.

Each member appointed from the Executive Branch shall serve at the pleasure of the Governor during the term of office of the Governor appointing the member and until the member's successor is appointed and qualified. The public members shall serve for terms of four years and until the appointment and qualification of their successors, but of the public members first appointed pursuant to P.L.2003, c.160, one shall serve for a term of two years and one shall serve for a term of four years, and of the two public members first appointed pursuant to P.L.2005, c.382, one shall serve for a term of one year and one shall serve for a term of three years. The Governor shall designate one public member to serve as chairman and one member to serve as vice-chairman of the commission.

The members of the State Ethics Commission who were appointed by the Governor from among the State officers and employees serving in the Executive Branch serving on January 17, 2006 are terminated as of that day. A member terminated pursuant to this paragraph shall be eligible for reappointment.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments but, in the case of public mem-

bers, for the unexpired term only. None of the public members shall be State officers or employees or special State officers or employees, except by reason of their service on the commission. A public member may be reappointed for subsequent terms on the commission.

(c) Each member of the commission shall serve without compensation but shall be entitled to be reimbursed for all actual and necessary expenses incurred in the performance of the member's duties.

(d) The Attorney General shall act as legal adviser and counsel to the commission. The Attorney General shall upon request advise the commission in the rendering of advisory opinions by the commission, in the approval and review of codes of ethics adopted by State agencies in the Executive Branch and in the recommendation of revisions in codes of ethics or legislation relating to the conduct of State officers and employees in the Executive Branch.

(e) (1) The commission may, within the limits of funds appropriated or otherwise made available to it for the purpose, employ such other professional, technical, clerical or other assistants, excepting legal counsel, and incur such expenses as may be necessary for the performance of its duties.

(2) The commission shall employ a training officer who shall be in the unclassified service of the civil service of this State. The training officer shall devote full-time to the creation, maintenance and coordination of a training program on ethical standards. The program shall be established for the purpose specified in section 2 of P.L.2005, c.382 (C.52:13D-21.1). The program shall be provided by the training officer or assistants or deputies of such officer, or by such other persons as may be designated by the commission. The commission shall approve the form and content of the training program created by the training officer and shall determine when and at what intervals State officers and employees and special State officers and employees in a State agency in the Executive Branch shall be required to complete such a program. The training program may include content which in particular addresses the situations of certain identified groups of officers or employees such as those who are involved in contracting processes.

(3) The commission shall employ a compliance officer who shall be in the unclassified service of the civil service of this State. The compliance officer shall devote full-time to the creation, maintenance, monitoring and coordination of procedures to ensure that all State officers and employees and special State officers and employees in State agencies in the Executive Branch comply fully with all reporting and training requirements and that all materials, forms, codes, orders and notices are distributed to and acknowledged by appropriate individuals, as may be required. In addition, the compliance officer shall conduct, on such regular basis as determined by the commission, systematic audits of State agencies in the Executive Branch for

compliance with the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning the ethical standards for State employees and officers and special State officers and employees.

(f) The commission, in order to perform its duties pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.), shall have the power to conduct investigations, hold hearings, compel the attendance of witnesses and the production before it of such books and papers as it may deem necessary, proper and relevant to the matter under investigation. The members of the commission and the persons appointed by the commission for that purpose are hereby empowered to administer oaths and examine witnesses under oath.

(g) The commission is authorized to render advisory opinions as to whether a given set of facts and circumstances would, in its opinion, constitute a violation of the provisions of P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.).

(h) The commission shall have jurisdiction to initiate, receive, hear and review complaints regarding violations, by any current or former State officer or employee or current or former special State officer or employee, in the Executive Branch, of the provisions of P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.). Any complaint regarding a violation of a code of ethics may be referred by the commission for disposition in accordance with subsection (d) of section 12 of P.L.1971, c.182 (C.52:13D-23).

An investigation regarding a violation committed during service by a former State officer or employee or special State officer or employee shall be initiated by the commission not later than two years following the termination of service.

The commission shall have the authority to dismiss a complaint that it determines to be frivolous.

(i) Any current or former State officer or employee or current or former special State officer or employee found guilty by the commission of violating any provision of P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics promulgated pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.) shall be fined not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and may be suspended from office or employment by order of the commission for a period of not in excess of one year. If the commission finds that the conduct of the officer or employee constitutes a willful and continuous disregard of the provisions of P.L.1971, c.182 (C.52:13D-12 et al.) or of a code of ethics

promulgated pursuant to the provisions of P.L.1971, c.182 (C.52:13D-12 et al.), it may order that person removed from office or employment and may further bar the person from holding any public office or employment in this State in any capacity whatsoever for a period of not exceeding five years from the date on which the person was found guilty by the commission.

In addition, for violations occurring after the effective date of P.L.2005, c.382, the commission may order restitution, demotion, censure or reprimand, or for a failure to file an appropriate financial disclosure statement or form, shall impose a civil penalty of \$50 for each day of the violation, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(j) The remedies provided herein are in addition to all other criminal and civil remedies provided under the law.

(k) The commission 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 P.L.1971, c.182 (C.52:13D-12 et al.).

(l) (1) The commission shall communicate periodically with the State Auditor, the State Inspector General, the State Commission of Investigation and the Office of Government Integrity, or its successor, in the Department of Law and Public Safety.

(2) The Executive Director of the commission shall meet with the head of each principal department of the Executive Branch of State Government, each board member if a board is considered the head of a principal department, and the Secretary of Agriculture, the Commissioner of Education, and the Secretary and Chief Executive Officer of the New Jersey Commerce and Economic Growth Commission, within 30 days after the head, member, secretary or commissioner takes office, and shall meet annually with these individuals as a group, to inform them of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning applicable ethical standards.

(m) The commission shall create and maintain a toll-free telephone number to receive comments, complaints and questions concerning matters under the jurisdiction of the commission. Information or questions received by the commission by this means shall be confidential and not accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

(n) Financial disclosure statements required to be submitted to the commission by law, regulation or executive order shall be made available to the public, promptly after receipt, on the Internet site of the commission, commencing with submissions for 2005.

(o) The commission shall prepare and ensure the distribution to each State officer and employee and special State officer and employee in a State

agency in the Executive Branch of a plain language ethics guide which provides a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning ethical standards applicable to such officers and employees. The guide shall be prepared to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the State Ethics Commission. Each State officer and employee and special State officer and employee shall certify that he or she has received the guide, reviewed it and understands its provisions.

(p) The commission shall have jurisdiction to enforce the provisions of an Executive Order that specifically provides for enforcement by the commission.

C.52:13D-21.1 Certain State officers, employees, completion of training program on ethical standards required; annual briefing.

2. A State officer or employee or a special State officer or employee in a State agency in the Executive Branch shall complete a training program on ethical standards provided by the State Ethics Commission at such times and intervals as the commission shall require pursuant to subsection (e) of section 10 of P.L.1971, c.182 (C.52:13D-21). At a minimum, an officer or employee shall complete annually, and acknowledge his or her completion of, a briefing on the ethics standards applicable to such employee or officer pursuant to the laws, regulations, codes, orders, procedures, advisory opinions or rulings of this State. The format and content of the program and briefing shall be determined by the training officer of the State Ethics Commission and approved by the commission as provided in subsection (e) of section 10 of P.L.1971, c.182 (C.52:13D-21).

3. Section 6 of P.L.1971, c.182 (C.52:13D-17) is amended to read as follows:

C.52:13D-17 Post-employment restrictions.

6. No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or

special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment.

Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed \$1,000 or imprisonment not to exceed six months, or both.

In addition, for violations occurring after the effective date of P.L.2005, c.382, any former State officer or employee or former special State officer or employee of a State agency in the Executive Branch found by the State Ethics Commission to have violated any of the provisions of this section shall be assessed a civil penalty of not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

4. Section 4 of P.L.1981, c.142 (C.52:13D-17.2) is amended to read as follows:

C.52:13D-17.2 "Person" defined; conflict of interest; violations, penalty.

4. a. As used in this section "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or any full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

b. No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary

company with respect thereto, in connection with any cause, application, or matter, except that (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or of a person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person. No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health and Senior Services, and Human Services and the Commission on Higher Education, shall hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment directly with any holder of or applicant for a casino license or any holding or intermediary company thereof and if so employed may hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, his employer, except as otherwise prohibited by law.

c. No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, except that:

(1) a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the person and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the person;

(2) an employee who is terminated as a result of a reduction in the workforce at the agency where employed, other than an employee who held a policy-making management position at any time during the five years prior to termination of employment, may, at any time prior to the end of the two-year period, accept employment with the holder of, or applicant for, a casino license if, in the judgment of the State Ethics Commission, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the employee. In no case shall the restrictions of this subsection apply to a secretarial or clerical employee. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection b. (2) of section 59 and to section 60 of P.L.1977, c.110 (C.5:12-59 and C.5:12-60); and

(3) any partnership, firm or corporation engaged in the practice of law with which a former member of the Judiciary is associated, and any partner, officer, director or employee thereof, other than the former member, may represent, appear for or negotiate on behalf of any holder of, or applicant for, a casino license in connection with any cause, application or matter or any holding company or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, and the former member shall not be barred from association with such partnership, firm or corporation, if the former member: (1) is screened, for a period of two years next subsequent to the termination of the former member's employment, from personal participation in any such representation, appearance or negotiation; and (2) the former member is associated with the partnership, firm or corporation in a position considered "of counsel," which does not entail any equity interest in the partnership, firm or corporation.

d. This section shall not apply to the spouse of a State officer or employee, which State officer or employee is without responsibility for matters affecting casino activity, who becomes the spouse subsequent to the State officer's or employee's appointment or employment as a State officer or employee and who is not individually or directly employed by a holder of, or applicant for, a casino license, or any holding or intermediary company.

e. The Joint Legislative Committee on Ethical Standards and the State Ethics Commission, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State government with responsibility for matters affecting casino activity.

f. No person shall solicit or accept, directly or indirectly, any complimentary service or discount from any casino applicant or licensee which he knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

g. No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to proscribe a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this act or the regulations of the commission.

h. Any person who willfully violates the provisions of this section is a disorderly person and shall be subject to a fine not to exceed \$1,000, or imprisonment not to exceed six months, or both.

In addition, for violations of subsection c. of this section occurring after the effective date of P.L.2005, c.382, a civil penalty of not less than \$500 nor more than \$10,000 shall be imposed upon a former State officer or employee or former special State officer or employee of a State agency in the Executive Branch upon a finding of a violation by the State Ethics Commission, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

5. Section 58 of P.L.1977, c.110 (C.5:12-58) is amended to read as follows:

C.5:12-58 Restrictions on pre-employment by commissioners, commission employees and division employees and agents.

58. Restrictions on Pre-Employment by Commissioners, Commission Employees and Division Employees and Agents.

a. Deleted by amendment.

b. No person shall be appointed to or employed by the commission or division if, during the period commencing three years prior to appointment or employment, said person held any direct or indirect interest in, or any employment by, any person which is licensed as a casino licensee pursuant to section 87 of P.L.1977, c.110 (C.5:12-87) or as a casino service industry pursuant to subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92) or has an application for such a license pending before the commission; provided, however, that notwithstanding any other provision of this act to the contrary, any such person may be appointed to or employed by the commission or

division if his interest in any such casino licensee or casino service industry which is publicly traded would not, in the opinion of the employing agency, interfere with the objective discharge of such person's employment obligations, but in no instance shall any person be appointed to or employed by the commission or division if his interest in such a casino licensee or casino service industry which is publicly traded constituted a controlling interest in that casino licensee or casino service industry; and provided further, however, that notwithstanding any other provision of this act to the contrary, any such person may be employed by the commission or division in a secretarial or clerical position if, in the opinion of the employing agency, his previous employment by, or interest in, any such casino licensee or casino service industry would not interfere with the objective discharge of such person's employment obligations.

c. Prior to appointment or employment, each member of the commission, each employee of the commission, the director of the Division of Gaming Enforcement and each employee and agent of the division shall swear or affirm that he possesses no interest in any business or organization licensed by or registered with the commission.

d. Each member of the commission and the director of the division shall file with the State Ethics Commission a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of said member or director and his spouse and shall provide to the State Ethics Commission a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the parents, brothers, sisters, and children of said member or director. Such statement shall be under oath and shall be filed at the time of appointment and annually thereafter.

e. Each employee of the commission, except for secretarial and clerical personnel, and each employee and agent of the division, except for secretarial and clerical personnel, shall file with the State Ethics Commission a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of said employee or agent and his spouse. Such statement shall be under oath and shall be filed at the time of employment and annually thereafter.

6. Section 59 of P.L.1977, c.110 (C.5:12-59) is amended to read as follows:

C.5:12-59 Employment restrictions on commissioners, commission employees and division employees.

59. Employment Restrictions on Commissioners, Commission Employees and Division Employees.

a. The "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.) shall apply to members of the commission and to all employees of the commission and the division, except as herein specifically provided.

b. The commission shall, no later than January 1, 1981, promulgate a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey. This Code of Ethics shall include, but not be limited to, provisions that address the propriety of relationships and dealings between the commission and its staff, and licensees and applicants for licensure under this act.

c. The division shall promulgate a Code of Ethics governing its specific needs.

d. The Codes of Ethics promulgated by the commission and the division shall not be in conflict with the laws of this State, except, however, that said Codes of Ethics may be more restrictive than any law of this State.

e. The Codes of Ethics promulgated by the commission and the division shall be submitted to the State Ethics Commission for approval. The Codes of Ethics shall include, but not be limited to provisions that:

(1) No commission member or employee or division employee or agent shall be permitted to gamble in any establishment licensed by the commission except in the course of his duties.

(2) No commission member or employee or division employee or agent shall solicit or accept employment from any person licensed by or registered with the commission or from any applicant for a period of four years after termination of service with the commission or division, except as otherwise provided in section 60 of this act.

(3) No commission member or employee or any division employee or agent shall act in his official capacity in any matter wherein he or his spouse, child, parent or sibling has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(4) No commission employee or any division employee or agent shall act in his official capacity in a matter concerning an applicant for licensure or a licensee who is the employer of a spouse, child, parent or sibling of said commission or division employee or agent when the fact of the employment of such spouse, child, parent or sibling might reasonably be expected to impair the objectivity and independence of judgment of said commission employee or division employee or agent.

(5) No spouse, child, parent or sibling of a commission member shall be employed in any capacity by an applicant for a casino license or a casino licensee nor by any holding, intermediary or subsidiary company thereof.

(6) No commission member shall meet with any person, except for any other member of the commission or employee of the commission, or discuss any issues involving any pending or proposed application or any matter whatsoever which may reasonably be expected to come before the commission, or any member thereof, for determination unless the meeting or discussion takes place on the business premises of the commission, provided, however, that commission members may meet to consider matters requiring the physical inspection of equipment or premises at the location of the equipment or premises. All meetings or discussions subject to this paragraph shall be noted in a log maintained for this purpose and available for inspection pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

f. No commission member or employee or division employee or agent shall have any interest, direct or indirect, in any applicant or in any person licensed by or registered with the commission during his term of office or employment.

g. Each commission member and employee of the commission, including legal counsel, and each employee and agent of the division shall devote his entire time and attention to his duties and shall not pursue any other business or occupation or other gainful employment; provided, however, that secretarial and clerical personnel may engage in such other gainful employment as shall not interfere with their duties to the commission or division, unless otherwise directed; and provided further, however, that other employees of the commission and division and agents of the division may engage in such other gainful employment as shall not interfere or be in conflict with their duties to the commission or division, upon approval by the commission or the director of the division, as the case may be.

h. No member of the commission, employee of the commission, or employee or agent of the division shall:

(1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise any person to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Take any active part in political campaigns or the management thereof; provided, however, that nothing herein shall prohibit a person from voting as he chooses or from expressing his personal opinions on political subjects and candidates.

i. For the purpose of applying the provisions of the "New Jersey Conflicts of Interest Law," any consultant or other person under contract for services to the commission and the division shall be deemed to be a special State employee, except that the restrictions of section 4 of P.L.1981, c.142 (C.52:13D-17.2) shall not apply to such person. Such person and any

corporation, firm or partnership in which he has an interest or by which he is employed shall not represent any person or party other than the commission or the division before the commission.

7. Section 60 of P.L.1977, c.110 (C.5:12-60) is amended to read as follows:

C.5:12-60 Post-employment restrictions

60. Post-employment restrictions.

a. No member of the commission shall hold any direct or indirect interest in, or be employed by, any applicant or by any person licensed by or registered with the commission for a period of 4 years commencing on the date his membership on the commission terminates.

b. (1) No employee of the commission or employee or agent of the division may acquire any direct or indirect interest in, or accept employment with, any applicant or any person licensed by or registered with the commission, for a period of two years commencing at the termination of employment with the commission or division, except that a secretarial or clerical employee of the commission or the division may accept such employment at any time after the termination of employment with the commission or division. At the end of two years and for a period of two years thereafter, a former employee or agent who held a policy-making management position at any time during the five years prior to termination of employment may acquire an interest in, or accept employment with, any applicant or person licensed by or registered with the commission upon application to and the approval of the commission upon a finding that the interest to be acquired or the employment will not create the appearance of a conflict of interest and does not evidence a conflict of interest in fact.

(2) Notwithstanding the provisions of this subsection, if the employment of a commission employee or a division employee or agent, other than an employee or agent who held a policy-making management position at any time during the five years prior to termination of employment, is terminated as a result of a reduction in the workforce at the commission or division, the employee or agent may, at any time prior to the end of the two-year period, accept employment with any applicant or person licensed by or registered with the commission upon application to and the approval of the commission upon a finding that the employment will not create the appearance of a conflict of interest and does not evidence a conflict of interest in fact. The decision of the commission shall be final, and the employee or agent shall not be subject to a determination by the State Ethics Commission under section 4 of P.L.1981, c.142 (C.52:13D-17.2).

c. No commission member or person employed by the commission or division shall represent any person or party other than the State before or against the commission for a period of two years from the termination of his office or employment with the commission or division.

d. No partnership, firm or corporation in which a former commission member or employee or former division employee or agent has an interest, nor any partner, officer or employee of any such partnership, firm or corporation shall make any appearance or representation which is prohibited to said former member, employee, or agent; provided, however, that nothing herein shall prohibit such partnership, firm or corporation from making such appearance or representation on behalf of a casino service industry licensed under subsection c. of section 92 of P.L.1977, c.110 (C.5:12-92).

e. Notwithstanding any post-employment restriction imposed by this section, nothing herein shall prohibit a former commission member or employee or former division employee or agent, at any time after termination of such membership or employment, from acquiring an interest in, or soliciting or obtaining employment with, any person licensed as a casino service industry under subsection c. of section 92 of this act or any applicant for such licensure.

8. Section 62 of P.L.1977, c.110 (C.5:12-62) is amended to read as follows:

C.5:12-62 Enforcement.

62. Enforcement.

a. The State Ethics Commission, established pursuant to the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.) shall enforce the provisions of sections 58, 59, and 60 of this act.

b. Penalties for violation of sections 58, 59, and 60 shall be those set forth in P.L.1971, c.182 (C.52:13D-12 et seq.).

In addition, for violations of section 60 occurring after the effective date of P.L.2005, c.382, the commission shall impose a civil penalty of not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

9. Section 8 of P.L.1971, c.182 (C.52:13D-19) is amended to read as follows:

C.52:13D-19 Contracts of State agencies.

8. a. No member of the Legislature or State officer or employee shall knowingly himself, or by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by

any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by any State agency, except as provided in subsection b. of this section. No special State officer or employee having any duties or responsibilities in connection with the purchase or acquisition of property or services by the State agency where he is employed or an officer shall knowingly himself, by his partners or through any corporation which he controls or in which he owns or controls more than 1% of the stock, or by any other person for his use or benefit or on his account, undertake or execute, in whole or in part, any contract, agreement, sale or purchase of the value of \$25.00 or more, made, entered into, awarded or granted by that State agency, except as provided in subsection b. of this section. The restriction contained in this subsection shall apply to the contracts of interstate agencies to the extent consistent with law only if the contract, agreement, sale or purchase is undertaken or executed by a New Jersey member to that agency or by his partners or a corporation in which he owns or controls more than 1% of the stock.

b. The provisions of subsection a. of this section shall not apply to (a) purchases, contracts, agreements or sales which (1) are made or let after public notice and competitive bidding or which (2), pursuant to section 5 of chapter 48 of the laws of 1944 (C. 52:34-10) or such other similar provisions contained in the public bidding laws or regulations applicable to other State agencies, may be made, negotiated or awarded without public advertising for bids, or (b) any contract of insurance entered into by the Director of the Division of Purchase and Property pursuant to section 10 of article 6 of chapter 112 of the laws of 1944 (C. 52:27B-62), if such purchases, contracts or agreements, including change orders and amendments thereto, shall receive prior approval of the Joint Legislative Committee on Ethical Standards if a member of the Legislature or State officer or employee or special State officer or employee in the Legislative Branch has an interest therein, or the State Ethics Commission if a State officer or employee or special State officer or employee in the Executive Branch has an interest therein.

10. Section 12 of P.L.1971, c.182 (C.52:13D-23) is amended to read as follows:

C.52:13D-23 Codes of ethics.

12. (a) (1) The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department for the purposes hereinafter set forth, shall within six months from the date of enactment, promulgate a code of ethics to govern and guide

the conduct of the members of the Legislature, the State officers and employees or the special State officers and employees in the agency to which said code is applicable. Such code shall conform to the general standards hereinafter set forth in this section, but it shall be formulated with respect to the particular needs and problems of the agency to which said code is to apply and, when applicable, shall be a supplement to the uniform ethics code promulgated pursuant to paragraph (2) of this subsection. Notwithstanding any other provisions of this section, the New Jersey members to any interstate agency to which New Jersey is a party and the officers and employees of any State agency which fails to promulgate a code of ethics shall be deemed to be subject to a code of ethics the provisions of which shall be paragraphs (1) through (6) of subsection (e) of this section.

(2) Within 180 days following the effective date of this act, P.L.2005, c.382, the State Ethics Commission shall promulgate a uniform ethics code to govern and guide the conduct of State officers and employees and special State officers and employees in State agencies in the Executive Branch. Such code shall conform to the general standards hereinafter set forth in this section, shall be the primary code of ethics for State agencies once it is adopted and a code promulgated pursuant to paragraph (1) of this subsection shall be a supplement to the primary code. The head of each State agency, or the principal officer in charge of a division, board, bureau, commission or other instrumentality within a department of State Government designated by the head of such department shall revise each code of ethics promulgated prior to the uniform code to recognize the uniform code as the primary code.

(b) A code of ethics formulated pursuant to subsection (a) of this section to govern and guide the conduct of the State officers and employees or the special State officers and employees in any State agency in the Executive Branch, or any portion of such a code, shall not be effective unless it has first been approved by the State Ethics Commission. When a proposed code is submitted to the said commission it shall be accompanied by an opinion of the Attorney General as to its compliance with the provisions of this act and any other applicable provision of law. Nothing contained herein shall prevent officers of State agencies in the Executive Branch from consulting with the Attorney General or with the State Ethics Commission at any time in connection with the preparation or revision of such codes of ethics.

(c) A code of ethics formulated pursuant to this section to govern and guide the conduct of the members of the Legislature, State officers and employees or special State officers and employees in any State agency in the Legislative Branch, or any portion of such code, shall not be effective unless it has first been approved by the Legislature by concurrent resolution. When a proposed code is submitted to the Legislature for approval it shall be accompanied by an opinion of the chief counsel as to its compliance with

the provisions of this act and any other applicable provisions of law. Nothing contained herein shall prevent officers of State agencies in the Legislative Branch from consulting with the Chief Legislative Counsel or the Joint Legislative Committee on Ethical Standards at any time in connection with the preparation or revision of such codes of ethics.

(d) Violations of a code of ethics promulgated pursuant to this section shall be cause for removal, suspension, demotion or other disciplinary action by the State officer or agency having the power of removal or discipline. When a person who is in the classified civil service is charged with a violation of such a code of ethics, the procedure leading to such removal or discipline shall be governed by any applicable provisions of the Civil Service Act, N.J.S.11A:1-1 et seq., and the Rules of the Department of Personnel. No action for removal or discipline shall be taken under this subsection except upon the referral or with the approval of the State Ethics Commission or the Joint Legislative Committee on Ethical Standards, whichever is authorized to exercise jurisdiction with respect to the complaint upon which such action for removal or discipline is to be taken.

(e) A code of ethics for officers and employees of a State agency shall conform to the following general standards:

(1) No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

(2) No State officer or employee or special State officer or employee should engage in any particular business, profession, trade or occupation which is subject to licensing or regulation by a specific agency of State Government without promptly filing notice of such activity with the State Ethics Commission, if he is an officer or employee in the Executive Branch, or with the Joint Legislative Committee on Ethical Standards, if he is an officer or employee in the Legislative Branch.

(3) No State officer or employee or special State officer or employee should use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others.

(4) No State officer or employee or special State officer or employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

(5) No State officer or employee or special State officer or employee should undertake any employment or service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.

(6) No State officer or employee or special State officer or employee should accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.

(7) No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

(8) Rules of conduct adopted pursuant to these principles should recognize that under our democratic form of government public officials and employees should be drawn from all of our society, that citizens who serve in government cannot and should not be expected to be without any personal interest in the decisions and policies of government; that citizens who are government officials and employees have a right to private interests of a personal, financial and economic nature; that standards of conduct should separate those conflicts of interest which are unavoidable in a free society from those conflicts of interest which are substantial and material, or which bring government into disrepute.

(f) The code of ethics for members of the Legislature shall conform to subsection (e) hereof as nearly as may be possible.

11. Section 13 of P.L.1971, c.182 (C.52:13D-24) is amended to read as follows:

C.52:13D-24 Restriction on, solicitation, receipt, etc. of certain things of value by certain State officers, employees.

13. a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services; or (c) any agency of the federal government, any agency of another state or of two or more states, or any political subdivision of another state.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial

compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the State Ethics Commission to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor and Workforce Development, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

12. Section 11 of P.L.1996, c.24 (C.52:13H-11) is amended to read as follows:

C.52:13H-11 Conflicts law, code of ethics; public employment restricted.

11. The members and employees of the council shall be subject to the provisions of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.), except that in addition to the requirements of that act, a member of the council, while serving on the council, shall not hold any other State or local office or employment or hold any State or local elective public office and shall not, for a period of two years thereafter, hold any State or local elective public office or hold any office or employment with

a county, municipality or school district which filed a complaint with the council, or with a State agency that promulgated a rule or regulation which was the subject of a complaint filed with the council, while the member served on the council. The council shall adopt a code of ethics to govern the conduct of its members and employees. The State Ethics Commission shall have jurisdiction to consider complaints regarding violations of P.L.1971, c.182 (C.52:13D-12 et seq.) or of the code of ethics or of this section by any member or employee of the council and for a violation of the restriction on holding office or employment after serving on the council occurring after the effective date of P.L.2005, c.382, the commission shall impose a civil penalty of not less than \$500 nor more than \$10,000, which penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

Nothing contained in this section shall be construed as prohibiting a member of the council from serving as a member of a study commission or similar advisory body for which service no compensation is authorized or provided by law other than reimbursement of expenses.

C.52:13D-21.2 Restrictions on certain State employment for certain relatives of State employees, officers; definition.

13. a. (1) A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State Government.

(2) A relative of the commissioner or head of a principal department in the Executive Branch of State Government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

(3) A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State Government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

(4) A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.

b. (1) A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

(2) A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

c. A State officer or employee or a special State officer or employee of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative of the officer or employee.

d. As used in this section, "relative" means an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

14. Section 3 of P.L.1969, c. 213 (C.52:15A-3) is amended to read as follows:

C.52:15A-3 Services and facilities provided to Governor-elect upon request.

3. (a) The Director of the Division of Purchase and Property referred to hereinafter in this act as "the director," is authorized to provide, upon request, to each Governor-elect, for use in connection with his preparations for the assumption of official duties as Governor necessary services and facilities, including:

(1) Suitable office space appropriately equipped with furniture, furnishings, office machines and equipment, and office supplies as determined by the director, after consultation with the Governor-elect, or his designee provided for in subsection (e) of this section, at such place or places within the State of New Jersey as the Governor-elect shall designate;

(2) Payment of the compensation of members of office staffs designated by the Governor-elect at rates determined by him. Provided, that any employee of any agency of any branch of the State Government may be detailed to such staffs on a reimbursable or nonreimbursable basis with the consent of the head of the agency; and while so detailed such employee shall be responsible only to the Governor-elect for the performance of his duties. Provided further, that any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as

members of office staffs under this subsection, other than those detailed from agencies, shall not be held or considered to be employees of the State Government except for purposes of the Public Employees' Retirement System (chapter 15A of Title 43) and the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.);

(3) Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the Governor-elect may be authorized at rates not to exceed \$100.00 per diem for individuals;

(4) Payment of travel expenses and subsistence allowances, including rental by the State Government of hired motor vehicles, found necessary by the Governor-elect, as authorized for persons employed intermittently or for persons serving without compensation, as may be appropriate;

(5) Communications services found necessary by the Governor-elect;

(6) Payment of expenses for necessary printing and binding.

(b) The director shall expend no funds for the provision of services and facilities under this act in connection with any obligations incurred by the Governor-elect before the day following the date of the general elections.

(c) The term "Governor-elect" as used in this act shall mean such person as is the apparent successful candidate for the office of Governor, respectively, as ascertained by the Secretary of State following the general election.

(d) Each Governor-elect shall be entitled to conveyance of all mail matter, including airmail, sent by him in connection with his preparations for the assumption of official duties as Governor.

(e) Each Governor-elect may designate to the director an assistant authorized to make on his behalf such designations or findings of necessity as may be required in connection with the services and facilities to be provided under this act.

(f) In the case where the Governor-elect is the incumbent Governor there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this act, and any funds appropriated for such purposes shall be returned to the general funds of the treasury.

(g) The salary of each person receiving compensation as a member of the office staff under paragraph (2) subsection (a) of this section, other than one detailed from an agency, shall be reported to the State Ethics Commission and made available by the commission to the public. Each such person shall complete the training program required pursuant to section 2 of P.L.2005, c.382 (C.52:13D-21.1) promptly after employment, and shall be provided by the commission, and shall acknowledge receipt thereof, with all ethics materials, forms, codes, guides, orders and notices required to be distributed to State employees. The Governor-elect shall designate which of these persons shall (1) file with the commission the financial disclosure

statement required of State officers and employees by law, regulation or executive order and (2) certify that the person is not in violation of ethical standards or conflicts of interest restrictions or requirements.

15. Section 2 of P.L.2003, c.255 (C.52:13D-24.1) is amended to read as follows:

C.52:13D-24.1 Restriction on acceptance of gifts, etc. from lobbyist, governmental affairs agent by legislators, staff.

2. a. Except as expressly authorized in section 13 of P.L.1971, c.182 (C.52:13D-24) or when the lobbyist or governmental affairs agent is a member of the immediate family of a member of the Legislature or legislative staff, no member of the Legislature or legislative staff may accept, directly or indirectly, any compensation, reward, employment, gift, honorarium or other thing of value from each lobbyist or governmental affairs agent, as defined in the "Legislative and Governmental Process Activities Disclosure Act," P.L.1971, c.183 (C.52:13C-18 et seq.), totaling more than \$250.00 in a calendar year. The \$250.00 limit on acceptance of compensation, reward, gift, honorarium or other thing of value shall also apply to each member of the immediate family of a member of the Legislature, as defined in section 2 of P.L.1971, c.182 (C.52:13D-13) to be a spouse, child, parent, or sibling of the member residing in the same household as the member of the Legislature.

b. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if received in the course of employment, by an employer other than the State, of an individual covered in subsection a. of this section or a member of the immediate family. The prohibition in subsection a. of this section on accepting any compensation, reward, gift, honorarium or other thing of value shall not apply if acceptance is from a member of the immediate family when the family member received such in the course of his or her employment.

c. Subsection a. of this section shall not apply if a member of the Legislature or legislative staff who accepted any compensation, reward, gift, honorarium or other thing of value provided by a lobbyist or governmental affairs agent makes a full reimbursement, within 90 days of acceptance, to the lobbyist or governmental affairs agent in an amount equal to the money accepted or the fair market value of that which was accepted if other than money. As used in this subsection, "fair market value" means the actual cost of the compensation, reward, gift, honorarium or other thing of value accepted.

d. A violation of this section shall not constitute a crime or offense under the laws of this State.

C.52:32-47 Business ethics guide posted on Internet site.

16. a. The State Treasurer shall post on the official Internet site of the State for the Division of Purchase and Property in the Department of the Treasury a business ethics guide prepared in accordance with Executive Order No. 189 of 1988, or any other executive order that modifies, supplements or replaces Executive Order No. 189 of 1988.

b. A person or private entity covered by the executive order that seeks to submit a bid for a contract with a State agency covered by the executive order, or enter into negotiations for a contract with such a State agency, shall be required to submit to the contracting agency a certification that the person or entity has read the guide, understands its provisions and is in compliance with its provisions.

Repealer.

17. Section 1 of P.L.2004, c.35 (C.52:14-7.1) is repealed.

18. This act shall take effect on the 60th day following enactment, except that the change in membership of the Executive Commission on Ethical Standards as set forth in subsection (b) of section 10 of P.L.1971, c.182 (C.52:13D-21) shall take effect January 17, 2006.

Approved January 14, 2006.

CHAPTER 383

AN ACT concerning smoking in indoor public places and workplaces and revising parts of statutory law.

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

C.26:3D-55 Short title.

1. This act shall be known and may be cited as the "New Jersey Smoke-Free Air Act."

C.26:3D-56 Findings, declarations relative to smoking in indoor public places, workplaces.

2. The Legislature finds and declares that: tobacco is the leading cause of preventable disease and death in the State and the nation, and tobacco smoke constitutes a substantial health hazard to the nonsmoking majority of the public; the separation of smoking and nonsmoking areas in indoor public places and workplaces does not eliminate the hazard to nonsmokers if these areas share a common ventilation system; and, therefore, subject to

certain specified exceptions, it is clearly in the public interest to prohibit smoking in all enclosed indoor places of public access and workplaces.

C.26:3D-57 Definitions relative to smoking in indoor public places, workplaces.

3. As used in this act:

"Bar" means a business establishment or any portion of a nonprofit entity, which is devoted to the selling and serving of alcoholic beverages for consumption by the public, guests, patrons or members on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of such beverages.

"Cigar bar" means any bar, or area within a bar, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar bar that is in an area within a bar shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the bar so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.

"Cigar lounge" means any establishment, or area within an establishment, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar lounge that is in an area within an establishment shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.

"Indoor public place" means a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public, including, but not limited to: a commercial or other office building; office or building owned, leased or rented by the State or by a county or municipal government; public and nonpublic elementary or secondary school building; board of education building; theater or concert hall; public library; museum or art gallery; bar; restaurant or other establishment where the principal business is the sale of food for consumption on the premises, including the bar area of the establishment; garage or parking facility; any public conveyance operated on land or water, or in the air, and passenger waiting rooms and platform areas in any stations or terminals thereof; health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); patient waiting room of the office of a health care provider licensed pursuant to Title 45 of the Revised Statutes; child care center licensed pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.); race track facility; facility

used for the holding of sporting events; ambulatory recreational facility; shopping mall or retail store; hotel, motel or other lodging establishment; apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single-family dwelling.

"Person having control of an indoor public place or workplace" means the owner or operator of a commercial or other office building or other indoor public place from whom a workplace or space within the building or indoor public place is leased.

"Smoking" means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked.

"Tobacco retail establishment" means an establishment in which at least 51% of retail business is the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

"Workplace" means a structurally enclosed location or portion thereof at which a person performs any type of service or labor.

C.26:3D-58 Smoking prohibited in indoor public place, workplace.

4. a. Smoking is prohibited in an indoor public place or workplace, except as otherwise provided in this act.

b. Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

C.26:3D-59 Exceptions.

5. The provisions of this act shall not apply to:

a. any cigar bar or cigar lounge that, in the calendar year ending December 31, 2004, generated 15% or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the local board of health in the municipality in which the bar or lounge is located. The registration shall remain in effect for one year and shall be renewable only if: (1) in the preceding calendar year, the cigar bar or lounge generated 15% or more if its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, and (2) the cigar bar or cigar lounge has not expanded its size or changed its location since December 31, 2004;

b. any tobacco retail establishment, or any area the tobacco retail establishment provides for the purposes of smoking;

c. any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco;

d. private homes, private residences and private automobiles; and

e. the area within the perimeter of:

(1) any casino as defined in section 6 of P.L.1977, c.110 (C.5:12-6) approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

(2) any casino simulcasting facility approved by the Casino Control Commission pursuant to section 4 of P.L.1992, c.19 (C.5:12-194) that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.

C.26:3D-60 Hotel, motel, lodging establishment, smoking permitted, certain areas.

6. a. The person having control of a hotel, motel or other lodging establishment may permit smoking in up to 20% of its guest rooms.

b. Nothing in this section shall be construed to require a hotel, motel or other lodging establishment to provide a nonsmoking room to a guest if all the designated nonsmoking rooms are occupied.

C.26:3D-61 Signage, requirements.

7. a. The person having control of an indoor public place or workplace shall place in every public entrance to the indoor public place or workplace a sign, which shall be located so as to be clearly visible to the public and shall contain letters or a symbol which contrast in color with the sign, indicating that smoking is prohibited therein, except in such designated areas as provided pursuant to this act. The sign shall also indicate that violators are subject to a fine. The person having control of the indoor public place or workplace shall post a sign stating "Smoking Permitted" in letters at least one inch in height or marked by the international symbol for "Smoking Permitted" in those areas where smoking is permitted.

b. The provisions of this section shall not be construed to prevent a lessee of the workplace, or space within the building or indoor public place, from enforcing the smoking restrictions imposed by the owner or operator of a commercial or other office building or other indoor public place.

C.26:3D-62 Violations; fines, penalties; enforcement.

8. a. The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply with the provisions of this act. A person, after being so ordered, who smokes in violation of this act is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. A penalty shall be recovered in accordance with the provisions of subsections c. and d. of this section.

b. The Department of Health and Senior Services or the local board of health or the board, body or officers exercising the functions of the local board of health according to law, upon written complaint or having reason to suspect that an indoor public place or workplace covered by the provisions of this act is or may be in violation of the provisions of this act, shall, by written notification, advise the person having control of the place accordingly and order appropriate action to be taken. A person receiving that notice who fails or refuses to comply with the order is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. In addition to the penalty provided herein, the court may order immediate compliance with the provisions of this act.

c. A penalty recovered under the provisions of this act shall be recovered by and in the name of the Commissioner of Health and Senior Services or by and in the name of the local board of health. When the plaintiff is the Commissioner of Health and Senior Services, the penalty recovered shall be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality where the violation occurred.

d. A municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of this act if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Commissioner of Health and Senior Services, or the local board of health, as the case may be, as plaintiff.

e. The penalties provided in subsections a. and b. of this section shall be the only civil remedy for a violation of this act, and there shall be no private right of action against a party for failure to comply with the provisions of this act.

C.26:3D-63 Supersedure of other law, etc.

9. The provisions of this act shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance under authority of R.S.40:48-1 or 40:48-2, or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this act.

C.26:3D-64 Rules, regulations.

10. 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.

Repealer.

11. The following are repealed:
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.184 (C.26:3D-23 et seq.);
P.L.1985, c.186 (C.26:3D-32 et seq.);
P.L.1985, c.318 (C.26:3D-38 et seq.);
P.L.1985, c.381 (C.26:3D-46 et seq.);
P.L.1985, c.185 (C.26:3E-7 et seq.); and
P.L.1998, c.35, s.1 (C. 30:5B-5.3).

12. This act shall take effect on the 90th day after enactment

Approved January 15, 2006.

CHAPTER 384

AN ACT concerning penalties for the sale or distribution of tobacco products to persons under 19 years of age 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.2000, c.87 (C.2A:170-51.4) is amended to read as follows:

C.2A:170-51.4 Sale, distribution of tobacco to persons under age 19; prohibited; civil penalties.

1. a. No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, distribute for commercial purpose at no cost or minimal cost or with coupons or rebate offers, give or furnish, to a person under 19 years of age, any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser of the tobacco product or the recipient of the promotional sample falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to make the purchase or receive the sample;

(2) that the appearance of the purchaser of the tobacco product or the recipient of the promotional sample was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to make the purchase or receive the sample; and

(3) that the sale or distribution of the tobacco product was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to make the purchase or receive the sample.

c. A person who violates the provisions of subsection a. of this section, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product to a person under 19 years of age, shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary proceeding before the municipal court having jurisdiction. An official authorized by statute or ordinance to enforce the State or local health codes or a law enforcement officer having enforcement authority in that municipality may issue a summons for a violation of the provisions of subsection a. of this section, and may serve and execute all process with respect to the enforcement of this section consistent with the Rules of Court. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the State by the local health agency. The penalty shall be paid into the treasury of the municipality in which the violation occurred for the general uses of the municipality.

d. In addition to the provisions of subsection c. of this section, upon the recommendation of the municipality, following a hearing by the municipality, the Division of Taxation in the Department of the Treasury may suspend or, after a second or subsequent violation of the provisions of subsection a. of this section, revoke the license issued under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail dealer. The licensee shall be subject to adminis-

trative charges, based on a schedule issued by the Director of the Division of Taxation, which may provide for a monetary penalty in lieu of a suspension.

e. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 3 of P.L.1999, c. 90 (C.2C:33-13.1).

2. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as follows:

C.26:2F-7 Special projects and development fund, established; grants.

7. (a) There is hereby established a special projects and development fund which shall consist of all funds appropriated or otherwise made available for the purposes set forth in this section. The commissioner, with the approval of the Public Health Council, may make grants from the special projects and development fund to local health agencies, to hospitals, and to voluntary health agencies to provide State health assistance for new health services and for special health projects in order to stimulate continued development of health services and to assure the citizens of New Jersey the benefits of the most advanced health protection techniques.

(b) Except as provided in subsection (c) of this section, grants from the special projects and development fund for specific purposes shall be made on an annual basis for a period not in excess of 5 years and such grants shall be in diminishing amounts during this period. The commissioner shall determine the conditions applicable to each such grant including the extent of local financial participation to be required. Grants from the special projects and development fund to voluntary health agencies shall not exceed 40% of said fund.

(c) (1) Grants from the special projects and development fund shall be made on an annual basis to local health agencies for local enforcement efforts concerning the sale and commercial distribution of tobacco products to persons under the age of 19 years, in an amount determined by the commissioner. The grants shall be distributed based on the number of cigarette retail dealer and vending machine licenses issued within a local health agency's jurisdictional authority in order to ensure Statewide coverage and Statewide consistency of enforcement efforts; except that the commissioner may designate up to 5% of available funds, annually, for incentive grants to local health agencies to enhance enforcement efforts.

Each grant recipient shall report quarterly to the commissioner on the number of compliance check inspections it has completed and the results of those compliance checks. The commissioner shall determine any other conditions applicable to the grants.

(2) Beginning in 1999, notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the commissioner may make grants from the special projects and development fund to public and private local agencies to reduce teenage use of addictive substances.

3. Section 3 of P.L.1995, c.304 (C.2A:170-51.1) is amended to read as follows:

C.2A:170-51.1 Purchase of tobacco product for person under age 19, petty disorderly person offense.

3. A person 19 years of age or older who purchases a tobacco product for a person who is under 19 years of age is a petty disorderly person.

4. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended to read as follows:

C.26:3A2-20.1 Sale of tobacco to persons under age 19, prohibition, enforcement; reports.

2. a. The Commissioner of Health and Senior Services is authorized to enforce the provisions of section 1 of P.L.2000, c.87 (C.2A:170-51.4) with respect to the prohibition on the sale and commercial distribution of tobacco products to persons under 19 years of age. The commissioner may delegate the enforcement authority provided in this section to local health agencies, subject to the availability of sufficient funding. The commissioner shall report quarterly to the Legislature on the enforcement program's progress, use of grants awarded pursuant to section 7 of P.L.1966, c.36 (C.26:2F-7), results of enforcement efforts and other matters the commissioner deems appropriate.

b. The Department of the Treasury shall provide the commissioner with information about retail tobacco dealer licensees necessary to carry out the purpose of this section.

5. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to read as follows:

C.2C:33-13.1 Sale of cigarettes to persons under age 19, petty disorderly persons offense.

3. a. A person who sells or gives to a person under 19 years of age any cigarettes made of tobacco or of any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco, including an employee of a retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise provides a tobacco product to a person under 19 years of age, shall be punished by a fine as provided for a petty disorderly persons offense. A person who has been previously punished under this section and who commits another offense

under it may be punishable by a fine of twice that provided for a petty disorderly persons offense.

b. The establishment of all of the following shall constitute a defense to any prosecution brought pursuant to subsection a. of this section:

(1) that the purchaser or recipient of the tobacco product falsely represented, by producing either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state or the federal government of Canada, or a photographic identification card issued by a county clerk, that the purchaser or recipient was of legal age to purchase or receive the tobacco product;

(2) that the appearance of the purchaser or recipient of the tobacco product was such that an ordinary prudent person would believe the purchaser or recipient to be of legal age to purchase or receive the tobacco product; and

(3) that the sale or distribution of the tobacco product was made in good faith, relying upon the production of the identification set forth in paragraph (1) of this subsection, the appearance of the purchaser or recipient, and in the reasonable belief that the purchaser or recipient was of legal age to purchase or receive the tobacco product.

c. A penalty imposed pursuant to this section shall be in addition to any penalty that may be imposed pursuant to section 1 of P.L.2000, c.87 (C.2A:170-51.4).

6. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to read as follows:

C.54:40A-4.1 Sign required; violations, penalties.

2. Notwithstanding any other provision of law to the contrary, a person to whom a license is issued pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall, as a condition of the license, conspicuously post a legible sign at the point of display of the tobacco products and at the point of sale. The sign, which also shall be posted conspicuously on any licensed cigarette vending machine, shall be at least six inches by three inches in bold letters at least one-quarter inch high and shall read as follows:

"A person who sells or offers to sell a tobacco product to a person under 19 years of age shall pay a penalty of up to \$1,000 and may be subject to a license suspension or revocation.

Proof of age may be required for purchase."

7. Section 4 of P.L.2005, c.85 (C.54:40A-49) is amended to read as follows:

C.54:40A-49 Conditions for non-face-to-face sale of cigarettes.

4. A person shall not engage in a retail sale of cigarettes in this State unless the sale is a face-to-face sale, except that a person may engage in a non-face-to-face sale of cigarettes to a person in this State if the following conditions are met:

a. The seller has fully complied with all of the requirements of the Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;

b. The seller has verified payment of, paid, or collected all applicable State taxes, including the cigarette taxes imposed by the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), due on the cigarettes; and

c. The seller has, before mailing or shipping the cigarettes:

(1) obtained from the purchaser reliable confirmation that the purchaser is at least 19 years old and a statement by the purchaser under penalty of perjury certifying the purchaser's date of birth and address;

(2) made good faith effort to verify the information contained in the certification provided by the purchaser against a commercially available database or has obtained a photocopy or other image of a government-issued identification bearing the purchaser's image and stating the date of birth or age of the purchaser;

(3) received payment for the sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check; and

(4) verified that a credit or debit card used for payment has been issued in the purchaser's name, and the address to which the cigarettes are being shipped matches the credit or debit card company's address for the cardholder.

Sellers taking an order for a non-face-to-face sale may request that prospective purchasers provide their e-mail addresses.

8. This act shall take effect on the 90th day after enactment; except that the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 15, 2006.

JOINT RESOLUTIONS

(2561)

JOINT RESOLUTION No. 1

A JOINT RESOLUTION recognizing the "Trenton Battlefield Historic Heritage Area" to commemorate the dramatic events that occurred in the City during the Revolutionary War at the Battle of Trenton.

WHEREAS, The movement for independence set out in the Declaration of Independence was in jeopardy by late 1776, due to heavy military losses and British occupation of strategic parts of Colonial America, including most of New Jersey; and

WHEREAS, Despite persistent defeats, General George Washington led his dwindling army of 500 patriots in a risky crossing of the Delaware River to rout British forces in a surprise attack at the City of Trenton on December 26, 1776, killing, wounding or capturing 1,100 Hessian troops and seizing desperately needed provisions while suffering only four casualties, in an event that would gain international acclaim; and

WHEREAS, The victory at Trenton was a crucial turning point in the struggle for independence, preserving the Continental army, restoring military and popular morale, and breaking the British hold on New Jersey; and

WHEREAS, The Trenton historic area where the decisive battle occurred has largely been overlooked with respect to State and federal measures to designate, preserve, mark or interpret this historic site and event; and

WHEREAS, Significant preservation investments have been made at related historic buildings in Trenton, including the State House, the Old Barracks Museum, the Trent House, the Trenton Battle Monument and the Trenton War Memorial; and

WHEREAS, The opening of a new conference hotel within the area to be designated the Trenton Battlefield Historic Heritage Area brings new opportunities and impetus to promoting heritage tourism in this historic area; and

WHEREAS, The Legislature encourages recognition for the Trenton Battlefield Historic Heritage Area on the State and National Registers of Historic Places based on its significant role in the history of our nation; and

WHEREAS, Such recognition will serve to complement existing historic attractions and will serve to stimulate the economy and enhance property and business values in the recognized area; and

WHEREAS, The people of New Jersey and the nation are encouraged to visit the Trenton Battlefield Historic Heritage Area, one of the nation's most important historic sites, to commemorate the critical turning point in American history that occurred in the City during the Revolutionary War at the Battle of Trenton on December 26, 1776; now, therefore,

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

1. The Legislature recognizes the Trenton Battlefield Historic Heritage Area in the designated 24-block area to foster its promotion as a significant national historic site and to stimulate public interest and education in the role the City of Trenton played at a decisive moment in America's War for Independence.

2. The delineated 24-block area of the Trenton Battlefield Historic Heritage Area shall be defined by the perimeter of streets as follows: from the Trenton Battle Monument, south along Broad Street to Perry Street, east on Perry to Montgomery Street, south on Montgomery to Front Street and through Mill Hill on Mercer Street to Market Street, west on Market to Warren Street, north on Warren to John Fitch Plaza, west on John Fitch Plaza to the Trenton War Memorial and Barrack Street, north on Barrack to State Street, east on State to Warren Street, north on Warren to Hanover Street, west on Hanover to Barnes Street, north on Barnes to Bank Street, west on Bank to Willow Avenue, north on Willow to Tucker Street, and east on Tucker to Warren Street and the Trenton Battle Monument.

3. Duly authenticated copies of this joint resolution shall be transmitted to the United States Secretary of the Interior, the Chief Historian of the National Park Service, the Director of the National Register of Historic Places, the Commissioner of the New Jersey Department of Environmental Protection, the Administrator of the New Jersey Historic Preservation Office, the Executive Director of the New Jersey Historical Commission, each member of the Congress of the United States elected thereto from this State, members of the City Council of the City of Trenton, and the Mayor of the City of Trenton.

4. This joint resolution shall take effect immediately.

Approved March 21, 2005.

JOINT RESOLUTION No. 2

A JOINT RESOLUTION declaring the month of February of each year as "Black History Month" in the State of New Jersey in recognition of the accomplishments of Black Americans and their contributions to the history of this nation and State.

WHEREAS, The history of our nation and State is inextricably linked to the heritage of our country's Black Americans; and

WHEREAS, In the beginning of our nation's history, the majority of Black Americans lived as slaves; yet many, such as Crispus Attucks, participated in the struggle for American independence, sacrificing their lives in order to build a society based upon the ideals of liberty, prosperity and self-government; and

WHEREAS, The history of Black Americans is the story of extraordinary individuals whose achievements have set examples for citizens of all races; of freedom fighters such as Frederick Douglass and Harriet Tubman, who worked to abolish slavery; of scientists and innovators such as George Washington Carver and Elijah McCoy, whose inventions and innovations contributed immeasurably to the scientific progress and industrial success of this nation; and of social reformers such as Mary McLeod Bethune, W.E.B. DuBois, and Martin Luther King, Jr., who dedicated their lives to creating a nation where all people are created equal; and

WHEREAS, The history of New Jersey has been enriched by Black New Jerseyans such as Paul Robeson, an activist, actor, athlete, attorney, author, concert singer and scholar, whose achievements set the highest standards for people of all races, and William "Count" Basie, whose musical influence can still be heard in virtually every big jazz band; and

WHEREAS, While the history of Black Americans is also the story of countless nameless heroes brought to our shores who endured lives of bondage and oppression, the deprivation of their civil rights and the ravages of bigotry and racism, it is a history for which the most glorious chapters have yet to be written as Black Americans contribute in full measure to the fulfillment of the American promise; and

WHEREAS, The people of New Jersey should study black history, so that they may learn from its stories of heroism, struggle and achievement; now, therefore,

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

C.36:2-83 "Black History Month," February; designated.

1. The month of February of each year is designated as "Black History Month" in the State of New Jersey in recognition of the many accomplishments of Black Americans and their contributions to the history of this nation and State.

2. The Governor is requested to annually issue a proclamation calling upon public officials and citizens of this State to observe "Black History Month" with appropriate activities and programs.

3. This joint resolution shall take effect immediately.

Approved April 7, 2005.

JOINT RESOLUTION No. 3

A JOINT RESOLUTION designating the week of April 9th through 15th of each year as New Jersey P.O.W.-M.I.A. Week of Remembrance.

WHEREAS, The citizens of this State have proudly answered the call of their country in war; and

WHEREAS, This State is deeply indebted to its servicemen and women of all wars and conflicts for their courage and sacrifice; and

WHEREAS, The citizens of this State should be reminded of the sacrifices their fellow New Jerseyans have made in each conflict in which their nation has fought, including the most recent conflict in Iraq; and

WHEREAS, During Operation Iraqi Freedom, American troops were held by the enemy as prisoners of war, and subjected by their enemy captors to treatment in violation of international codes and customs for the treatment of prisoners of war; and

WHEREAS, This terrible ordeal of uncertainty about their fate, caused their families and friends extreme pain and grief; and

WHEREAS, A tribute to commemorate and honor those who have endured the hardship of being a prisoner of war and to remember and honor those missing in action is appropriate; and

WHEREAS, It is therefore fitting and proper to pay homage to the men and women from New Jersey who served in the Armed Forces of the United States and have suffered as prisoners of war or who remain missing in action; now, therefore,

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

C.36:2-84 New Jersey P.O.W.-M.I.A. Week of Remembrance, April 9 through April 15; designated.

1. The week of April 9th through 15th of each year is designated as New Jersey P.O.W.-M.I.A. Week of Remembrance in order to pay public tribute to the thousands of men and women who have suffered as prisoners of war or who remain missing in action.

2. The Governor and the Legislature shall annually call upon its citizens to join with citizens of all states in recalling those who were prisoners of war or are missing in action, in remembering the suffering their families have endured and are enduring, and in honoring the memory of those who have made the supreme sacrifice.

3. This joint resolution shall take effect immediately.

Approved April 11, 2005.

JOINT RESOLUTION No. 4

A JOINT RESOLUTION designating March 6 in each year as "Cystic Fibrosis Awareness Day."

WHEREAS, Cystic fibrosis is one of this nation's most common fatal inherited diseases, allowing mucus to clog the lungs and also affecting the pancreas, harming digestion and the absorption of vitamins in those persons with the disease; and

WHEREAS, Without treatment, most persons with cystic fibrosis die in infancy or childhood from malnutrition or lung infections; and

WHEREAS, Cystic fibrosis is the leading genetic killer among the Caucasian population in this country; however, early detection, proper disease management and specialized care can increase life expectancy dramatically for persons with the disease and enable these persons to enjoy a good quality of life and be a valuable asset to society; and

WHEREAS, About one in every 25 persons is a carrier of the genetic trait for cystic fibrosis; in New Jersey, approximately 14 persons are diagnosed with the disease annually; and over 420 persons in the State have been diagnosed with the disease, of whom approximately 250 are under age 18; and

WHEREAS, Recent research has indicated the potential benefits of early diagnosis and nutritional therapy for newborn infants with cystic fibrosis; and

WHEREAS, Almost 30,000 Americans have cystic fibrosis, and their average life span is 30 years, up from six years in 1954; and

WHEREAS, The steadily increasing period of survival for patients with cystic fibrosis in those countries in which specialized care is available indicates that treatment of this disease is successful; now, therefore,

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

C.36:2-85 "Cystic Fibrosis Awareness Day," March 6; designated.

1. March 6 in each year is designated as "Cystic Fibrosis Awareness Day" in the State of New Jersey to increase public awareness of cystic fibrosis as one of the most common fatal inherited diseases in the United States and the needs of persons who are coping with this disease.

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 observe this day with appropriate activities and programs.

3. This joint resolution shall take effect immediately.

Approved April 26, 2005.

JOINT RESOLUTION No. 5

A JOINT RESOLUTION designating the Cannonball Trail Pedestrian Bridge in Ramapo Mountain State Forest as the "Frank Oliver Pedestrian Bridge."

WHEREAS, Frank Oliver was a lifelong outdoorsman and a volunteer who effectively dedicated his spare time to saving a portion of North Jersey for outdoor recreation; and

WHEREAS, Frank Oliver was an active organizer of public support for the purchase of the Ramapo Mountain State Forest in Bergen County and worked to develop the area as a premier recreational site; and

WHEREAS, Frank Oliver played a major role in the creation of the New Jersey Trails Conference, a subsidiary of the New York - New Jersey Trail Conference, which is a federation of over 85 hiking and environmental organizations and 10,000 individuals dedicated to building and maintaining marked hiking trails and protecting the related open space in the bi-state region; and

WHEREAS, In tribute to Frank Oliver, and to perpetuate his memory, it is fitting and proper that the Cannonball Trail Pedestrian Bridge in Ramapo Mountain State Forest in Bergen County be designated as the "Frank Oliver Pedestrian Bridge"; now, therefore,

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

1. The Commissioner of the Department of Environmental Protection shall designate the Cannonball Trail Pedestrian Bridge in Ramapo Mountain State Forest in Bergen County as the "Frank Oliver Pedestrian Bridge."

2. The Commissioner of the Department of Environmental Protection is authorized to erect appropriate signs bearing that name.

3. This joint resolution shall take effect immediately.

Approved April 26, 2005.

JOINT RESOLUTION No. 6

A Joint Resolution commemorating the 60th anniversary of the liberation of Nazi concentration camps in 1945.

WHEREAS, The systematic persecution and deliberate mass execution of almost 11 million people, known as the Holocaust, occurred primarily in Nazi concentration camps located throughout Eastern Europe between 1933 and 1945; and

WHEREAS, Hitler established the first concentration camp in January of 1933, which enabled him to contain his political opponents and wage a successful propaganda campaign primarily against Jews and all people he considered racially and physically inferior; and

WHEREAS, Once Hitler invaded Poland in September of 1939, officially starting World War II, other concentration camps were rapidly built and soon became the locations for the implementation of the "Final Solution," the deliberate, planned mass murder of all European Jews; and

WHEREAS, Within the confines of the concentration camps, the Nazi soldiers carried out the mass genocide of 6 million Jews and the persecution, torture, and death of another 5 million non-Jews, who included Gypsies, Serbs, Poles, the disabled, homosexuals, Jehovah's Witnesses, Afro-Europeans, and resistance fighters; and

WHEREAS, The destruction of humanity caused by the Nazi regime finally came to an end in 1945 when the Allied forces of the United States, Great Britain, the Soviet Union and Canada liberated the Nazi concentration camps, provided food and medical support to the camps' survivors, and collected evidence for war crime trials; and

WHEREAS, Soldiers from 35 United States Army divisions exhibited heroism and gallantry by liberating prisoners from brutal Nazi rule, including the following:
the 1st, 2nd, 4th, 8th, 26th, 29th, 36th, 42nd, 45th, 63rd, 65th, 69th, 71st, 80th, 83rd, 84th, 86th, 89th, 90th, 95th, 99th, 103rd, and 104th Infantry Divisions;
the 3rd, 4th, 6th, 8th, 9th, 10th, 11th, 12th, 14th, and 20th Armored Divisions; and
the 82nd and 101st Airborne Divisions;

WHEREAS, The 60th anniversary of the liberation of Nazi concentration camps in 1945 will be marked in 2005 in the following months:

Czestochowa and Lodz, January
Warsaw, January
Auschwitz and Birkenau, January
Gross-Rosen, February
Ohrdruf, April
Buchenwald, April
Bergen-Belsen, April
Sachsenhausen, April
Flossenbuerg, April
Ravensbrueck, April
Dachau, April
Dora-Mittelbau, April
Landaberg, April
Westerbork, April
Mauthausen, May
Stutthof, May
Gunskirchen, May
Ebensee, May
Neuengamme, May; and

WHEREAS, The liberation of Nazi concentration camp prisoners signified a paramount moment in history when a stunned and horrified world, made aware of Nazi atrocities, was forced to recognize the capacity of human beings viciously to act out feelings of intolerance, racial prejudice and hatred; now, therefore,

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

1. The Senate and General Assembly of the State of New Jersey commemorate the 60th anniversary of the liberation of Nazi concentration camps and honor the victims and survivors of the Holocaust, and the United States military personnel who liberated these concentration camps, thereby encouraging the citizens of New Jersey to continue their collective endeavor to confront and resolve acts of indifference, hatred and prejudice.

2. This joint resolution shall take effect immediately.

Approved May 4, 2005.

JOINT RESOLUTION No. 7

A JOINT RESOLUTION designating the month of October in each year as "Breast Cancer Awareness Month."

WHEREAS, Breast cancer is the most common cancer among American women and is second only to lung cancer as the leading cause of cancer-related death; and

WHEREAS, In 2004, an estimated 215,990 women in the United States will be diagnosed with breast cancer, approximately 7,970 of whom will be women in New Jersey; 40,110 women in the United States, approximately 1,480 in New Jersey, will die of the disease; and

WHEREAS, An estimated one in every eight women in the United States will develop breast cancer during her lifetime; and

WHEREAS, The United States Department of Health and Human Services recommends that women 40 years of age and older be screened for breast cancer with mammography every one to two years; and

WHEREAS, Women 65 years of age or older are less likely to be screened for breast cancer with mammography than women 40 to 49 years of age, even though breast cancer risk increases with age; and

WHEREAS, In the United States, fewer Hispanic and Asian women are screened for breast cancer with mammography than Caucasian and African-American women; and women below the federal poverty level are less likely than women at higher incomes to have had a mammogram within the past two years; and

WHEREAS, October 2003 marked the 18th anniversary of National Breast Cancer Awareness Month, which is dedicated to increasing awareness of breast cancer issues, especially the importance of early detection; now, therefore,

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

C.36:2-86 "Breast Cancer Awareness Month," October; designated.

1. The month of October in each year is designated as "Breast Cancer Awareness Month" in the State of New Jersey.

2. The Governor is hereby requested to issue a proclamation calling upon public officials and the citizens of this State to observe the month with appropriate activities and programs.

3. This joint resolution shall take effect immediately.

Approved January 9, 2006.

JOINT RESOLUTION No. 8

A JOINT RESOLUTION creating the "Smart Freight Railroad Study Commission."

WHEREAS, Approximately 24 million tons of freight per year are moved along the State's Class I long distance and short-line railroads; and

WHEREAS, Northern New Jersey is at the center of rail freight services in the State, supporting the demand for the distribution of freight out of the Port of New York and New Jersey, the biggest container port on the eastern seaboard, and Newark Airport, one of the fastest growing air cargo hubs in North America; and

WHEREAS, To meet the demand, short-line freight railroads in northern New Jersey are expanding through the reactivation of previously unused or abandoned rail lines and construction of new rail lines, potentially leading to a cumulative increase in freight traffic along the Rahway Valley Railroad, the Lehigh Valley Railroad, the Staten Island Railway, the Raritan Valley Line, the Erie Lackawanna, the Chemical Coast Line, the Reading System, and the West Trenton Line; and

WHEREAS, These railroads were laid out in the 19th century and are being reactivated to meet 21st century needs; however it is not clear whether this expansion is being engineered with an overall strategic plan that maximizes the efficiency of freight movement while minimizing the impact on traffic flow, the environment, and safety in the communities near the rail lines; and

WHEREAS, Since the Department of Transportation has purchased the rights-of-way for several of these abandoned rail corridors for the reactivation of rail transportation services, it is appropriate to establish a commission to study the costs and benefits of short-line freight

railroad expansion before more State money is spent on the process;
now, therefore,

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

1. There is established a commission to be known as the "Smart Freight Railroad Study Commission" to consist of ten members as follows:

a. Two members of the General Assembly, with special consideration given to members who represent the areas that would be affected by freight rail expansion and who shall not be of the same political party, to be appointed by the Speaker of the General Assembly, to serve during the two-year legislative session in which the appointments are made;

b. Two members of the Senate, with special consideration given to members who represent the areas that would be affected by freight rail expansion and who shall not be of the same political party, to be appointed by the President of the Senate, to serve during the two-year legislative session in which the appointments are made;

c. The Commissioner of the Department of Transportation, ex officio, or the commissioner's designated representative;

d. Five members of the public to be appointed by the Governor with the advice and consent of the Senate: one of whom shall be a representative of the rail freight services industry, one of whom shall be a representative of the environmental community, one of whom shall be an individual with expertise in New Jersey transportation issues, one of whom shall be a representative of the New Jersey State League of Municipalities, and one of whom shall be a representative of a community-based organization that represents the interests of the communities near the short-line freight railroad expansion projects. No more than three of the members appointed by the Governor shall be of the same political party.

The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for this purpose.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

2. a. The commission shall organize within 30 days after the appointment of the majority of its members and shall select a chairperson and vice-chairperson from among the members. The chairperson shall appoint a secretary, who need not be a member of the commission.

b. The commission shall meet at the call of the chairperson and, except as provided by section 4 of this joint resolution, hold hearings at such places as the chairperson shall designate, during the sessions and recesses of the Legislature.

c. The commission shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance and incur traveling and other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

3. The commission shall conduct a thorough and comprehensive study of whether there is a need for the reactivation and construction of short-line freight railroads in northern New Jersey, and whether the potential for economic growth from the expansion of the rail lines justifies the economic cost to the State, the impact on air, soil, ground water, noise, and vibration pollution in the area of the rail lines, and the impact on the quality of life of nearby communities with regard to traffic flow, safety, and property values.

The commission shall adopt findings and recommendations as to whether the State should proceed with the expansion of short-line freight railroads in northern New Jersey or postpone the expansion projects until a more comprehensive plan of the State's short-line rail freight system can be developed by experts in rail freight transportation.

The commission shall prepare and submit a final report, containing its findings and recommendations, no later than six months after the commission organizes, to the Governor, the President of the Senate, and the Speaker of the General Assembly. The commission shall dissolve and all commission activities are to cease seven months after the commission's organization.

4. Within three months after the commission organizes, the commission shall hold at least one public hearing in a county in northern New Jersey that would be affected by short-line rail expansion to receive public input into short-line freight railroad expansion. The commission shall provide at least 10 days' notice to the public of the time and place of the public hearing.

5. a. With respect to the 10.5 mile section of the Lehigh Valley Railroad short-line freight track extending from the Township of Edison in Middlesex County to the Borough of Bound Brook in Somerset County, beginning on the effective date of this joint resolution, the Department of

Transportation shall not enter into any new contract for the purposes of rehabilitation or construction of railroads, tracks, structures, or rights-of-way for the reestablishment or establishment of short-line freight rail services until the commission has completed its report.

b. Nothing in subsection a. of this section shall be construed to prohibit the Department of Transportation from entering into any new contract for rehabilitation or construction of railroads, tracks, structures, or rights-of-way for the reestablishment or establishment of short-line freight rail services in other areas of this State outside of the 10.5 mile section of the Lehigh Valley Railroad track referred to in subsection a. of this section.

6. This joint resolution shall take effect immediately and shall expire seven months after the organization of the commission

Approved January 9, 2006.

JOINT RESOLUTION No. 9

A JOINT RESOLUTION providing for an independent study of the emergency medical services system in New Jersey.

WHEREAS, The sudden onset of trauma, physical distress or severe psychological distress due to illness, injury, natural disaster or acts of terrorism may result in disability or death without emergency medical care; and

WHEREAS, The few minutes after an injury occurs or at the onset of a medical crisis are frequently the most important to avoid death or serious impairment and disability, and the citizens of New Jersey expect and depend upon the prompt response of emergency medical services personnel to provide expert pre-hospital emergency care; and

WHEREAS, The current New Jersey emergency medical services system is a mix of over 25,000 dedicated volunteer and career providers, including first responders, emergency medical technicians, paramedics, nurses and physicians who respond to over 800,000 requests for emergency medical services each year; and

WHEREAS, The quality of care provided depends on well-trained and competent emergency medical services personnel, adequate staffing

levels, well-equipped emergency medical vehicles and sufficient funding to maintain the viability of the system; and

WHEREAS, Both career and volunteer emergency medical service agencies are experiencing difficulty attracting and retaining qualified emergency medical services personnel, and a shortage of personnel threatens the ability of emergency medical services to respond to State residents and visitors 24 hours a day, 7 days a week, 365 days a year; and

WHEREAS, Changes made by the federal Centers for Medicare and Medicaid Services to the Medicare ambulance fee structure in 2002 have significantly impacted the New Jersey hospital-based primarily non-transport advanced life support system; and it is estimated that, when fully implemented in the year 2006, current advanced life support services could face a \$32 million deficit; and

WHEREAS, The availability of qualified pre-hospital providers available to respond to requests for their services and a fiscally viable system that provides both basic and advanced life support services are essential to maintaining a high quality comprehensive emergency medical services system available to all New Jersey residents and visitors 24 hours a day, 7 days a week, 365 days a year; now, therefore,

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

1. The Commissioner of Health and Senior Services shall contract with an independent entity to conduct a study of the emergency medical services system in New Jersey. The study shall be completed no later than six months after the date that the contract is executed.

2. The study shall:

- a. include a comprehensive review and assessment of emergency medical services in New Jersey;
- b. identify emerging issues and problems in the delivery of pre-hospital emergency medical services;
- c. review existing State and federal statutes and regulations pertaining to emergency medical services;
- d. evaluate the hospital-based model for the provision of advanced life support services and the value and merit in retaining this system;
- e. review the New Jersey Emergency Medical Services Helicopter Response Program and the provision of air medical services in New Jersey;

f. review the fiscal solvency of the advanced life support system in light of federal reimbursement rules and the operation of the New Jersey Emergency Medical Services Helicopter Response Program;

g. consider other related issues as study personnel may deem appropriate and necessary;

h. make recommendations regarding the means of ensuring efficient, responsive, quality basic life support and advanced life support services to New Jersey residents and visitors 24 hours a day, 7 days a week, 365 days a year; and

i. make recommendations for workforce development to include recruitment and retention strategies for both career and volunteer services in order to ensure that adequate personnel are available to provide emergency medical services in the future.

3. The commissioner shall report to the Governor and the Legislature on the results of the study, and shall include in that report any recommendations that the commissioner deems appropriate.

4. This joint resolution shall take effect immediately and shall expire upon the issuance of the report by the commissioner.

Approved January 12, 2006.

AMENDMENTS
ADOPTED IN 2005
TO THE 1947 CONSTITUTION

(2579)

Amendments Adopted in 2005 to the 1947 Constitution

ARTICLE II, SECTION I, PARAGRAPH 1

Amend Article II, Section I, paragraph 1 to read as follows:

1. General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by law. The Governor, Lieutenant Governor, and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law.

Approved November 8, 2005.
Effective January 17, 2006.

ARTICLE IV, SECTION V, PARAGRAPH 1

Amend Article IV, Section V, paragraph 1 to read as follows:

1. No member of the Senate or General Assembly, during the term for which the member shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor, as Lieutenant Governor, or as a member of the Senate or General Assembly.

Approved November 8, 2005.
Effective January 17, 2006.

ARTICLE V, SECTION I, PARAGRAPHS 2 - 10

Amend Article V, Section I, paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 to read as follows:

2. The Governor shall be not less than thirty years of age, and shall have been for at least twenty years a citizen of the United States, and a resident of this State seven years next before election, unless the Governor shall have been absent during that time on the public business of the United States or of this State. A person shall be eligible for the office of Lieutenant Governor only if eligible under this Constitution for the office of Governor.

3. No member of Congress or person holding any office or position, of profit, under this State or the United States shall be Governor or Lieutenant Governor. If the Governor or Lieutenant Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, the office of Governor or Lieutenant Governor, as the case may be, shall thereby be vacated. No Governor or Lieutenant Governor shall be elected by the Legislature to any office during the term for which the person shall have been elected Governor or Lieutenant Governor.

4. The Governor and Lieutenant Governor shall be elected conjointly and for concurrent terms by the legally qualified voters of this State, and the manner of election shall require each voter to cast a single vote for both offices. The candidate of each political party for election to the office of Lieutenant Governor shall be selected by the candidate of that party nominated for election to the office of Governor. The selection of the candidate for election to the office of Lieutenant Governor shall be made within 30 days following the nomination of the candidate for election to the office of Governor. A person shall not seek election to both offices simultaneously. The joint candidates receiving the greatest number of votes shall be elected; but if two or more joint candidacies shall be equal and greatest in votes, one set of joint candidates shall be elected by the vote of a majority of all the members of both houses in joint meeting at the regular legislative session next following the election for Governor and Lieutenant Governor by the people. Contested elections for the offices of Governor and Lieutenant Governor shall be determined in such manner as may be provided by law.

5. The term of office of the Governor and of the Lieutenant Governor shall be four years, beginning at noon of the third Tuesday in January next following their election, and ending at noon of the third Tuesday in January four years thereafter. No person who has been elected Governor for two successive terms, including an unexpired term, shall again be eligible for that office until the third

Tuesday in January of the fourth year following the expiration of the second successive term.

6. In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, the Lieutenant Governor shall become Governor, until a new Governor is elected and qualifies.

In the event of simultaneous vacancies in both the offices of Governor and Lieutenant Governor resulting from any cause, the President of the Senate shall become Governor until a new Governor or Lieutenant Governor is elected and qualifies. In the event that there is a vacancy in the office of Senate President, or the Senate President declines to become Governor, then the Speaker of the General Assembly shall become Governor until a new Governor or Lieutenant Governor is elected and qualifies. In the event that there is a vacancy in the office of Speaker of the General Assembly, or if the Speaker declines to become Governor, then the functions, powers, duties and emoluments of the office shall devolve for the time being upon such officers and in the order of succession as may be provided by law, until a new Governor or Lieutenant Governor is elected and qualifies.

7. In the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or the Governor's inability to discharge the duties of the office, or the Governor's impeachment, the functions, powers, duties and emoluments of the office shall devolve upon the Lieutenant Governor, until the Governor-elect qualifies, or the Governor in office returns to the State, or is no longer unable to discharge the duties of the office, or is acquitted, as the case may be, or until a new Governor is elected and qualifies. In the event that the Lieutenant Governor in office is absent from the State, or is unable to discharge the duties of the office, or is impeached, or if the Lieutenant Governor-elect fails to qualify, or if there is a vacancy in the office of Lieutenant Governor, the functions, powers, duties, and emoluments of the office of Governor shall devolve upon the President of the Senate. In the event there is a vacancy in the office of the President of the Senate, or of the Senate President's absence from the State, inability to discharge the duties of the office, or impeachment, then such functions, powers, duties, and emoluments shall devolve upon the Speaker of the General Assembly. In the event there is a vacancy in the office of Speaker of the General Assembly, or of the Speaker's absence from the State, inability to discharge the duties of the office,

or impeachment, then such functions, powers, duties, and emoluments shall devolve upon such officers and in the order of succession as may be provided by law. The functions, powers, duties, and emoluments of the office of Governor shall devolve upon the President of the Senate, the Speaker of the General Assembly or another officer, as the case may be, until the Governor-elect or Lieutenant Governor-elect qualifies, or the Governor or Lieutenant Governor in office returns to the State, or is no longer unable to discharge the duties of the office, or is acquitted, or until a new Lieutenant Governor is appointed, as the case may be, or a new Governor or Lieutenant Governor is elected and qualifies.

8. Whenever a Governor-elect or Lieutenant Governor-elect shall have failed to qualify within six months after the beginning of the term of office, or whenever for a period of six months a Governor or Lieutenant Governor in office, or person administering the office, shall have remained continuously absent from the State, or shall have been continuously unable to discharge the duties of the office by reason of mental or physical disability, the office shall be deemed vacant. Such vacancy shall be determined by the Supreme Court upon presentment to it of a concurrent resolution declaring the ground of the vacancy, adopted by a vote of two-thirds of all the members of each house of the Legislature, and upon notice, hearing before the Court and proof of the existence of the vacancy.

9. In the event of a vacancy in the office of Lieutenant Governor resulting from the death, resignation or removal of a Lieutenant Governor in office or the death of a Lieutenant Governor-elect or from any other cause, the Governor shall appoint a Lieutenant Governor within forty-five days of the occurrence of the vacancy to fill the unexpired term.

If a Lieutenant Governor becomes Governor, or in the event of simultaneous vacancies in the offices of Governor and Lieutenant Governor, a Governor and a Lieutenant Governor shall be elected to fill the unexpired terms of both offices at the next general election, unless the assumption of the office of Governor by the Lieutenant Governor, or the vacancies, as the case may be, occur within sixty days immediately preceding a general election, in which case they shall be elected at the second succeeding general election. No election to fill the unexpired terms shall be held in any year in which a Governor and Lieutenant Governor are to be elected for full terms. A Governor and Lieutenant Governor elected for unexpired terms shall assume their offices immediately upon their election.

10. a. The Governor and the Lieutenant Governor shall each receive for services a salary, which shall be neither increased nor diminished during the period for which the Governor or Lieutenant Governor shall have been elected or appointed.

b. The Governor shall appoint the Lieutenant Governor to serve as the head of a principal department or other executive or administrative agency of State government, or delegate to the Lieutenant Governor duties of the office of Governor, or both. The Governor shall not appoint the Lieutenant Governor to serve as Attorney General. The Lieutenant Governor shall in addition perform such other duties as may be provided by law.

Approved November 8, 2005.

Effective January 17, 2006.

ARTICLE V, SECTION IV, PARAGRAPHS 2-4

Amend Article V, Section IV, paragraphs 2, 3 and 4 to read as follows:

2. Each principal department shall be under the supervision of the Governor. The head of each principal department shall be a single executive unless otherwise provided by law. Such single executives shall be nominated and appointed by the Governor, with the advice and consent of the Senate, to serve at the pleasure of the Governor during the Governor's term of office and until the appointment and qualification of their successors, except as herein otherwise provided with respect to the Secretary of State and the Attorney General. The Governor may appoint the Lieutenant Governor to serve as the head of a principal department, without the advice and consent of the Senate, and to serve at the pleasure of the Governor during the Governor's term of office.

3. The Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor, except the Governor may appoint the Lieutenant Governor to serve as Secretary of State without the advice and consent of the Senate.

4. Whenever a board, commission or other body shall be the head of a principal department, the members thereof shall be nominated and appointed by the Governor with the advice and

consent of the Senate, and may be removed in the manner provided by law. The Governor may appoint the Lieutenant Governor hereto without the advice and consent of the Senate. Such a board, commission or other body may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the Governor. Any principal executive officer so appointed shall be removable by the Governor, upon notice and an opportunity to be heard.

Approved November 8, 2005.
Effective January 17, 2006.

ARTICLE XI, SECTION VII

Amend Article XI by the addition of a new Section VII to read as follows:

In the event of a vacancy in the office of Governor resulting from the death, resignation or removal of a Governor in office, or the death of a Governor-elect, or from any other cause, occurring prior to noon on January 19, 2010, the President of the Senate shall become Governor until a new Governor or Lieutenant Governor is elected and qualifies, and in the event of the Senate President's death, resignation or removal prior to becoming Governor, or if the Senate President declines to become Governor, then the Speaker of the General Assembly shall become Governor until a new Governor or Lieutenant Governor is elected and qualifies, and in the event of the Speaker's death, resignation or removal prior to becoming Governor, or if the Speaker declines to become Governor, then the functions, powers, duties and emoluments of the office shall devolve for the time being upon such officers and in such order of succession as may be provided by law until a new Governor or Lieutenant Governor is elected and qualifies. When the President or Speaker becomes Governor pursuant to this section, the President's or Speaker's seat in the Legislature and leadership position shall become vacant.

In the event of a vacancy in the office of Governor occurring prior to noon on January 19, 2010, a Governor shall be elected to fill the unexpired term at the general election next succeeding the vacancy, unless the vacancy shall occur within sixty days immediately preceding a general election, in which case the Governor shall be elected at the second succeeding general election; but no election to fill an unexpired term shall be held in calendar year 2009. A

Governor elected for an unexpired term shall assume office immediately upon election.

Until noon on January 19, 2010, in the event of the failure of the Governor-elect to qualify, or of the absence from the State of a Governor in office, or the Governor's inability to discharge the duties of the office, or the Governor's impeachment, the functions, powers, duties and emoluments of the office shall devolve upon the President of the Senate, for the time being; and in the event of the Senate President's death, resignation, removal, absence, inability or impeachment, then upon the Speaker of the General Assembly, for the time being; and in the event of the Speaker's death, resignation, removal, absence, inability or impeachment, then upon such officers and in such order of succession as may be provided by law; until the Governor-elect qualifies, or the Governor in office returns to the State, or is no longer unable to discharge the duties of the office, or is acquitted, as the case may be, or until a new Governor or Lieutenant Governor is elected and qualifies.

If the President of the Senate is to become Governor or acting Governor pursuant to this section but the Senate has elected more than one President, only one of whom is of the same political party as the Governor, the President who is of that same political party shall become Governor or acting Governor, as appropriate.

If the Speaker of the General Assembly is to become Governor or acting Governor pursuant to this section but the General Assembly has elected more than one Speaker, only one of whom is of the same political party as the Governor, the Speaker who is of that same political party shall become Governor or acting Governor, as appropriate.

Approved November 8, 2005.

Effective January 17, 2006.

ARTICLE VIII, SECTION II, PARAGRAPH 6

Amend Article VIII, Section II, paragraph 6 to read as follows:

6. There shall be credited annually to a special account in the General Fund an amount equivalent to 4% of the revenue annually derived from the tax imposed pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), as amended and supplemented, or any other State law of similar effect.

The amount annually credited pursuant to this paragraph shall be dedicated and shall be appropriated from time to time by the

Legislature only for the following purposes: paying or financing costs incurred by the State for the remediation of discharges of hazardous substances, which costs may include performing necessary operation and maintenance activities relating to remedial actions and costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge; providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom; providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge; for paying or financing the cost of water quality point and nonpoint source pollution monitoring, watershed based water resource planning and management, and nonpoint source pollution prevention projects; and for providing grants for the costs of air pollution control equipment to reduce the levels of particulate matter emissions from diesel-powered engines, and for funding for other measures to reduce human exposure to those emissions.

It shall not be competent for the Legislature, under any pretense whatever, to borrow, appropriate, or use the amount credited to the special account pursuant to this paragraph, or any portion thereof, for any purpose or in any manner other than as enumerated in this paragraph. It shall not be competent for the Legislature, under any pretense whatever, to borrow, appropriate, or use the amount credited to the special account pursuant to this paragraph, or any portion thereof, for the payment of the principal or interest on any general obligation bond that was approved by the voters prior to this paragraph becoming part of this Constitution.

(a) A minimum of one-sixth of the amount annually credited pursuant to this paragraph, or a minimum of an amount equal to \$5,000,000.00 per year, whichever is less, shall be dedicated, and shall be appropriated from time to time by the Legislature, only for paying or financing the cost of water quality point and nonpoint source pollution monitoring, watershed based water resource planning and management, and nonpoint source pollution prevention projects.

(b) A minimum of one-third of the amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for providing

funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and for providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge. Of any amount dedicated pursuant to this subparagraph (b) but not expended prior to January 1, 2004, fifty percent of that amount shall be expended on funding for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and fifty percent shall be expended on funding the costs of the remediation of discharges of hazardous substances, including costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2004 and ending December 31, 2005, fifty percent of the moneys dedicated pursuant to this subparagraph (b) shall be appropriated for funding the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and fifty percent shall be appropriated for funding the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2006 and ending December 31, 2021, forty percent of the moneys dedicated pursuant to this subparagraph (b) shall be appropriated for funding the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and sixty percent shall be appropriated for funding the costs of the remediation of discharges of hazardous substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge.

Commencing January 1, 2004, up to \$2,000,000.00 per year, which shall be taken from the amount appropriated pursuant to this subparagraph (b) for the costs of the remediation of discharges of

hazardous substances, may be expended for the costs of a State underground storage tank inspection program, which costs may include the direct but not indirect program administrative costs incurred by the State for the employment of inspectors and a compliance and enforcement staff, and the purchase of vehicles and equipment necessary for the implementation thereof.

All moneys derived from repayments of any loan issued from the amount dedicated pursuant to this subparagraph (b) shall be dedicated, and shall be appropriated from time to time by the Legislature, only for the purposes authorized pursuant to this subparagraph (b). The dedication of moneys derived from loan repayments shall not expire.

Except for moneys that may be expended for the costs of a State underground storage tank inspection program, and except for amounts that may be appropriated from time to time by the Legislature on or after January 1, 2006, but not to exceed \$1,000,000 annually, to administer programs to provide loans and grants for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, no moneys appropriated pursuant to this subparagraph (b) may be expended on any direct or indirect administrative costs of the State or any of its departments, agencies, or authorities.

Commencing January 1, 2006, funding for administrative costs for programs to provide loans and grants for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances may be appropriated from time to time by the Legislature from the amount dedicated pursuant to this subparagraph (b) for those purposes in an amount not to exceed \$1,000,000 in any year.

No moneys appropriated pursuant to this subparagraph (b) may be expended on any upgrade, replacement, or closure of any underground storage tank, or for the remediation of any discharge therefrom, for any underground storage tank owned by the State or any of its departments, agencies, or authorities, or for costs incurred by the State for the remediation of discharges of hazardous substances.

Commencing on January 1, 2022, the moneys dedicated pursuant to this subparagraph (b) may be appropriated from time to time by the Legislature: for providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom; for providing funding, including the provision of loans or grants, for the costs of the remediation of discharges of hazardous

substances, which costs may include costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge; or for the costs of a State underground storage tank inspection program, in an amount up to \$2,000,000.00 per year.

The Legislature may appropriate after January 1, 2006, an amount not to exceed \$10,000,000, of any of the amounts appropriated in any fiscal year ending before July 1, 2005, made for the purpose of the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge therefrom, and not expended for that purpose prior to the end of the fiscal year ending on June 30, 2005, for the purpose set forth in subparagraph (d) of this paragraph.

(c) Commencing January 1, 2006 and ending December 31, 2015, a minimum of thirty-three percent of the amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for paying or financing costs incurred by the State for the remediation of discharges of hazardous substances, which costs may include performing necessary operation and maintenance activities relating to remedial actions and costs incurred for providing alternative sources of public or private water supplies, when a water supply has been, or is suspected of being, contaminated by a hazardous substance discharge. Commencing January 1, 2016, a minimum of one-half of the amount annually credited pursuant to this paragraph shall be dedicated for the purposes of this subparagraph (c). No moneys appropriated pursuant to this subparagraph (c) may be expended for any indirect administrative costs of the State, its departments, agencies, or authorities. No more than nine percent of the moneys annually credited pursuant to this paragraph, which shall be taken from the amount dedicated pursuant to this subparagraph (c), may be expended for any direct program administrative costs of the State, its departments, agencies, or authorities. If the Legislature dedicates for the purposes of this subparagraph (c) any moneys above the minimum that is required to be dedicated pursuant to this subparagraph (c), those moneys may not be expended for any direct or indirect administrative costs of the State, its departments, agencies, or authorities.

(d) Commencing January 1, 2006 and ending December 31, 2015, a minimum of seventeen percent of the amount annually credited pursuant to this paragraph shall be dedicated, and shall be appropriated from time to time by the Legislature, only for providing

grants for the costs of air pollution control equipment to reduce the levels of particulate matter emissions from diesel-powered engines, funding for other measures to reduce human exposure to those emissions, and funding for those program administrative costs as provided in this subparagraph. No more than \$1,150,000 per year of the amount dedicated pursuant to this subparagraph (d) may be expended for program administrative costs of the State, its departments, agencies, or authorities for implementing the provisions of this subparagraph (d), and for regulating particulate matter emissions from diesel-powered engines.

Any amount dedicated and appropriated pursuant to this subparagraph (d) but not expended prior to January 1, 2016 shall be dedicated and may be appropriated from time to time by the Legislature for the purposes authorized in subparagraph (c) of this paragraph.

Approved November 8, 2005.
Effective December 8, 2005.

EXECUTIVE ORDERS

(2593)

EXECUTIVE ORDER No. 15

WHEREAS, Beginning on January 22, 2005, severe weather conditions, including snow, wind and freezing temperatures have made roadways hazardous to travel throughout the State; and

WHEREAS, Snow accumulations make it difficult or impossible for citizens to obtain the necessities of life as well as essential services such as police, fire and first aid; and

WHEREAS, The aforesaid weather conditions constitute a disaster from a natural cause which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities or counties of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled by the normal municipal operating services; and

WHEREAS, The Constitution and Statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33 et seq. and N.J.S.A.38A:3-6.1 and 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, RICHARD J. CODEY, Acting Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do DECLARE AND PROCLAIM that a State of Emergency presently exists throughout the State of New Jersey; and I hereby ORDER AND DIRECT the following:

1. Authorize and empower the Adjutant General, in accordance with N.J.S.A.38A:2-4 and 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 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.

2. Authorize and empower the State Director of Emergency Management to implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operations plans as necessary.

3. Authorize and empower the State Director of Emergency Management who is the Superintendent of State Police, in accordance with 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 or interstate 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 and empower the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Attorney General or Superintendent of State Police within their respective municipalities.

5. Authorize and empower 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.

6. 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 their residences during the course of this emergency.

7. Authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the

contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A.App.A:9-45.

8. In accordance with N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A. App. A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

10. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this state of emergency.

11. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6 and 40A:14-156.4, that no municipality or public or semipublic agency send public works, fire, police, emergency medical or other personnel or equipment into any non-contiguous disaster-stricken municipality within this State nor to any disaster-stricken municipality outside this State unless and until such aid has been directed by the county emergency management coordinator or his deputies in consultation with the State Director of Emergency Management.

12. 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 January 22, 2005.

EXECUTIVE ORDER No. 16

WHEREAS, Executive Order No. 15 (2005), declaring a State of Emergency, was issued on January 22, 2005, because of severe weather conditions, including snow, wind and freezing temperatures that made roadways hazardous to travel throughout the State; and

WHEREAS, The severity of the conditions necessitating the declaration of a State of Emergency have now eased;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of Emergency declared in Executive Order No. 15 is terminated effective immediately.

Dated January 24, 2005.

EXECUTIVE ORDER No. 17

WHEREAS, Army National Guard Specialist Alain Kamolvathin, was raised in Hardwick and Blairstown and graduated from North Warren Regional High School; and

WHEREAS, Specialist Kamolvathin enlisted in the New Jersey National Guard and, following the death of their parents, dreamed of buying a house for himself and his sister, Sidney; and

WHEREAS, Specialist Kamolvathin subsequently transferred to the New York National Guard, where he proudly served as a Scout for the First Battalion 69th Infantry Regiment, and was awarded a Purple Heart; and

WHEREAS, Specialist Kamolvathin was a courageous soldier, and a loving son and brother; and

WHEREAS, Specialist Kamolvathin has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Specialist Kamolvathin's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Thursday, January 27, 2005, in recognition and mourning of Army National Guard Specialist Alain Kamolvathin.

2. This Order shall take effect immediately.

Dated January 25, 2005.

EXECUTIVE ORDER No. 18

WHEREAS, Executive Order No. 134 ("E.O. 134") was issued on September 22, 2004 for the purpose of protecting the integrity of the State's public contracting process by ensuring that decisions regarding the award of State contracts are based upon merit and are not influenced, in appearance or actuality, by political contributions to a candidate for or holder of the public Office of Governor, or any State or county political party committee; and

WHEREAS, E.O. 134 prohibits the award of any State contract in excess of \$17,500 to any firm making a reportable contribution during certain specified time periods to a candidate committee or an election fund of any candidate for Governor or the current holder of the Office of Governor, or any State or county political party committee; and

WHEREAS, E.O. 134 further requires that, effective October 15, 2004, firms seeking State contracts must report all contributions made during the preceding four years to any political organization organized under section 527 of the Internal Revenue Code that also meets the definition

of a continuing political committee, within the meaning of N.J.S.A.19:44A-3(n) and N.J.A.C.19:25-1.7, and permits the State Treasurer to disqualify a firm from bidding on or receiving a contract if the Treasurer determines that such contributions constitute a conflict of interest; and

WHEREAS, By banning the practice of pay-to-play as described above, E.O. 134 clearly advances the best interests of the citizens and taxpayers of the State of New Jersey by ensuring that decisions regarding the award of State contracts are based upon merit and are not influenced, in appearance or actuality, by contributions to a candidate for or holder of the public office of Governor, or to any State or county political party committee; and

WHEREAS, E.O. 134, by its terms, applies to all State contracts above the \$17,500 threshold established therein and does not expressly distinguish between State-funded contracts and those contracts that may be funded, in whole or in part, with funds received from other sources; and

WHEREAS, The New Jersey Department of Transportation ("DOT") annually receives approximately \$750 to \$800 million from the Federal Highway Administration ("FHWA") for the design, construction and maintenance of highways in New Jersey and, pursuant to federal law, 23 U.S.C.s. 112 et seq., and its implementing regulations, the FHWA must approve the plans, specifications and method of procurement for DOT contracts that are federally funded; and

WHEREAS, Beginning in October 2004, the DOT communicated on several occasions with the FHWA concerning whether the inclusion of E.O. 134's requirements in federally funded highway contracts would have any effect on federal highway funding; and

WHEREAS, The FHWA recently has taken the position that despite its beneficial public purpose, E.O. 134 as applied to federally funded highway contracts allegedly poses a threat to competition and would violate federal law, asserting in a January 6, 2005 letter from the FHWA Division Administrator to the DOT Commissioner that "Executive Order #134 conflicts with Federal regulations and may not be included in Federal-aid contracts" and "[u]nless this provision is removed from Federal projects, we cannot authorize Federal funds;" and

WHEREAS, The DOT has not received FHWA authorization on any new federally funded highway construction project since December 2004, and at this time 19 projects totaling approximately \$250 million are being held up for lack of federal funding because the contracts for those projects contain language implementing the requirements of E.O. 134; and

WHEREAS, The FHWA's position not only denies the DOT the ability to undertake important construction projects that are necessary to protect the safety and well-being of New Jersey's citizens and the citizens of other states who are traveling by motor vehicle in New Jersey, but also has an economic impact due to job loss associated with projects that cannot proceed without federal funds; and

WHEREAS, The State of New Jersey initiated litigation intended to protect the State's interests by challenging the FHWA's determination that E.O. 134 is in conflict with federal law, and requesting declaratory and injunctive relief preventing the FHWA from withholding federal highway funds; and

WHEREAS, As part of the litigation, the State sought a temporary restraining order to compel the FHWA to release federal highway funds during the pendency of the litigation; and

WHEREAS, A federal district court has denied the State's request for a restraining order, with the effect that the FHWA will be able to continue withholding those essential transportation funds from the State while the litigation proceeds; and

WHEREAS, The Constitution of this State requires me, as Acting Governor, to manage the operations of State government effectively and fairly, consistent with the laws as interpreted by the courts; and

WHEREAS, The State of New Jersey intends to pursue its available legal remedies; however, pursuit of those remedies will likely take several months, and the citizens of this State cannot continue to be harmed by the federal withholding of critically needed transportation funds in the interim;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of this State, do hereby ORDER and DIRECT:

1. The provisions of E.O. 134 shall not apply to DOT contracts that are funded, in whole or in part, by the FHWA.
2. Except as herein modified, all of the provisions of E.O. 134 shall remain in full force and effect.
3. This Order shall take effect immediately and shall be effective until such time as the State obtains the relief sought in the pending litigation captioned, State of New Jersey v. Norman Y. Mineta, et al.

Dated January 26, 2005.

EXECUTIVE ORDER No. 19

WHEREAS, United States Marine Corps Corporal Sean P. Kelly, a resident of New Jersey, graduated from Pitman High School in 2000, where he was a member of the varsity football and wrestling teams; and

WHEREAS, Corporal Kelly enlisted in the U.S. Marines Corps shortly after graduation, following in the family tradition established by his father, grandfather and older brother and planned to make a career of his service in the Marine Corps; and

WHEREAS, Corporal Kelly proudly served as a member of the U.S. Marine Corps' 1st Battalion, 3rd Marine Regiment, 3rd Marine Division, III Marine Expeditionary Force, and was deployed to Iraq in the service of his country in October 2004; and

WHEREAS, Corporal Kelly was a courageous Marine, and a loving son, brother and husband; and

WHEREAS, Corporal Kelly has made the ultimate sacrifice, giving his life in the line of duty while serving our Nation; and

WHEREAS, Corporal Kelly's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and,

therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Thursday, February 3, 2005, in recognition and mourning of United States Marine Corps Corporal Sean P. Kelly.

2. This Order shall take effect immediately.

Dated February 2, 2005.

EXECUTIVE ORDER NO. 20

WHEREAS, New Jersey, the most densely populated State in the nation, has an unmatched array of critical transportation, utility, petrochemical, pharmaceutical, manufacturing and entertainment infrastructure; and

WHEREAS, The State's industrial and civil infrastructure commingles with dense population centers and high traffic transportation corridors; and

WHEREAS, New Jersey functions as a global transportation and commercial gateway with tens of millions of people passing through New Jersey on their way to destinations around the world and vast quantities of goods moving through the State to and from markets throughout the nation, Canada, Europe, Africa and the Far East; and

WHEREAS, Numerous analyses have indicated that Port Newark-Port Elizabeth, which is the most active port on the eastern seaboard and which has plans to further increase its cargo capacity throughput, is vulnerable to terrorist actions including attacks from weapons of mass destruction concealed in containers; and

WHEREAS, Each day New Jersey's public roads and transportation systems, including buses, light rail, passenger airlines, trains and ferries, enable millions of people to gain access to all parts of the State and neighboring states; and

WHEREAS, This transportation infrastructure and these systems are likely targets for terrorist attacks and, as such, the State must devise and implement measures to meet the challenge of safeguarding and avoiding disruption to those who could be affected by such an attack; and

WHEREAS, A terrorist incident disrupting New Jersey's industrial and transportation infrastructure or critical utilities would severely affect both national and international economic stability as well as public safety and international travel resulting in the loss of billions of dollars to the world economy; and

WHEREAS, The federal, State and local efforts to develop comprehensive training, education, exercise and research and development programs to protect against chemical, biological, radiological, nuclear and explosive (CBRNE) threats have been robust but divergent; and

WHEREAS, Safeguarding the State's populace and critical infrastructure requires a continuous, comprehensive and intensive training, education, exercise and research effort to protect against CBRNE threats; and

WHEREAS, The scale of response that is required to protect New Jersey and the nation against the threat of domestic terrorism require the consolidation and coordination to the extent possible of efficient and effective training, education, exercises, research and development; and

WHEREAS, To best utilize the disparate expertise in the areas of training, education, exercise and research and development throughout the State, it is necessary to aggregate to the greatest extent possible the functions that will be relied upon prepare for and to respond to the CBRNE threats; and

WHEREAS, New Jersey would benefit substantially from an objective expert and efficient process to conduct training, education, exercises, research and development related to the CBRNE threats; and

WHEREAS, At present there is no single entity designated to support the State's efforts to protect against CBRNE threats by way of continuous, comprehensive training, education, exercises, research and development; and

WHEREAS, The New Jersey Medical Emergency Disaster Preparedness and Response Expert Panel (MEDPREP), under the direction and leadership of the New Jersey Department of Health and Senior Services, recently recognized the need for, and endorsed the concept of creating, an "all hazards" simulation training facility for public health, law enforcement and environmental protection emergency response personnel, and emergency medical practitioners and clinicians; and

WHEREAS, The University of Medicine and Dentistry of New Jersey (UMDNJ) currently staffs and operates the Center for BioDefense; and

WHEREAS, UMDNJ is the State's public biological and health-related research university, which includes the Center for BioDefense, the School of Public Health and its federally funded Academic Center for Public Health Preparedness, the Environmental and Occupational Health Sciences Institute in partnership with Rutgers, The State University, and the New Jersey Preparedness Training Consortium; and

WHEREAS, The UMDNJ Center for BioDefense has a lead role in the Northeast Biodefense Center (NBC), a consortium of basic and applied research and public health organizations selected by the National Institute for Allergy and Infectious Diseases as one of eight Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases Research; and

WHEREAS, The NBC's primary mission is to provide regional and national practical solutions to the public health threats emanating from both bioterrorism and emerging infectious diseases; and

WHEREAS, UMDNJ has been awarded nearly \$21 million from the National Institutes of Health to build a new 13,000 square foot regional biocontainment laboratory;

WHEREAS, UMDNJ has a proven record of State service, responding in an effective manner to a wide variety of public needs; and

WHEREAS, Chapter 3 of the Laws of 2005 tasked the Department of Environmental Protection, with the concurrence of the Department of Health and Senior Services and the Homeland Security Branch in the Division of State Police, with development of a comprehensive plan for the standardization and coordination of county hazardous material response programs; and

WHEREAS, UMDNJ has demonstrated an ability to partner with the full range of relevant entities, including other higher education institutions, State military bases, and State agencies, including the Domestic Security Preparedness Task Force; and

WHEREAS, UMDNJ has an established close working relationship with Picatinny Arsenal and Fort Monmouth, installations that have previously been designated as "New Jersey Centers for Homeland Defense Technologies and Security Readiness"; and

NOW, THEREFORE, I, Richard J. Codey, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT that:

1. The New Jersey CBRNE Training and Research Center at UMDNJ (the "Center") shall be created within UMDNJ to work in collaboration with State government and thereby serve as the facilitator in bringing together the vast array of expertise that exists in New Jersey and throughout the country in the areas of training, education, exercises, research and development relating to CBRNE threats.

2. Working in collaboration with the State including those State agencies tasked with the development of standardized hazardous material response programs; in coordination with those already existing CBRNE training, education and research programs; in compliance with the security strategy developed by the Domestic Security Preparedness Task Force (Task Force); and with oversight and guidance from the Task Force through the Center Advisory Group (CAG), the Center will, among other activities:

- Establish at least one state-of-the-art center to provide CBRNE focused training, education and exercises to first responders, as that term is defined by the National Incident Management System (NIMS);

- Establish at least one state-of-the-art center to provide CBRNE focused training, education and exercises to security advisors;
- Provide and/or facilitate CBRNE focused training, education and exercises;
- Develop training, education and exercise curricula and perform research and development based on identified threats and associated risks and impact to public health and safety;
- Provide a delivery platform for first responder and security advisor training as approved by the Office of Domestic Preparedness, Department of Homeland Security (ODP);
- Take all necessary steps to become a member of the ODP National Domestic Preparedness Training Consortium;
- Endeavor to establish a comprehensive world class "all hazards" preparedness training, education and exercises facilities, coupled with state-of-the-art advanced level preparedness programs;
- Provide opportunities for educators, researchers, and other professionals to provide and investigate critical information and technical aspects of state-of-the-art advancements, as well as new applications for existing technologies relating to the CBRNE threats;
- Provide a venue and resources for CBRNE focused basic and applied research directed by the United States Departments of Health and Human Services, Homeland Security and Defense;
- Address CBRNE specific needs which are local to New Jersey as well as CBRNE needs that may not receive adequate attention at a national level;
- Seek and foster collaboration, coordination and more effective management of a single organization or multi-organizational grant application(s) regarding CBRNE focused training, education, exercises, research and development programs that engage federal, state and local agencies, New Jersey colleges and universities and private sector firms;
- Seek and foster collaboration and coordination with the recently assigned Civil Support Team (Heavy) assigned to the Department of Military and Veterans' Affairs;
- Seek and foster collaboration, coordination and more effective management of a single organization or multi-organizational grant application(s) regarding CBRNE focused training, education, exercises, research and development programs that engage federal, state and local agencies, New Jersey colleges and universities and private sector firms;
- Enter into cooperative agreements with federal, state and local agencies, New Jersey colleges and universities, and private sector firms regarding

CBRNE focused training, education and exercises, research and development programs;

- Enter into cooperative agreements with military installations such as Fort Monmouth, Picatinny Arsenal, Lakehurst Naval Air Base, Fort Dix, McGuire Air Force Base related to CBRNE focused training, education, exercises, research and development programs; and
- Identify opportunities, and make recommendations, to maximize efficiencies through relocation and alignment of CBRNE focused training, education and exercise programs, and research expertise, capabilities and facilities.

3. The Center will have an Center Advisory Group (CAG) comprised of representatives from the Attorney General's Office, the Department of Environmental Protection, the Department of Health and Senior Services, the Department of Agriculture, the Department of Military and Veterans' Affairs, the Department of Community Affairs, the Superintendent of State Police, and the Office of Counter Terrorism. The Chair shall be elected by the Group from among the members of the Group. The CAG, as a representative body of the Task Force, shall provide oversight and guidance to the Center including, but not limited to, the continuing viability of the Center.

4. UMDNJ will be responsible for developing and maintaining, and have full control of an appropriate governance, oversight, management and operational structure for the Center with advice and direction from the CAG.

5. This Order shall take effect immediately.

Dated February 3, 2005.

EXECUTIVE ORDER No. 21

WHEREAS, United States Marine Corps Lance Corporal Harry Swain IV, a resident of New Jersey, graduated from Millville Senior High School in 2001; and

WHEREAS, Lance Corporal Swain enlisted in the U.S. Marine Corps shortly after graduation, passing up a college scholarship to fulfill his

long-time goal of entering military service, with the hope of eventually becoming a member of the FBI's Hostage Rescue Team; and

WHEREAS, Lance Corporal Swain proudly served as a member of the U.S. Marine Corps' Alpha Company, 1st Battalion, Second Marines, and was deployed to Iraq in the service of his country for two tours of duty, where he received the Presidential Unit Citation for his performance in battle; and

WHEREAS, Lance Corporal Swain was a courageous Marine, and a loving son and brother; and

WHEREAS, Lance Corporal Swain has made the ultimate sacrifice, giving his life in the line of duty while serving our nation; and

WHEREAS, Lance Corporal Swain's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, February 9, 2005, in recognition and mourning of United States Marine Corps Lance Corporal Harry Swain IV.

2. This Order shall take effect immediately.

Dated February 8, 2005.

EXECUTIVE ORDER No. 22

WHEREAS, United States Army Sergeant Stephen Sherman, a resident of New Jersey, graduated from High Technology High School in Lincroft in 1996; and

WHEREAS, Sergeant Sherman graduated from the University of Oregon in 2001 with a degree in Business Administration before enlisting in the U.S. Army in April 2003, where he was trained as a Chemical Operations Specialist and served as a nuclear, biological, chemical, non-commissioned officer, directing other soldiers in the use of detection and decontamination equipment; and

WHEREAS, Sergeant Sherman proudly served as a member of the U.S. Army's 1st Battalion, 5th Infantry Regiment, 25th Infantry Division (Stryker Brigade Combat Team), and was deployed to Iraq in the service of his country; and

WHEREAS, Sergeant Sherman was a courageous soldier, and a loving son and brother; and

WHEREAS, Sergeant Sherman has made the ultimate sacrifice, giving his life in the line of duty while serving our nation; and

WHEREAS, Sergeant Sherman's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, February 11, 2005, in recognition and mourning of United States Army Sergeant Stephen Sherman.

2. This Order shall take effect immediately.

Dated February 10, 2005.

EXECUTIVE ORDER No. 23

WHEREAS, Senator Joseph Suliga, Jr. spent his entire adult life committed to public service and New Jersey is a better place today because of that commitment; and

WHEREAS, Senator Suliga started his career in elected office at age 19 as the youngest person ever elected to the Linden Board of Education; and

WHEREAS, Senator Suliga graduated from Kean University and subsequently earned Masters degrees from Kean and Rutgers universities; and

WHEREAS, Senator Suliga subsequently served as a Councilman in Linden, as a Union County Freeholder, as a member of the General Assembly and as a State Senator; and

WHEREAS, Senator Suliga was a thoughtful and respected legislator, sponsoring legislation compelling insurance coverage for mammograms for women over 35, co-chairing the Senate Environmental Committee and serving as the second ranking Democrat on the Appropriations Committee; and

WHEREAS, Senator Suliga most recently was serving as chief financial officer for the City of Linden, and was known as a man who valued his faith, his family and friendship; and

WHEREAS, It is with deep sadness that we mourn the loss of Senator Suliga and extend our sincere sympathy to his family and friends; and

WHEREAS, It is fitting and appropriate to honor the memory and the passing of Senator Suliga;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday,

February 23, 2005, in recognition and mourning of the passing of Senator Suliga.

2. This Order shall take effect immediately.

Dated February 22, 2005.

EXECUTIVE ORDER No. 24

WHEREAS, United States Army Private First Class Min Soo Choi, a resident of New Jersey, graduated from Pascack Valley High School in Hillsdale in 2003, where he was a member of the varsity golf team; and

WHEREAS, PFC Choi completed a semester at John Jay College before enlisting in the U.S. Army in the summer of 2004, with the goal of becoming a United States citizen and an FBI agent; and

WHEREAS, PFC Choi proudly served as a member of the U.S. Army's 3rd Infantry Divisions 6th Squadron, 8th Cavalry, and was deployed to Iraq in the service of his country; and

WHEREAS, PFC Choi was a courageous soldier, and a loving son and brother; and

WHEREAS, PFC Choi has made the ultimate sacrifice, giving his life in the line of duty while serving our nation; and

WHEREAS, PFC Choi's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Sunday, March 6, 2005, in

recognition and mourning of United States Army Private First Class Min Soo Choi.

2. This Order shall take effect immediately.

Dated March 4, 2005.

EXECUTIVE ORDER No. 25

WHEREAS, Thomas John McMeekin Jr., a loving husband, father, son and brother, and a lifelong resident of the City of Atlantic City, joined the Atlantic City Police Department in October 2000, and graduated from the Police Academy first in his class academically; and

WHEREAS, Officer McMeekin served the Police Department and the citizens of Atlantic City with exceptional courage, dedication and professionalism, genuine courtesy and abiding commitment to the finest law enforcement traditions; and

WHEREAS, Officer McMeekin proudly served in the Department for 5 years, and received several commendations for excellent police work during his tour of duty; and

WHEREAS, Officer McMeekin has made the ultimate sacrifice, giving his life in the line of duty to help New Jersey's citizens and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory.

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, March 8, 2005, in recognition and mourning of Atlantic City Police Officer Thomas John McMeekin, Jr.

2. This Order shall take effect immediately.

Dated March 7, 2005.

EXECUTIVE ORDER No. 26

WHEREAS, United States Army Captain Sean Grimes, the beloved son of Mary Grimes of Dover, New Jersey, and Donald P. Grimes of Southfield, Michigan, graduated from Michigan State University, with a B.S. degree in nursing; and

WHEREAS, Captain Grimes enlisted in the U.S. Army in 1997 and served as a physicians assistant and an Army nurse; and

WHEREAS, Captain Grimes graduated from the Army's Air Assault Course and from the Army's Airborne School; and

WHEREAS, Captain Grimes proudly served as a member of the U.S. Army's 1st Infantry Battalion, 9th Infantry Regiment, 2nd Brigade Combat Team, and was deployed to Iraq in the service of his country; and

WHEREAS, Captain Grimes was a courageous soldier, and a loving son and brother; and

WHEREAS, Captain Grimes has made the ultimate sacrifice, giving his life in the line of duty while serving our nation, and has been awarded the Purple Heart, the Bronze Star, and the Combat Medic Badge posthumously; and

WHEREAS, Captain Grimes' patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, March 15, 2005, in recognition and mourning of United States Army Captain Sean Grimes.

2. This Order shall take effect immediately.

Dated March 14, 2005.

EXECUTIVE ORDER No. 27

WHEREAS, New Jersey National Guard Sergeant William D. Blahut, Jr., was born and raised in Whitehouse Station, New Jersey, and graduated from North Hunterdon High School in 1981; and

WHEREAS, Sergeant Blahut enlisted in the New Jersey National Guard in March 2000; and

WHEREAS, Sergeant Blahut proudly served as a member of the National Guard's Company B, 50th Main Support Battalion, based in Dover, New Jersey, and was deployed in support of Operation Iraqi Freedom in the service of his country in February 2004, where he was assigned to the 1452nd Transportation Company and where he received the Bronze Star; and

WHEREAS, Sergeant Blahut was a courageous soldier, and a loving son and brother; and

WHEREAS, While in Iraq, Sergeant Blahut became ill and was returned to this country, where he was diagnosed with brain cancer, which ultimately took his life; and

WHEREAS, Sergeant Blahut's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, March 18, 2005, in

recognition and mourning of New Jersey National Guard Sergeant William D. Blahut, Jr.

2. This Order shall take effect immediately.

Dated March 18, 2005.

EXECUTIVE ORDER No. 28

WHEREAS, Beginning on April 2, 2005, severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff now threatens homes and other structures and the flow of traffic throughout the State; and

WHEREAS, The aforesaid weather conditions make it difficult or impossible for citizens to obtain the necessities of life, as well as essential services such as police, fire and first aid; and

WHEREAS, The aforesaid weather conditions constitute a disaster from a natural cause which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities and counties of this State; and which is in some parts of this State and may become in other parts of the State too large in scope to be handled by the normal county and municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and 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, RICHARD J. CODEY, Acting Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey DO DECLARE AND PROCLAIM that a State of Emergency presently exists throughout the State of New Jersey; and I hereby ORDER AND DIRECT the following:

1. Authorize and empower the State Director of Emergency Management to implement the State Emergency Operations Plan and to direct the

activation of county and municipal emergency operation plans as necessary.

2. Authorize and empower the State Director of Emergency Management, who is the Superintendent of State Police, in accordance with N.J.S.A. 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.

3. Authorize and empower the Attorney General, pursuant to the provisions of N.J.S.A.39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Attorney General and the Superintendent of State Police, within their respective municipalities.

4. Authorize and empower the State Director of Emergency Management to order the evacuation of all persons, except for those emergency and governmental personnel whose presence the State Director deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

5. Authorize and empower the State Director of Emergency Management to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from a residence, dwelling, building, structure or vehicle during the course of this emergency.

6. Authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule, the enforcement of which would be

detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. Authorize and empower the Adjutant General, in accordance with N.J.S.A.38A:2-4 and 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 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.

8. In accordance with N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, as supplemented and amended, reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A. App. A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order or the orders of the State Director of Emergency Management.

10. It shall be the duty of the members of the governing body and each and every officer, agent and employee of every political subdivision of this State and of each member of all other governmental bodies, agencies and authorities of any nature whatsoever fully co-operate with the State Director of Emergency Management in all matters during this emergency.

11. Authorize and empower the State Director of Emergency Management, pursuant to N.J.S.A. App.A:9-37 and N.J.S.A. App. A:9-48 and in accordance with N.J.S.A. App. A:9-36, to require any public official, citizen or resident of this State or any firm, partnership, or corporation, incorporated or doing business in this State, to furnish any information deemed reasonably necessary by the Director to carry out the purposes of this Order.

12. The cooperation of every person or entity in this State or doing business in this State in all matters concerning this state of emergency is requested.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6 and 40A:14-156.4, I direct that no municipality or public or semipublic agency send public works, fire, police, emergency medical or other personnel or equipment into any non-contiguous disaster-stricken municipality within this State nor to any disaster-stricken municipality outside this State unless and until such aid has been directed by the county emergency management coordinator or his deputies in consultation with the State Director of Emergency Management.

14. This Order shall take effect as of 9:15 a.m. on April 3, 2005 and shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Dated April 3, 2005.

EXECUTIVE ORDER No. 29

WHEREAS, His Holiness Pope John Paul II was one of the greatest leaders of our time, or of any other time in history; and

WHEREAS, The death of Pope John Paul II is a loss not just for the Catholic Church, but for all people of the world; and

WHEREAS, For a quarter century, Pope John Paul II was the rock of the Catholic Church, and his influence extended beyond the Church into international affairs; and

WHEREAS, Pope John Paul II was concerned with the greater good for all people and was a leading champion of human rights and an ardent advocate for peace; and

WHEREAS, This State, this nation and the world are better for having been blessed with the leadership of Pope John Paul II; and

WHEREAS, It is fitting and proper for the State of New Jersey to mourn the passing and honor the memory of Pope John Paul II;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning Monday, April 4, 2005, and through and including Friday, April 8, 2005, in recognition and mourning of the passing of Pope John Paul II.

2. This Order shall take effect immediately.

Dated April 4, 2005.

EXECUTIVE ORDER No. 30

WHEREAS, Executive Order No. 28 (2005), declaring a State of Emergency, was issued on April 3, 2005, because of severe weather conditions, including heavy rains, high winds, main stream and river flooding and progressing runoff that threatened homes and other structures and the flow of traffic throughout the State; and

WHEREAS, The severity of the conditions necessitating the declaration of a State of Emergency have now eased;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of Emergency declared in Executive Order No. 28 is terminated effective immediately.

Dated April 15, 2005.

EXECUTIVE ORDER No. 31

WHEREAS, New Jersey is home to 1.4 million adults 60 years of age who deserve the right to independence, dignity and choice as they grow older; and

WHEREAS, The citizens of New Jersey are entitled to a long-term care system where they can make their own long-term care decisions; and

WHEREAS, The State of New Jersey must support a long-term care reform agenda to ensure a more equitable distribution of funding between home- and community-based services and institutionalization; and

WHEREAS, The State of New Jersey is currently in the second year of a three-year federally funded Aging and Disability Resource Connection initiative, which is being implemented on a pilot basis in Atlantic and Warren counties; and

WHEREAS, The State of New Jersey, through its Aging and Disability Resource Connection initiative, is implementing a clinical assessment tool and fast track eligibility process in a test environment in Atlantic and Warren counties; and

WHEREAS, The clinical assessment tool shall be linked to levels of care, which will then generate a service care plan as well as identify funds to support an individual's choice for long-term care services;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Health and Senior Services shall begin a process in State Fiscal Year 2006 to develop and implement a pilot global budget long-term care program. The new long-term care system for older adults shall have improved access and consumer-directed care across all settings and an array of home- and community-based services from which to choose.

2. The Department of Health and Senior Services, in partnership with the Department of Human Services, shall develop a pilot fast track eligibility program with presumptive eligibility in Warren and Atlantic Counties.

3. This Order shall take effect immediately.

Dated April 21, 2005.

EXECUTIVE ORDER No. 32

WHEREAS, Executive Order No. 7 (2004) created an Office of the Inspector General and authorized that Office to, among other things, investigate the performance of governmental programs in order to promote efficiency, to identify cost savings, and to detect and prevent misconduct within programs and operations of any governmental agency funded by or disbursing State funds; and

WHEREAS, The Inspector General, during the course of her review of the New Jersey Schools Construction Corporation (SCC), has issued an Initial Report of Findings dated April 21, 2005, that contains a series of recommended changes; and

WHEREAS, The Inspector General recommends that the Board of Directors of the SCC be strengthened and made more independent by the appointment of two additional public members with financial management background and no personal or professional interests in either the education community or the construction community; and

WHEREAS, The composition of the Board of Directors of the SCC was delineated in Executive Order No. 24 (2002) and Executive Order No. 47 (2003); and

WHEREAS, There is a compelling need to quickly implement the Inspector General's recommended changes so that the construction of schools can continue in an efficient, non-wasteful manner;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the

Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Paragraph 1(a) of Executive Order No. 24 (2002), previously amended by Executive Order No. 47 (2003), is hereby further amended to read as follows:

"The creation of a corporation Board of Directors consisting of the following members: the Attorney General; Commissioner of Education; Commissioner of Labor and Workforce Development; Commissioner of Community Affairs; State Treasurer; CEO/Secretary of Commerce and Economic Growth Commission; Executive Director of EDA; Member of the Governor's Executive Staff; three public members of the EDA Board of Directors selected by the Governor; and four members of the public to be appointed by the Governor. At least two of the four public members shall have financial management background and no personal or professional interest in either the education community or the construction industry."

2. The SCC shall establish the Office of Chief Financial Officer (CFO). The CFO shall be responsible for implementing adequate internal financial controls and shall report directly to the Chief Executive Officer and the Audit Committee of the SCCs Board of Directors.

3. The SCC is hereby directed to submit a plan to the Board of Directors within 14 days to implement the remaining recommendations contained within the Office of the Inspector General's Initial Report of Findings dated April 21, 2005.

4. Executive Order No. 24 (2002) and Executive Order No. 47 (2003) shall remain in full force and effect except as modified herein.

5. This Order shall take effect immediately.

Dated April 26, 2005.

EXECUTIVE ORDER No. 33

WHEREAS, In July 2002 the State Commission of Investigation ("SCI") launched a formal investigation into reported abuses in new-home construction and inspection; and

WHEREAS, Over the course of its nearly three-year inquiry into these complaints, the SCI conducted hundreds of field interviews; examined thousands of pages of documentary evidence; took sworn testimony from scores of witnesses; performed sophisticated accounting analyses; and held five days of hearings to present its findings to the public; and

WHEREAS, The SCI completed its investigation in March 2005 with the issuance of comprehensive report detailing the findings of the inquiry and proposing recommendations for reform; and

WHEREAS, The SCI report revealed examples of shoddy and deficient construction practices, lax regulatory oversight and poor remediation options for homebuyers; and

WHEREAS, The Department of Community Affairs ("DCA") has assisted the SCI in its investigation; and

WHEREAS, In response to the SCI investigation, the SCI and DCA have recommended a series of reforms designed to bolster oversight of the home construction industry, strengthen the inspection and enforcement process, and safeguard the interests of the home-buying public; and

WHEREAS, It is appropriate and just that this Office do everything in its power to protect the home-buying public and to restore consumer confidence in those charged with regulating the home construction industry;

NOW THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Community Affairs ("DCA") to create a home-buyers web site containing information on registered builders including claims adjudicated against them, industry standard guides, housing codes, inspection information, and homebuyers' warranty rights.

2. The DCA to publish and distribute to every new homeowner, within four months of the closing date, a booklet that explains their warranty rights and how they can protect them by filing timely claims.

3. That the current multi-step arbitration process be eliminated and replaced with a single arbitration hearing, which should focus on repair of the defects rather than monetary settlement. The method-of-repair standard should be the repair necessary to restore the home to "as new" condition and place the residence in compliance with applicable codes and industry standards.

4. That DCA oversight of the arbitration process in New Jersey be strengthened to include: reviewing of arbitrator qualifications; requiring that all arbitrators who handle major structural or fire safety defect claims be licensed as architects or professional engineers, specifically qualified in residential construction technology; and ensuring that arbitrators and arbitration services performing in New Jersey are in full compliance with disclosure requirements of New Jersey's arbitration law.

5. That private warranty plans be required to actively eliminate conflicts of interest of arbitrators through a rigorous plan-administered economic disclosure and disqualification procedure, with copies of documents pertaining to this process forwarded to DCA with certification by the warranty plan as to due diligence.

6. That DCA review any cases of homeowner dissatisfaction with the warranty process.

7. That warranty plans provide DCA with records of all complaints, beyond mere numerical reporting.

8. That DCA promulgate a strict code of ethics for all State, county, and municipal building inspectors and construction code officials.

9. That given the critical importance of proper structural framing in new homes, the DCA adopt code provisions that require home builders to certify compliance with the Department's framing checklist.

10. That the Department of Community Affairs establish a system of engineering inspections to be executed under municipal auspices, but paid for by builder fees, where code violations are found in a new home that has received a certificate of occupancy.

11. This Order shall take effect immediately.

Dated May 9, 2005.

EXECUTIVE ORDER No. 34

WHEREAS, Congressman Peter W. Rodino, Jr., the son of Italian immigrants, was born and raised in the City of Newark; and

WHEREAS, Congressman Rodino worked his way through law school at night, earning his degree from Rutgers Law School in Newark in 1937; and

WHEREAS, Congressman Rodino enlisted in the United States Army in March 1941, served honorably during World War II as a captain with the First Armored Division in North Africa and in Italy, and was awarded a Bronze Star, a War Cross and Knight Order of the Crown of Italy; and

WHEREAS, Congressman Rodino was elected to Congress in 1948, and served with distinction for a period of 40 years; and

WHEREAS, Congressman Rodino became a champion of civil rights legislation, and helped guide the landmark Civil Rights Act of 1964 through its complicated approval process; and

WHEREAS, Congressman Rodino served as Chairman of the Judiciary Committee from 1973 to 1989, and was instrumental in securing legislation on immigration reform, antitrust reform, fair housing laws and equal rights for women; and

WHEREAS, In 1974, Congressman Rodino guided the Judiciary Committee through the impeachment proceedings against President Nixon with extraordinary skill and a spirit of fundamental fairness and bipartisanship; and

WHEREAS, After his service in Congress, Congressman Rodino continued to teach and mentor lawyers and students at Seton Hall Law School; and

WHEREAS, It is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the

Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning Tuesday, May 10, 2005 through Monday, May 16, 2005, in recognition and mourning of the passing of Congressman Peter W. Rodino, Jr.

2. This Order shall take effect immediately.

Dated May 10, 2005.

EXECUTIVE ORDER No. 35

WHEREAS, James Michael Ratcliffe joined the Metuchen Fire Department in 1965; and

WHEREAS, Mr. Ratcliffe served the Fire Department and the people of Metuchen with exceptional courage, dedication and professionalism, genuine courtesy and abiding commitment to the finest humanitarian traditions; and

WHEREAS, Mr. Ratcliffe proudly served in the Fire Department for forty years, in various capacities as a Firefighter, Lieutenant, Captain, Assistant Chief, Department Chief and most recently Department Safety Officer; and

WHEREAS, Mr. Ratcliffe has made the ultimate sacrifice, giving his life in the line of duty to help New Jersey's citizens and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half staff at all State departments, offices,

agencies and instrumentalities during appropriate hours on Tuesday, May 10, 2005, in recognition and mourning of James Michael Ratcliffe, the former Chief and current Safety Officer of the Metuchen Fire Department.

2. This Order shall take effect immediately.

Dated May 10, 2005.

EXECUTIVE ORDER No. 36

WHEREAS, In the words of President John F. Kennedy, "[n]o responsibility of government is more fundamental than the responsibility for maintaining the highest standards of ethical behavior by those who conduct the public business. This principle must be followed not only in reality, but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter"; and

WHEREAS, I have made it a cornerstone of my administration to transform the ethical culture in State government, with the hope of forging a renewed partnership among government, its employees, and the people of this State; and

WHEREAS, To help realize this goal, I appointed Special Counsel for Ethics Review to assess the efficacy of the States existing ethical standards, to conduct an extensive audit of Executive Branch ethics training programs, and to identify areas within the existing ethics rules that require reform and improvement; and

WHEREAS, After completing their review and analysis, Special Counsel issued a series of sweeping recommendations designed to clarify and unify the States ethics codes, promote transparency in government processes, bolster ethics training programs, enhance government accountability to the public, and toughen penalties for ethics violations; and

WHEREAS, As concrete steps toward achieving these ends, Special Counsel urged the implementation of three new ethics guidelines: The Uniform Ethics Code, the Plain Language Ethics Guide, and the Business Ethics Guide; recommended that the Executive Commission

on Ethical Standards establish a confidential toll-free hotline for the receipt of ethics complaints; proposed that the Executive Commission post financial disclosure forms in an on-line searchable database; and urged the Executive Director of the Executive Commission on Ethical Standards to meet with every new member of the Governor's Cabinet shortly after they take office, and thereafter to meet with the entire Cabinet on an annual basis to address ethics-related issues; and

WHEREAS, The Uniform Ethics Code distills the otherwise disparate Executive Branch ethics strictures into a single ethics code, providing uniform standards of conduct applicable to all Executive Branch employees; and

WHEREAS, The Plain Language Ethics Guide explains clearly and succinctly to all Executive Branch employees the ethical standards that must be met by every State employee; and

WHEREAS, The Business Ethics Guide makes clear the ethical standards required of third parties conducting business with the State; and

WHEREAS, The confidential, toll-free reporting hotline allows both State employees and members of the public to lodge ethics complaints, obtain information, and voice ethics-related concerns; and

WHEREAS, Posting financial disclosure forms on the internet provides the public with ready access to the assets, holdings, and other financial interests of public employees; and

WHEREAS, The State of New Jersey has a compelling interest in ensuring that Executive Branch employees understand and appreciate their ethical duties and responsibilities; and

WHEREAS, Those who have a business relationship with a governmental agency must be fully educated regarding their ethical obligations to the public; and

WHEREAS, It is important that Executive Branch business be conducted in the most transparent manner possible, so that citizens have full information about efforts directed at influencing Executive Branch policies and procurement; and

WHEREAS, We must always remember that government officers are at all times accountable to the people of this State and that public service should never be used for private gain;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Executive Commission on Ethical Standards shall promulgate a Uniform Ethics Code.
2. All Executive Branch departments, agencies, and authorities shall conform their individual ethics codes to the Uniform Ethics Code.
3. Every Executive Branch department, agency, and authority shall disseminate the Plain Language Ethics Guide to their employees and shall require said employees to certify that they have received, reviewed, and understood the ethical strictures set forth therein.
4. The Treasury Department's Division of Purchase and Property shall post the Business Ethics Guide on its website and to require any potential vendor with the State to certify compliance with said guide before submission of a bid.
5. The Executive Commission on Ethical Standards shall establish a new, toll-free, confidential reporting hotline for the receipt of ethics complaints.
6. The Executive Commission on Ethical Standards shall post the financial disclosure forms of public employees and officers, filed pursuant to Executive Order No. 10 (2002), on a web-based searchable database, beginning with the forms filed in 2005.
7. The Executive Director of the Executive Commission on Ethical Standards shall appear before the Governor's Cabinet on an annual basis to provide a refresher course on the ethics rules and to address ethics-related issues.

8. The Executive Director of the Executive Commission on Ethical Standards shall brief every new Cabinet member on their ethical responsibilities not later than 30 days after they assume office.

9. This Order shall take effect immediately.

Dated May 10, 2005.

EXECUTIVE ORDER No. 37

WHEREAS, United States Marine Corps Staff Sgt. Anthony L. Goodwin, a former resident of Westampton Township, New Jersey, attended Rancocas Valley High School, and subsequently graduated from high school in Texas; and

WHEREAS, Staff Sgt. Goodwin enlisted in the U.S. Army in 1989, served in Operation Desert Shield and Operation Desert Storm, and thereafter became a trainer and instructor for the Marine Corps; and

WHEREAS, Staff Sgt. Goodwin served proudly as a member of the U.S. Marine Corps 1st Battalion, 2nd Marine Division as a platoon sergeant, and was deployed to Iraq with the II Marine Expeditionary Force for Operation Iraqi Freedom; and

WHEREAS, Staff Sgt. Goodwin was moved to the 2nd Marine Regimental Training Center to serve as the chief instructor for the regiment, and was redeployed to Iraq in February 2005 in the service of his country; and

WHEREAS, Staff Sgt. Goodwin was a courageous soldier who received more than two dozen medals and commendations in the Marine Corps and a loving husband, father, son and brother; and

WHEREAS, Staff Sgt. Goodwin has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Staff Sgt. Goodwin's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, May 17, 2005, in recognition and mourning of U.S. Marine Corps Staff Sgt. Anthony L. Goodwin.

2. This Order shall take effect immediately.

Dated May 16, 2005.

EXECUTIVE ORDER No. 38

WHEREAS, United States Marine Corps Major John Charles Spahr, a native of Cherry Hill, New Jersey, attended Saint Joseph's Preparatory School in Philadelphia, where he played football, baseball and basketball, rowed for the Schools Crew Team, was voted Best All-Around Athlete and graduated in 1981; and

WHEREAS, Major Spahr attended the University of Delaware, where he earned a Bachelor's Degree in Physical Education and a Master's Degree in Exercise Physiology and was a member of the football team; and

WHEREAS, Major Spahr subsequently enlisted in the U.S. Marine Corps, where he completed his officer training in 1989 and thereafter attended the U.S. Navy's "Top Gun" Fighter Weapons School in 1996; and

WHEREAS, Major Spahr later served as an instructor pilot at the "Top Gun" School and was embarked aboard the aircraft carrier U.S.S. Constellation when the Iraq war began in March 2003; and

WHEREAS, Major Spahr served proudly as Executive Officer of Marine Fighter Attack Squadron 323 in the Persian Gulf aboard the carrier U.S.S. Carl Vinson; and

WHEREAS, Major Spahr was a courageous pilot who had recently been named for a promotion to Lieutenant Colonel and was a loving father, son and brother; and

WHEREAS, Major Spahr has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Major Spahr's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, May 18, 2005, in recognition and mourning of United States Marine Corps Major John Charles Spahr.

2. This Order shall take effect immediately.

Dated May 17, 2005.

EXECUTIVE ORDER No. 39

WHEREAS, A contributing factor to the recent budget shortfall has been a \$1.4 billion increase in mandatory funding needs, including nearly a \$1 billion increase in employee benefits; and

WHEREAS, Continuing increases in employee benefits costs contribute to the structural deficit that New Jersey faces every year; and

WHEREAS, Over the last four years growth in benefits has helped drive budget spending increases; and

WHEREAS, The total cost of health care benefits for current State employees has risen by 50 percent over the last four years; the total cost of health care benefits for retired State and college employees has more than doubled; and the total cost of health benefits provided free of charge to retired teachers and other school personnel has doubled; and

WHEREAS, Employee benefit costs are projected to be 14 percent of the State's overall FY 2006 Budget as compared to 8.8 percent four years ago, and by the year 2010, it is projected that benefit costs will constitute 20 percent of the State budget; and

WHEREAS, Controlling growth in employee benefit programs cannot occur overnight, but it is critical that the process to review and recommend ways in which the costs of health benefits and pensions for public employees can be managed begin now, while still maintaining fair benefits for those employees;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established a Benefits Review Task Force (hereinafter "Task Force"). The Task Force shall consist of eight members, including the State Treasurer, the Commissioner of Labor and Workforce Development, and six public members appointed by the Governor. The public members shall be selected from among individuals with knowledge or experience in the areas of employee benefits, pensions, management, finance or economics in the academic, corporate or government setting. The Governor shall appoint the Chair of the Task Force.

2. The Task Force shall (1) examine the current laws, regulations, procedures and agreements governing the provision of employee benefits to State and local government workers, (2) analyze the current and future costs of the benefits, (3) compare the level of benefits provided to government employees in this State to the benefits provided to other workers, and (4) recommend changes to the laws, regulations, procedures and agreements designed to control the costs of such benefits to the State's taxpayers, while ensuring the State's public employees a fair and equitable benefit system.

3. The Task Force shall issue its report to the Governor within six months of the effective date of this Executive Order.

4. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with records and other information, personnel or assistance that it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Task Force and to furnish it with such records, information, personnel and assistance as is necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

Dated May 25, 2005.

EXECUTIVE ORDER No. 40

WHEREAS, Executive Order No. 1 (2004) created a Governor's Task Force on Mental Health (hereinafter the "Task Force") to undertake a comprehensive review of New Jersey's mental health system, and to make recommendations to the Governor and the Legislature concerning legislative, regulatory and administrative changes that are needed to improve the delivery of and access to mental health services in New Jersey; and

WHEREAS, On March 31, 2005, the Task Force issued its Final Report that identified priority recommendations to achieve immediate relief for an overburdened and under-funded infrastructure and that provided a blueprint for developing quality, consumer and family directed care and systems while including longer-term recommendations; and

WHEREAS, Certain of the Task Force's recommendations require legislative action while others can be implemented more quickly through administrative direction; and

WHEREAS, Some of the recommendations have already been pursued, including the filing and subsequent adoption of Reorganization Plan 002-2005, moving the responsibility for monitoring and inspecting residential health care facilities from the Department of Health and

Senior Services to the Department of Community Affairs, and the inclusion in the FY 2006 budget proposal of an additional \$40 million to recast the State's mental health system to provide services that are comprehensive, accessible and consumer-driven; and

WHEREAS, It is critical that the State of New Jersey and its governmental agencies foster the movement of New Jersey's mental health system away from a status quo characterized by stigma and isolation, towards a Treatment, Wellness and Recovery model, in as expeditious a manner as possible;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Utilizing existing resources, the Department of Human Services shall expand its existing 800-number and shall establish a Statewide information and referral system.

2. The Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency shall review their existing regulations, policies and enabling legislation specific to housing for special needs individuals and shall promulgate new or revised rules and recommend such legislative amendments as are necessary to foster the process of creating the 10,000 housing opportunities envisioned in the Task Force report. These recommendations shall include allowing access to new housing in the community, prioritizing rental assistance for people with disabilities, and changes to Council on Affordable Housing regulations.

3. The Department of Human Services shall take all necessary action to ensure that County Mental Health Boards operate consistent with the provisions of N.J.A.C. 10:37-1 et seq., in regard to all of the Boards' duties for both the adult and children's mental health system, especially in regard to local planning and monitoring.

4. The Commissioner of Human Services shall take the necessary steps to elevate the position of Director, Division of Mental Health Services to a Special Assistant Commissioner for Mental Health Services, reporting directly to the Commissioner of Human Services. This action will elevate the profile of mental health within New Jersey State government.

5. The State shall clearly outline the requirements for protecting privacy in compliance with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Where consistent with federal requirements, the State shall streamline the process of obtaining consent from individuals to share essential information, gain access to services, transfer essential information for the provision of high-quality of care and enroll or verify enrollment in necessary entitlement programs. The State shall further distribute that information to consumers, family members and providers. The Department of Human Services is directed to work with the Community Health Law Project to develop, print and distribute a user-friendly pamphlet explaining these requirements.

6. This Order shall take effect immediately.

Dated June 2, 2005.

EXECUTIVE ORDER No. 41

WHEREAS, There are numerous entities in State government that are not directly controlled through the normal administrative infrastructure, including many authorities, commissions, boards and agencies; and

WHEREAS, Executive Order No. 10 (2002) mandates that members of certain boards, commissions, independent authorities and public corporations, as well as the executive or administrative head and assistant heads of such boards, commissions or independent authorities file annual financial disclosure statements; and

WHEREAS, Executive Order No. 122 (2004) directs that all public authorities, agencies and commissions create an audit committee to assist in the oversight of the financial reporting and audit processes of that entity, and that such audit committee follow certain specified procedures in carrying out its duties; and

WHEREAS, Executive Order No. 134 (2004) requires that the State of New Jersey and all of its agencies and independent authorities implement procedures designed to limit or ban campaign contributions by vendors doing business with the State or its authorities; and

WHEREAS, The public deserves to know that each and every entity associated with State government, directly or indirectly, functions with proper internal accounting controls and independent Board oversight so that taxpayer dollars or user fees are properly recorded, managed and disbursed; and

WHEREAS, The ethics reforms heretofore advanced by this administration should apply not only to the direct operations of State government but to each and every entity connected to the State of New Jersey by virtue of its financial or operational relationship to the State;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. For the purpose of this Order, "authority" shall mean any board, commission or agency which is organized in but not of a principal department of State government and any independent authority. Furthermore, for the purpose of this Order, "Executive Director" shall mean the Executive or Administrative Head of an authority.

2. The Governor's Authorities Unit, in conjunction with the Executive Commission on Ethical Standards and the Inspector General, shall hold several training sessions for members of all State authorities in government ethics and, where appropriate, proper fiscal practices, including specific training in the requirements of the Federal Sarbanes Oxley Act, as related to their duties as authority members. Such training will include the responsibility of authority members in the employment of authority staff, oversight of procurement and fiscal operations and approval of contracts. As of January 1, 2006 and annually thereafter, the Executive Director of each authority shall certify in writing to the Director of the Governor's Authorities Unit that each member of the authority has completed such training. Such training will be updated annually at the direction of the Director of the Governor's Authorities Unit to include such Federal mandates as directed by Congress and such State mandates as directed by the Office of the Inspector General.

3. The Inspector General shall assess the internal controls that are in place at every authority and make recommendations concerning what

uniform practices and procedures should be established for all State authorities.

4. Within 30 days, the Director of the Governor's Authorities Unit shall provide recommendations concerning whether there are any authorities, boards, commissions or agencies that are not presently covered by the provisions of Executive Order Nos. 10, 122, 134 or this Executive Order, but should be included within its scope. The Director shall further review whether any Executive Director of an authority also serves as a member of the authority, and recommend whether legislative or regulatory changes are necessary to eliminate this service in dual capacities.

5. Within 30 days of the date of this Executive Order and annually as of May 15 thereafter, the Executive Director of an authority shall certify in writing to the Director of the Governor's Authorities Unit that all authority members have met the requirements of Executive Order No. 10.

6. Within 45 days of the date of this Executive Order and annually as of January 1 thereafter, each Executive Director shall certify in writing to the Director of the Governor's Authorities Unit that the authority has met the requirements of Executive Order No. 122, which includes the requirement that every authority covered by that Executive Order have an Audit Committee that serves independently of the management of the authority in soliciting, procuring and overseeing the function of the independent auditor and ensuring that the relationship with such auditor is the function of the Board and not the management of the authority.

7. Within 60 days of this Executive Order and annually as of January 1 thereafter, each Executive Director shall certify in writing to the Director of the Governor's Authorities Unit that the authority has met the requirements of Executive Order No. 134, which includes the requirement that every authority comply with procedures designed to limit or ban campaign contributions by vendors doing business with the State or the authority.

8. The failure of any authority member, officer or employee to comply with the provisions of this Executive Order shall constitute good cause for his or her removal from office or employment.

9. This Order shall take effect immediately.

Dated June 15, 2005.

EXECUTIVE ORDER No. 42

WHEREAS, United States Army Captain Charles D. Robinson, a former resident of Haddon Heights, New Jersey, was commissioned in the Army after he graduated from Cedarville College in 1998; and

WHEREAS, Captain Robinson served proudly as a member of the First Battalion, 7th Special Forces Group, and was deployed to Afghanistan in January 2005; and

WHEREAS, Captain Robinson was a courageous soldier and a loving husband and son; and

WHEREAS, Captain Robinson has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Captain Robinson's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, July 5, 2005, in recognition and mourning of United States Army Captain Charles D. Robinson.

2. This Order shall take effect immediately.

Dated June 30, 2005.

EXECUTIVE ORDER No. 43

WHEREAS, Terrorists have used improvised explosive devices to attack trains in London, England, and while there is no specific threat to the

New Jersey metropolitan area, an enhanced law enforcement presence on trains entering and leaving New York City and New York State is appropriate; and

WHEREAS, The New Jersey State Police on New Jersey Transit trains are required by law to exit the trains at the last stop in New Jersey while New York City and New York State law enforcement officers are required to exit trains at the last stop in New York; and

WHEREAS, The provisions of the Interstate Civil Defense and Disaster Compact permit the States of New Jersey and New York to extend the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services; and

WHEREAS, The State of New York has entered an executive order extending law enforcement powers to New Jersey law enforcement officers accompanying trains into New York City; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33 et seq. and N.J.S.A. 38A:3-6.1 and 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; and

WHEREAS, The Governor is empowered to request aid pursuant to the Interstate Civil Defense and Disaster Compact, N.J.S.A. 38A:20-3 and to grant powers of arrest and other powers to law enforcement officers from other states;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. That in order to facilitate the security on the trains and throughout the State of New Jersey, in accordance with the Interstate Civil Defense and Disaster Compact, N.J.S.A. 38A:20-3, that mutual aid is requested of New York State and New York City law enforcement officers, to provide enhanced security on trains exiting and returning to the State of New York, and such officers are hereby granted all law enforcement powers while

providing enhanced security on the trains and in the train stations in the State of New Jersey, including the power of arrest. This Declaration is not intended to alter or amend any compacts, policies, legal authorization or opinions regarding law enforcement powers during hot pursuit.

2. That the State Director of Emergency Management implement the State Emergency Operations Plan and direct the activation of county and municipal emergency operations plans as necessary to implement this order.

3. In accordance with N.J.S.A. App. A:9-40, that no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

4. That it shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this Order.

5. In accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, that the Adjutant General order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

6. This Order shall take effect immediately and shall remain in effect until such time as it is rescinded by me.

Dated July 7, 2005.

EXECUTIVE ORDER No. 44

WHEREAS, Terrorists have used improvised explosive devices to attack trains in London, England, and as a precautionary measure, the United

States Coast Guard has raised the Maritime Security or MARSEC level for all ferries carrying 150 passengers or more; and

WHEREAS, While there is no specific threat to the New Jersey metropolitan area, an enhanced law enforcement presence on all forms of mass transportation, including ferries entering and leaving New York City and New York State is appropriate; and

WHEREAS, The New Jersey State Police and local police, when riding a commuter ferry between New Jersey and New York, do not have law enforcement authority once the ferry crosses the jurisdictional boundary from New Jersey to New York; and

WHEREAS, The New Jersey and New York City law enforcement officers, when riding a commuter ferry between New York and New Jersey, do not have law enforcement authority once the ferry crosses over jurisdictional boundary from New York and New Jersey; and

WHEREAS, The provisions of the Interstate Civil Defense and Disaster Compact permit the States of New Jersey and New York to extend the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services; and

WHEREAS, The State of New York is about to or has entered an executive order extending law enforcement powers to New Jersey law enforcement officers riding ferries into New York City; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A: 9-33 et seq. and N.J.S.A. 38A:3-6.1 and 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; and

WHEREAS, The Governor is empowered to request aid pursuant to the Interstate Civil Defense and Disaster Compact, N.J.S.A. 38A:20-3 and to grant powers of arrest and other powers to law enforcement officers from other States;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the

Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. That in order to facilitate the security on the ferries and throughout the State of New Jersey, in accordance with the Interstate Civil Defense and Disaster Compact, N.J.S.A. 38A:20-3, that mutual aid is requested of New York State and New York City law enforcement officers, to provide enhanced security on ferries exiting and returning to the State of New York, and such officers are hereby granted all law enforcement powers while providing enhanced security on the ferries and in the customary points of embarkation and debarkation for such vessels in the State of New Jersey, including the power of arrest. This Order is not intended to alter or amend any compacts, policies, legal authorization or opinions regarding law enforcement powers during hot pursuit.

2. That the State Director of Emergency Management implement the State Emergency Operations Plan and direct the activation of county and municipal emergency operations plans as necessary to implement this order.

3. In accordance with N.J.S.A. App. A:9-40, that no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

4. That it shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this Order.

5. In accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, that the Adjutant General order to active duty such members of the New Jersey National Guard that, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare and to authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

6. This Order shall take effect immediately.

Dated July 10, 2005.

EXECUTIVE ORDER No. 45

WHEREAS, On July 9, 2004, legislation providing for the implementation of the State Development and Redevelopment Plan (March 1, 2001) through, inter alia, the establishment of a Smart Growth Ombudsman in the Department of Community Affairs ("DCA") and the creation of a Division of Smart Growth in each of the Departments of Environmental Protection ("DEP"), Transportation ("DOT") and DCA, as well as providing for the expediting of certain State permits in designated smart growth areas and other regulatory reforms, was signed into law as P.L.2004, c.89; and

WHEREAS, P.L.2004, c.89 required DCA, DEP and DOT each to develop a program for the qualification and registration of professionals within 120 days of its enactment; and

WHEREAS, A primary purpose of P.L.2004, c.89 was to provide a comprehensive and transparent permitting system with expedited timetables in smart growth areas; and

WHEREAS, P.L.2004, c.89 authorized DEP, DOT and DCA each to adopt rules and regulations in accordance with the New Jersey Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.) (APA) to implement the requirements of P.L.2004, c.89; and

WHEREAS, In order to effectuate the purposes of P.L.2004, c.89, a large number of separate rulemaking proposals must be adopted by the affected departments, requiring a high level of coordination among those departments, their Directors of Smart Growth, the Smart Growth Ombudsman, and interested members of the public; and

WHEREAS, P.L.2004, c.89 expressly provided that its provisions should not "be construed or implemented in such a way as to modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program"; and

WHEREAS, The State of New Jersey presently receives considerable federal funding in grants and loans to implement federal laws and programs, and it is in the best interests of the State to ensure the continuation of this important partnership; and

WHEREAS, Representatives of the federal government have raised concerns regarding the effects of P.L.2004, c.89 on federal programs; and

WHEREAS, It is imperative that DEP, DOT and DCA carefully develop rules to fully implement P.L.2004, c.89 while simultaneously ensuring the continuation of all federal programs and financial arrangements, and the continuation of adequate opportunities for public notice and participation in the permitting process; and

WHEREAS, In recognition of these facts, former Governor McGreevey issued Executive Order No. 140 (2004), requiring the affected departments to utilize the pre-proposal process for administrative rulemaking pursuant to the APA to ensure full public participation, thoroughness and due deliberation in rulemaking; and

WHEREAS, The pre-proposal process resulted in the submission of several comments that raised legitimate issues warranting careful deliberation by the State departments before they engage in formal rulemaking; and

WHEREAS, Executive Order No. 140 (2004) further directed the DEP to consider measures for conforming implementation of P.L.2004, c.89 with applicable federal standards and protections to ensure that the proposed State regulations do not, directly or indirectly, modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program, including the Coastal Permit Program Rules (including the Waterfront Development Act, Wetlands Act of 1970, Freshwater Wetlands Protection Act, Flood Hazard Area Control Act, Endangered Non-game Species Conservation Act); Freshwater Wetlands Protection Act; Toxic Catastrophe Prevention Act; Spill Compensation Control Act; Transportation of Hazardous Liquids Act; Industrial Establishments Act; New Jersey Environmental Infrastructure Trust Act; New Jersey Safe Drinking Water Act; New Jersey Water Pollution Control Act; Water Supply Bond Act; Wastewater Treatment Bond Act of

1985; Water Quality Management Planning Act; Industrial Site Recovery Act; Underground Storage of Hazardous Substance Act; and Brownfields and Contaminated Site Remediation Act; and

WHEREAS, Outstanding legal issues remain concerning the impact, if any, of DEP's potential regulatory actions to implement P.L.2004, c.89 upon federally delegated programs;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, hereby ORDER and DIRECT as follows:

1. Until such time as the federal government and the DEP reach agreement concerning the impact, if any, of DEP's proposed rules implementing P.L.2004, c.89 upon the ability of DEP to administer the federal programs described above, no expedited permit, permit-by-rule, or general permit under P.L.2004, c.89 may be accepted for review by any State department or division.

2. In recognition of the supremacy of federal law, once agreement is reached between the federal government and the affected departments, DEP, DOT and DCA shall conform their proposed rules implementing the expedited permitting provisions of P.L.2004, c.89, to the extent those provisions are applicable, with the federal agencies' standards and protections to ensure that such regulations do not, directly or indirectly, modify any requirement of law that is necessary to retain federal delegation to, or assumption by, the State of the authority to implement a federal law or program. Thereafter, each affected department shall provide for pre-publication review of the proposed final regulations by interested parties as permitted by the Administrative Procedure Act, N.J.S.A. 52:14B-4(e).

3. To ensure further consistency and coordination in the implementation process, in addition to the foregoing, no proposed rule for the implementation of P.L.2004, c.89 shall be published by any department until such time as all rules necessary and desirable for the implementation of P.L.2004, c.89 are approved and reviewed as described above, at which time all departments shall submit all such rules for simultaneous publication.

4. This Order shall take effect immediately.

Dated July 12, 2005.

EXECUTIVE ORDER No. 46

WHEREAS, According to a study conducted by the Center for Disease Control, steroid use among teens has more than doubled over the last decade, with an especially alarming increase among teenage girls; and

WHEREAS, Research has shown that the use of steroids and other performance enhancers has profoundly harmful effects on the physical and mental health of teens; and

WHEREAS, The documented health risks of steroid use include, among others, the increased chance of suffering heart attack or stroke; of developing liver and other cancers; and of triggering mood and hormonal imbalances; and

WHEREAS, The State of New Jersey must take immediate steps to assess and combat this problem before it becomes a public health crisis;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the Governor's Task Force on Steroid Use and Prevention (hereinafter "The Task Force"). The Task Force shall be composed of the Commissioners of Education and Health and Senior Services and 16 public members, drawn from the fields of education, science, athletics, law, and journalism, who have expertise and experience in assessing and tackling teen steroid use.

2. The Governor shall appoint the Chair of the Task Force. The members of the Task Force shall serve at the pleasure of the Governor and shall not receive compensation for their service on the Task Force.

3. The Task Force shall be responsible for:

- (1) holding public hearings and a summit to gather information on the physical and psychological effects of steroid use on teenagers;
- (2) determining the extent of the problem among high school student-athletes in New Jersey;
- (3) ascertaining the feasibility and prudence of steroid testing;

(4) developing a Statewide steroid education program to be taught in our schools;

(5) determining the most appropriate academic setting, such as physical education or health class, in which to implement said educational program;

(6) examining the effects and prevalence of other performance enhancers, such as nutritional supplements, and determining whether to include information on them in the proposed educational program;

(7) crafting a comprehensive policy on steroid use and prevention, to be introduced throughout New Jersey schools.

4. By December 1, 2005, the Task Force shall present to the Acting Governor a comprehensive report setting forth its findings and recommendations for addressing the problem of teen steroid use.

5. In addition, a Summit on Steroid Use and Prevention for State high school athletic directors and other school administrators shall be convened this winter. The Summit will serve to educate school personnel about the issue of teen steroid use and about concrete steps they can take to eliminate the problem in their individual schools.

6. This Order shall take effect immediately.

Dated July 19, 2005.

EXECUTIVE ORDER No. 47

WHEREAS, Brigadier General Steven L. Bell, a devoted family man, served honorably from 1969 to 1971 in the United States Army Reserve; and

WHEREAS, Brigadier General Bell enlisted in the New Jersey Army National Guard in 1971 and was commissioned as a Second Lieutenant in 1973; and

WHEREAS, Brigadier General Bell graduated from the United States Army War College in 2001 with a Master of Strategic Studies degree; and

WHEREAS, Brigadier General Bell's noteworthy military career included assignment as the Chief of Staff, STARC; Chief, Military Support

Division; Commander, 42nd DISCOM and Commander, 205th Forward Support Battalion; and

WHEREAS, Following a successful career with the Internal Revenue Service, Brigadier General Bell was employed by the Department of Military and Veterans' Affairs as the Deputy Executive Director of Homeland Security; and

WHEREAS, Brigadier General Bell last served the New Jersey National Guard as the Assistant Adjutant General and was recently awarded the Legion of Merit; and

WHEREAS, It is with deep sadness that we mourn the loss of Brigadier General Bell and extend our sincerest sympathy to his family and friends;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Friday, August 5, 2005 in recognition and mourning of the passing of Brigadier General Steven L. Bell.

2. This Order shall take effect immediately.

Dated August 4, 2005.

EXECUTIVE ORDER No. 48

WHEREAS, New Jersey was the crossroads of the American Revolution, both because of its location along the primary north/south land route within the American colonies, and because it was situated between the British headquarters in New York City and the Continental Congress in Philadelphia; and

WHEREAS, New Jersey's location between the warring parties was such that from the Battle of Bunker Hill in 1775 until the formal British surrender in 1783, continuous civil war took place on New Jersey soil between individuals and communities loyal to the Crown and those seeking independence for the American colonies; with the result that nowhere in the 13 colonies was the cost to the civilian population greater; nowhere was the suffering of the troops greater; nowhere was the price of liberty more dear than in New Jersey; and

WHEREAS, Military action in New Jersey between 1775 and 1783 included five major campaigns: the American retreat from New York; the Ten Crucial Days (Crossing of the Delaware and Battles of Trenton and Princeton) of 1776 and 1777; the defense of the Delaware and capture of Philadelphia; the British retreat from Philadelphia and the Battle of Monmouth; and the closing battle in New Jersey at Springfield; and some 291 lesser-known battles and encounters, including Tory and militia raids, strikes by privateers from the protection of rivers and bays, and ambushes from woodland or mountain hideaways; which were important to the outcome of the American Revolution, and thereby to the history of the United States; and

WHEREAS, The Continental Army spent winters in the rural Morristown and Middlebrook areas, while the British Army made winter encampments in New Jersey cities; and the farms, mines, and mills located in New Jersey supplied both armies as they fought their way back and forth across the State; and

WHEREAS, General George Washington spent almost half the period of the American Revolution commanding troops of the Continental Army in New Jersey; and

WHEREAS, The National Register of Historic Places lists more than 250 buildings and sites in the State of New Jersey that are associated with the period of the American Revolution; while portions of the New Jersey landscape important to the strategies of the British and Continental armies, including waterways, mountains, farms, wetlands, villages, and roadways:

- A. Retain the integrity of the period of the American Revolution; and
- B. Offer outstanding opportunities for conservation, education and recreation; and

New Jersey State Library

WHEREAS, Because of the important role that New Jersey played in the successful outcome of the American Revolution, there is a State interest in developing a regional framework to assist local and county governments, organizations, and private citizens in:

A. Preserving and protecting cultural, historic, and natural resources of the period; and

B. Bringing recognition to those resources for the educational and recreational benefit of the present and future generations of citizens of the State and the United States; and

WHEREAS, Pursuant to FY2000 Congressional direction recommended by Reps. Rodney Frelinghuysen and Rush Holt, the United States Department of the Interior's National Park Service conducted a special resource and feasibility study in the State of New Jersey, publishing its findings in August, 2002, in a draft report entitled "Crossroads of the American Revolution: Special Resource Study, National Heritage Area Feasibility Study and Environmental Assessment"; and

WHEREAS, The National Park Service concluded that nationally distinctive cultural, historic, and natural resources in the State of New Jersey meet the criteria necessary for federal designation, and that establishment of a Crossroads of the American Revolution National Heritage Area is suitable and feasible; and

WHEREAS, The National Park Service's Crossroads of the American Revolution study names the Crossroads of the American Revolution Association, Inc., as the management entity for the National Heritage Area, noting that the Association is a nonprofit corporation whose board of directors is designed to represent the widest variety of interests and locations within the proposed National Heritage Area, which may include local government, business, education, historians, historic preservation, open space and natural resource protection, sports persons, tourism and recreation; and that its mission is to foster the conservation, preservation and interpretation of New Jersey's American Revolutionary heritage in ways that enhance public understanding about the people, places and events that transformed the course of American history; and

WHEREAS, In October, 2002, after considering the public comment received, the Northeast Region of the National Park Service published a Public Comment Document, in which the "Preferred Boundary

Proposal" option (often referred to as the "red boundary" option for the color of the proposed National Heritage Area in the attached map depicting this option) was selected for the delineation of the Crossroads of the American Revolution National Heritage Area; the recommended area would include all or part of fourteen counties in central New Jersey, stretching from the Delaware River to the Atlantic Ocean, and from Gloucester County in the south-central part of the State almost to the New York border in Bergen County; and

WHEREAS, In late 2002, the Secretary of the Interior certified to Congress that the Crossroads of the American Revolution met all National Park Service criteria as a National Heritage Area; and Senators Jon Corzine and Frank Lautenberg plan to introduce a bill in the Senate and Reps. Rodney Frelinghuysen and Rush Holt have introduced a parallel bill in the House of Representatives which would establish in New Jersey the "Crossroads of the American Revolution National Heritage Area" and would provide funding for developing a plan which will focus attention on the area's distinctive natural and cultural resources and promote the partnerships required for their protection;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of New Jersey is hereby declared to be the "Crossroads of the American Revolution," and a Crossroads of the American Revolution State Heritage Area is hereby designated, with the lands and waters within the "red boundary" set forth in the "Preferred Boundary Proposal" map (attached) comprising the area of this State Heritage Area; encompassing resources in 213 municipalities and all or portions of 14 counties in central New Jersey, with branches to the north and south connecting the area to New York and Pennsylvania.

2. This Executive Order shall serve as a preparatory and facilitating step toward securing Congressional designation of the Crossroads of the American Revolution National Heritage Area in concert with recommendations of the United States Department of the Interior, National Park Service and with provisions of the pending federal legislation.

3. All departments, officers, divisions and agencies of the State are hereby directed to cooperate as much as practically feasible with the nonprofit Crossroads of the American Revolution Association, Inc., as well as any other nonprofit groups dedicated to the conservation, preservation and interpretation of New Jersey's Revolutionary War heritage in this Heritage Area, to further their goals, as appropriate within the limits of statutory authority and appropriations.

Dated August 5, 2005.

EXECUTIVE ORDER No. 49

WHEREAS, The State Records Committee has the statutory responsibility to promulgate standards, schedules, and regulations for creation, retention, and final disposition of public records of State agencies in the State of New Jersey; and

WHEREAS, The State Records Committee seeks to foster integrity, economy, efficiency, and effectiveness in the management of the public records of State agencies in New Jersey; and

WHEREAS, Improved management of the public records will enhance State agencies' promptness and accuracy in responding to public requests for access to records under the provisions of the Open Public Records Act; and

WHEREAS, Electronic and digital technologies are rapidly transforming practices for managing State agencies' public records; and

WHEREAS, Many State agencies' records retention schedules may mandate lengthy or permanent retention of records that are no longer needed for the legal, fiscal, administrative, or historical purposes of the State, or for protection of the rights, privileges, and property of the public; and

WHEREAS, The storage of State agencies' records in State-owned and leased warehouses or commercial facilities may include obsolete public records, which drains scarce public resources; and

WHEREAS, The Division of Archives and Records Management in the Department of State is mandated by law to classify public records and assess retention requirements in cooperation with State agencies, and to propose appropriate retention schedules to the State Records Committee for adoption;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Division of Archives and Records Management (DARM), in coordination with the State Records Committee (SRC), shall undertake and direct a global review of State agency records retention schedules, practices and procedures in partnership with all agencies in the Executive Branch of State government.

2. The purpose of this coordinated program is to:

a. identify State records now scheduled for lengthy or permanent retention that are no longer needed for the legal, fiscal, administrative or historical purposes of the State or for the protection of the civil rights, privileges and property of the general public;

b. present adjusted records retention schedules to the SRC for adoption; and

c. institute Statewide requirements for timely disposition of obsolete records.

3. As part of this coordinated program, the SRS and DARM are empowered to:

a. require adjustments in State agency records retention schedules; and

b. enforce disposition of State records whose legal retention periods have expired.

4. All State agencies that use off-site facilities, whether State owned or leased, or that contract with commercial vendors for the storage of records, are directed to seek review and approval from DARM prior to applying to the Department of the Treasury for issuance or renewal of such contracts.

5. The Department of the Treasury's Purchase Bureau and the Office of Information Technology are directed to consult with DARM when

reviewing requests for hard copy and electronic records storage and conversion services contracts and records-related technology purchases.

6. All State agencies are directed to certify the imaging systems that are currently in use in their agencies.

7. The SRC and DARM may request assistance from any department, division, office or agency of the State. Any department, division, office or agency of the State is hereby required to cooperate with the SRC and DARM and furnish it with information and personnel assistance to the extent necessary to achieve the goals of this Order.

8. This Order shall take effect immediately.

Dated August 5, 2005.

EXECUTIVE ORDER No. 50

WHEREAS, The President of the United States, in Homeland Security Directive No. 5 (HSPD-5), directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent, nationwide approach for federal, state, local, and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic security incidents, regardless of cause, size or complexity; and

WHEREAS, The collective input and guidance from all federal, State, local, and tribal homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS; and

WHEREAS, It is necessary and desirable that all federal, State, local and tribal emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management; and

WHEREAS, To facilitate the most efficient and effective incident management system, it is critical that federal, state, local, and tribal organizations utilize standardized terminology, standardized organizational

structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and implementing comprehensive resource management and designated incident facilities during domestic security emergencies or disasters; and

WHEREAS, The NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the State's ability to utilize federal funding to enhance local and State agency readiness, maintain first responder safety, and streamline incident management processes; and

WHEREAS, The Incident Command System (ICS) components of NIMS are already an integral part of various incident management activities currently being undertaken throughout the State, including current emergency management training programs; and

WHEREAS, The National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized ICS; and

WHEREAS, As used herein, the term "first responder" has the same meaning as used in HSPD-8 and applies regardless of whether the first responder is paid or volunteer; and

WHEREAS, HSPD-8 has defined first responders to include those individuals who, in the early stages of an incident, are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in Section 2 of the Homeland Security Act of 2002 (6 U.S.C. s.101), as well as emergency management, public health, clinical care, public works, and other skilled support personnel, such as equipment operators, who provide immediate support services during prevention, response, and recovery operations; and

WHEREAS, The federal Homeland Security Act of 2002 provides that the term "emergency response providers" includes federal, state, and local emergency public safety, law enforcement, emergency response, emergency medical, including hospital emergency, and related personnel, agencies, and authorities; and

WHEREAS, The NIMS ICS is based upon the National Wildfire Coordinating Group curriculum, the same Incident Command System that is currently used by the fire service and emergency management in New Jersey, as well as the New Jersey State Police;

NOW, THEREFORE, I, Richard J. Codey, Acting Governor of the State of New Jersey, by the virtue of the authority vested in me by the Constitution and Laws of the State of New Jersey do hereby ORDER and DIRECT:

1. There is established an incident management system in New Jersey which shall be the National Incident Management System (NIMS). The NIMS shall be the State standard for incident management and it shall be used for all emergency incidents in this State. All State departments and agencies, within 60 days of this Order, and thereafter from time to time as may be appropriate to maintain compliance with federal requirements, shall issue such directives, administrative orders and regulations as may be necessary to ensure the use of the NIMS on all incidents by all first responders within their subject areas of responsibility, including those first responders at the departmental, agency, county and local levels.

2. All first responders shall complete the NIMS Awareness Course: National Incident Management System (NIMS), An Introduction, and all State department and agency heads, as well as their senior staff and other staff members with emergency response responsibility, also shall complete the NIMS course.

3. All responses conducted pursuant to the State Emergency Operations Plan (EOP), or any county or municipal EOP, shall be conducted in accordance with the NIMS. All State departments and agencies shall incorporate the NIMS into existing training programs and exercises, wherever appropriate. All first responders shall annually participate in multi-discipline exercises and drills that utilize the NIMS. The Domestic Security Preparedness Task Force shall coordinate existing learning management and tracking systems to track incident management and other NIMS training, and the Division of Fire Safety in the Department of Community Affairs, the State Forest Fire Service and the State Office of Emergency Management shall expand their existing Memorandum of Agreement to include all departments and agencies with responsibility for the implementation of the NIMS in the development of equivalent, uniform training standards and programs.

4. The State Office of Emergency Management shall work with the Emergency Support Function lead agencies to develop a strategy to train: (a) all entry level first responders, including firefighters, police officers, emergency medical services providers, public works on-scene personnel, public health on-scene personnel and other emergency responders, and other emergency personnel that require an introduction to the basic components of the ICS, to the ICS-100: Introduction to ICS level, prior to December 31, 2005; (b) all first line supervisors, single resource leaders, lead dispatchers, field supervisors, company officers and entry level positions (trainees) on Incident Management Teams and other emergency personnel that require a higher level of ICS training to the ICS-200: Basic ICS Basic level, prior to December 31, 2006; (c) all middle management, strike team leaders, task force leaders, unit leaders, division/group supervisors, branch directors and Multi-Agency Coordination System/Emergency Operations Center staff to the ICS-300: Intermediate ICS level, prior to December 31, 2007; and (d) all command and general staff, agency administrators and department heads with on-scene incident management responsibilities, emergency managers, areas commander and Multi-Agency Coordination System/Emergency Operations Center managers to the ICS-400: Advanced ICS level, prior to December 31, 2007. The State Office of Emergency Management also shall work with the Emergency Support Function lead agencies to develop a strategy to provide to elected officials, senior executive, senior managers and agency administrators with policy responsibilities, but without specific ICS or Multi-Agency Coordination System function/roles or responsibilities the ICS-402: ICS Summary for Executives course.

5. All county and municipal OEMs shall incorporate the NIMS into the county or municipal EOP during the next update pursuant to N.J.S.A. App. A:9-43.2, and the State Office of Emergency Management shall promote intrastate mutual aid agreements whenever feasible.

6. The Attorney General, as State Administrative Agency (SAA) for the Department of Homeland Security grants, and the Commissioner of Health and Senior Services, as SAA for Health and Human Services and Centers for Disease Control grants, and any other designated SAA shall assure that federal Fiscal Year 2005, 2006 and 2007 grants support the above objectives, and the Attorney General and Commissioner and any other designated SAA shall report their progress on these issues to the Domestic Security Preparedness Task Force on a regular basis.

7. Beginning on January 1, 2006, all State departments and agencies shall condition award of all preparedness grants upon compliance with federal requirements for the NIMS.

8. The Attorney General shall ascertain such other steps as may be required to assure that the State of New Jersey is in compliance with the Department of Homeland Security's evolving requirements for the NIMS and shall work through the Domestic Security Preparedness Task Force to implement such measures.

9. This Order shall take effect immediately.

Dated August 5, 2005.

EXECUTIVE ORDER No. 51

WHEREAS, In August 2004, the Legislature enacted P.L. 2004, c.121, known as the "New Jersey Fair and Clean Elections Pilot Project"; and

WHEREAS, That Act was designed to strengthen public confidence in New Jersey's democratic processes and institutions by establishing a Clean Elections Pilot Project to provide selected candidates for the offices of Member of the General Assembly with equal resources with which to communicate with voters; and

WHEREAS, That Act further provided that the participants in the New Jersey Fair and Clean Elections Pilot Project would be selected by the Chairs of the State political parties whose candidate for Office of the Governor received the largest number and second largest number of votes in the most recent gubernatorial election, each from among one of three specified legislative districts; and

WHEREAS, Those districts have been selected by the respective Chairs of the eligible political parties; and

WHEREAS, In order to be certified as a New Jersey Fair and Clean Elections candidate under the Act, the participating candidates must obtain a specified number of contributions in certain amounts within a certain timeframe; and

WHEREAS, The Election Law Enforcement Commission (ELEC) recently amended its implementing regulations to increase the public's ability to contribute to participating candidates in the Pilot Project by using electronic transfers from a checking account or a debit card and contributing through accessing a website; and

WHEREAS, The established deadline for making such qualifying contributions is currently due to expire on September 7, 2005, and it is apparent that most of the participating candidates will not receive sufficient qualifying contributions prior to the current deadline; and

WHEREAS, Without an extension of the deadline, the New Jersey Fair and Clean Elections Pilot Project will most likely not occur, in contravention of the clear legislative intent underlying P.L. 2004, c.121; and

WHEREAS, Following public hearings by the bi-partisan New Jersey Citizens' Clean Elections Commission that is monitoring this issue, the Chair of the Commission endorses an extension of the deadline for making qualifying contributions to participating candidates; and

WHEREAS, The Legislature is not in Session and cannot rectify this anomaly by extending the deadline statutorily; and

WHEREAS, The public interest clearly warrants an extension of the deadline to allow a brief period of time for the improvements recently made by ELEC to work and to allow the participating candidates to reach the number of contributions required in order to qualify under the Pilot Project;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The qualifying period for participating candidates in the New Jersey Fair and Clean Elections Pilot Project to receive qualifying contributions is extended to September 21, 2005, the 48th day prior to the 2005 General Election.

2. This Order shall take effect immediately.

Dated August 31, 2005.

EXECUTIVE ORDER No. 52

WHEREAS, The recent advance of Hurricane Katrina across the Gulf of Mexico and its landfall along Gulf Shores have caused numerous tornadoes, high winds, extreme tidal surges, extremely heavy thunderstorms, torrential rains, and flooding across many areas within the states of Florida Alabama, Mississippi, and Louisiana; and

WHEREAS, This severe natural disaster has already resulted in extensive human and economic damage across the States which surround the Gulf of Mexico; and

WHEREAS, The destructive conditions and damages caused by Hurricane Katrina are continuing across increasing areas of the southern United States; and

WHEREAS, These extreme conditions, and the resulting destruction of property, interruption of essential human services, and continuing dangers to and loss of human life, now require and will continue to require a massive public and private response to provide immediate, emergency assistance and continuing emergency relief to individual persons, businesses, and federal, state and local governmental units in need of transportation for food, supplies, tools, equipment, medicine, health care, law enforcement, security services, public utility services, sanitation and waste disposal, cleanup of debris, property restoration and reconstruction, and other necessities, which threatens to overload the available transportation systems to, from, and within these affected states; and

WHEREAS, The President of the United States of America has recognized the existence of an emergency within the meaning of Section 390.23 of Title 49, Code of Federal Regulations, resulting from these severe weather conditions, which poses a threat to the public safety and health of persons residing within these affected states; and

WHEREAS, The safety and welfare of the inhabitants of the affected states and the public interest clearly require that operators of commercial motor carriers upon the public highways within New Jersey, who are rendering assistance to the emergency efforts be exempted from certain regulatory requirements while they are engaged in disaster relief efforts;

NOW, THEREFORE, I, ALBIO SIRES, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Acknowledging the existence of a regional State of Emergency, the commercial motor vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in interstate disaster relief efforts in Alabama, Florida, Louisiana or Mississippi, shall be waived.

2. The effective date of this Executive Order shall begin on September 2, 2005, and shall continue in effect until the expiration date as set forth in the National Declaration of Emergency issued by the President of the United States of America, and the expiration dates of any emergency declarations issued by the Governors of the states of Florida, Mississippi, Alabama, and Louisiana, or October 3, 2005, whichever earlier occurs.

3. This Order shall be forwarded to the Chief Administrator of the Motor Vehicle Commission, who shall cause the provisions of this Order to be implemented.

Dated September 2, 2005.

EXECUTIVE ORDER No. 53

WHEREAS, The President of the United States has declared that the states of Louisiana and Mississippi are disaster areas as a result of the destruction and loss of life suffered from the impact of Hurricane Katrina; and

WHEREAS, The states of Louisiana and Mississippi along with the State of New Jersey are members of the Emergency Management Assistance Compact (EMAC) (N.J.S.A. 38A:20-4) which requires New Jersey to provide assistance to any other Compact member who has suffered a disaster and requests such aid; and

WHEREAS, The states of Louisiana and Mississippi have declared that Emergencies exist and have requested aid from New Jersey under the provisions of EMAC; and

WHEREAS, In order to respond to such requests it may be necessary to employ the resources of State, county and local government and the private sector; and

WHEREAS, The aforesaid circumstances may result in the uncoordinated deployment of emergency personnel and delivery of emergency resources and may endanger the health, safety and resources of the citizens of New Jersey by dangerously depleting the supply of essential materials and services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33 et seq. and N.J.S.A. 38A:3-6.1 and 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, ALBIO SIRE, Acting Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a State of Emergency presently exists for the specific purpose of activating the Emergency Management Assistance Compact to coordinate multi-state mutual aid to the states of Louisiana and Mississippi and do hereby ORDER and DIRECT:

1. The State Director of Emergency Management shall implement the State Emergency Operations Plan and shall direct the activation of county and municipal emergency operations plans as necessary to identify resources that are available for response to EMAC requests as authorized by and coordinated through the State Director of Emergency Management.

2. In accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to provide a full, prompt and effective utilization of resources to respond to requests from disaster-stricken states.

3. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every

official, employee or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters.

4. Pursuant to the Laws of 1942, Chapter 251, as supplemented and amended (N.J.S.A. App. A:9-40), no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

5. In accordance with the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-34), as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to provide a full, prompt and effective utilization of resources to respond to requests from disaster-stricken States to protect against this emergency.

6. All persons participating in a response authorized by the State Director of Emergency Management to an EMAC request shall be considered State emergency forces for the purposes of EMAC.

7. Pursuant to the Laws of 1942, Chapter 251, as supplemented and amended (N.J.S.A. App. A:9-40), no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

8. 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 September 3, 2005.

EXECUTIVE ORDER No. 54

WHEREAS, The Honorable William H. Rehnquist served this Nation with distinction as an associate justice of the United States Supreme Court, and for the past nineteen years as Chief Justice of the United States; and

WHEREAS, Consistent with Title 4 of the United States Code, the President of the United States of America has directed that the flag of the United States of America be flown at half staff in honor of Chief Justice Rehnquist for ten days from the day of his death; and

WHEREAS, It is fitting and proper for the State of New Jersey to mourn the passing and honor the memory of Chief Justice Rehnquist;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning Tuesday, September 6, 2005 and through and including Tuesday, September 13, 2005, in recognition and mourning of the passing of Chief Justice William H. Rehnquist.

2. This Order shall take effect immediately.

Dated September 6, 2005.

EXECUTIVE ORDER No. 55

WHEREAS, Hurricane Katrina's rampage has caused catastrophic damage, claiming hundreds if not thousands of lives and ravaging property in Louisiana, Mississippi and Alabama; and

WHEREAS, The President of the United States has directed that the flag of the United States shall be flown at half-staff on all federal buildings and grounds as a mark of respect for the victims of Hurricane Katrina; and

WHEREAS, The State of New Jersey similarly recognizes the need to remember and honor the memory of the victims of this horrible tragedy;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours through and including Tuesday, September 20, 2005, in recognition and mourning of the victims of the Hurricane Katrina disaster.

2. This Order shall take effect immediately.

Dated September 6, 2005.

EXECUTIVE ORDER No. 56

WHEREAS, The State of New Jersey is committed to the prevention of gang activities and violence and to eradicating gangs from its communities; and

WHEREAS, On June 29, 2005 I signed into law legislation that created the Gang Land Security Task Force ("Task Force"), P.L. 2005, c.107; and

WHEREAS, The Task Force is charged with examining the activities of adult and youth gangs in the State and their effect on the State's communities; researching the conditions that foster the formation and operation of gangs; analyzing methods for the prevention of their formation and continuation; and evaluating the need for an office of gang land security within the Department of Law and Public Safety for ongoing review of these issues; and

WHEREAS, The Task Force will issue a report to the Governor and Legislature within 120 days of its organization, which report shall outline methods for the prevention of new gangs and elimination of existing gangs; intelligence gathering concerning gangs' activities; and the reintegration of gang members into society; and

WHEREAS, The Task Force will be comprised of individuals from throughout the State who possess expertise relevant to this analysis; and

WHEREAS, It is essential that the Task Force members have the benefit of all available experts, resources and information as they conduct their analysis;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established an Advisory Committee to the Gang Land Security Task Force (hereinafter the Advisory Committee). The Advisory Committee shall be composed of the Commissioner of the Department of Labor and Workforce Development, or his designee, and four members appointed by the Governor as follows:

a. Two local police directors with experience in combatting gang activities;

b. A representative of the New Jersey State League of Municipalities, recommended by the League's Executive Director; and

c. A mayor of an urban municipality, with experience in combating gang activities. The mayor appointed by the Governor may name a designee to participate on the Advisory Committee in the mayor's absence.

2. The members of the Advisory Committee shall serve at the pleasure of the Governor and shall not receive compensation for their service on the Advisory Committee.

3. The Advisory Committee shall work in close conjunction with the Gang Land Security Task Force, and shall lend its expertise in providing the Task Force with the Committee's thoughts and recommendations as requested by the Task Force.

4. The Advisory Committee is authorized to call upon any department, office, division or agency of this State to supply it with records and other information, personnel or assistance that it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Advisory Committee and to furnish it with such records, information, personnel and assistance as is necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

Dated October 4, 2005.

EXECUTIVE ORDER No. 57

WHEREAS, Executive Order No. 33 (2002) created the Office of Counter-Terrorism (OCT) and empowered it to administer, coordinate and lead New Jersey's counter-terrorism and preparedness efforts; and

WHEREAS, Executive Order No. 33 (2002) organized OCT as a separate Office within the Department of Law and Public Safety, with all of the powers conferred by law to the Department of Law and Public Safety, subject to approval by the Attorney General; and

WHEREAS, Executive Order No. 33 (2002) directed that the OCT shall be led by a Director of Counter-Terrorism, who shall direct and supervise the work of the OCT, and who shall report directly to the Attorney General and, at the direction of the Governor, to the Governor, as appropriate; and

WHEREAS, In order to protect the public from terrorist acts, Executive Order No. 33 (2002) directed OCT to gather and disseminate intelligence for State and local law enforcement entities and to coordinate the counter-terrorism efforts of those entities, under the direction of the Attorney General, and to serve as a liaison with federal authorities concerning counter-terrorism issues; and

WHEREAS, In order to optimize the State's intelligence gathering and analysis capabilities regarding terrorist activities, Executive Order No. 33 (2002) directed OCT to develop and maintain a databank of information regarding terrorist and terrorist-related activities; and

WHEREAS, Legislation has been introduced which would establish OCT in, but not of, the Department of Law and Public Safety, and which would mandate that the Director of OCT report to the Attorney General only on matters relating to the enforcement and prosecution of criminal business in the State and would require the Director of OCT to report to the Governor on all matters relating to Homeland Security; and

WHEREAS, Recent events have demonstrated that the current organizational structure whereby OCT relies upon the Department of Law and Public Safety and the Division of State Police for personnel and budgetary assistance may be adversely affecting the important work of OCT and may be contrary to the public interest;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Division of State Police is hereby directed to assign 10 Division members to work directly with the Office of Counter-Terrorism until further Order of the Governor.
2. The Department of the Treasury is hereby directed to assume responsibility for all budgetary matters involving the Office of Counter-Terrorism.
3. The Department of Personnel is hereby directed to assume responsibility for the processing of all personnel matters involving the Office of Counter-Terrorism.
4. The Office of Counter-Terrorism is hereby authorized to hire up to 15 investigators or other necessary personnel to enable the Office to perform its critical responsibilities.
5. The Department of Law and Public Safety and the Division of State Police are hereby directed to cooperate with the Office of Counter-Terrorism, the Department of the Treasury and the Department of Personnel in effectuating the provisions of this Order, including making available all funding appropriated to or available for the use of OCT.
6. The Director of OCT shall provide the Governor and the Attorney General with a monthly report detailing the status of pending investigations and other important activities of the Office. This report shall be deemed to be confidential, non-public and not subject to the Open Public Records Act, P.L. 1963, c.73, as amended and supplemented.
7. Mindful of their paramount responsibility to ensure the safety of the citizens of New Jersey, the Department of Law and Public Safety, the Division of State Police and the Office of Counter-Terrorism shall ensure

that all necessary and appropriate information concerning terrorist threats and activities is shared with each other and with all appropriate federal, State and local law enforcement authorities.

8. This Order shall take effect immediately.

Dated October 4, 2005.

EXECUTIVE ORDER No. 58

WHEREAS, Executive Order No. 1 (2004) created a Governor's Task Force on Mental Health (hereinafter the "Task Force") to undertake a comprehensive review of New Jersey's mental health system, and to make recommendations to the Governor and the Legislature concerning legislative, regulatory and administrative changes that are needed to improve the delivery of and access to mental health services in New Jersey; and

WHEREAS, Executive Order No. 40 (2005) directed the implementation of certain of the Task Force's recommendations, and other recommendations have been implemented through the FY 2006 Appropriations Act, as well as the filing and subsequent adoption of Reorganization Plan 002-2005; and

WHEREAS, Legislative proposals implementing other Task Force recommendations are currently being considered by the Legislature; and

WHEREAS, Because of the importance of the mental health issue, it remains a top priority of this Administration, and much more needs to be done to address this public health issue; and

WHEREAS, The stigma of mental illness is the primary barrier to the achievement of wellness and recovery and full social integration; and

WHEREAS, For New Jersey to reduce the burden of mental illness, the stigma of such illness must no longer be tolerated; and

WHEREAS, Combating stigma must be a top priority in our effort to create a better mental health system in New Jersey;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established in the Department of Human Services a Governor's Council on Mental Health Stigma (hereinafter "Council"). The Council shall consist of 11 voting members, including 10 public members appointed by the Governor to serve at his pleasure, and the Commissioner of Human Services, or his designee, ex-officio. The Governor shall designate a Chair and Vice Chair from among the members of the Council. The Council may include representatives of mental health service consumers and family members, mental health and health professionals, media, government, business, law enforcement and education. The members of the Council shall serve without compensation.

2. The Council shall develop a master plan organizing the activities of the State aimed at increasing awareness and understanding of mental disorders and overcoming the stigma associated with mental illness, via the coordinated efforts of new and existing initiatives with activities throughout the State aimed at increasing awareness and understanding of mental disorders and overcoming the stigma associated with them.

3. The Council is further authorized to perform the following functions:

a. Develop and maintain a mental health stigma website and telephone hotline;

b. Educate the public and the media about the evils of mental health stigma, utilizing such methods as educating volunteers, hosting community forums, maintaining a speakers bureau, distributing informative material, including public service announcements, pamphlets and the like, raising awareness in the workplace and supporting media watch groups that focus on mental health stigma issues;

c. Performing advocacy services and outreach to local organizations, senior citizens, pre- and post-natal and other specialty groups;

d. Developing resources to combat the "not-in-my-backyard" syndrome;

e. Promoting peer support groups;

f. Improving training by including appropriate information about mental illness to primary care physicians, judicial/law enforcement organizations, emergency medical technician staff and clergy;

g. Promoting targeted research and evaluating anti-stigma efforts.

4. The Council shall consult with psychiatrists, psychologists, nurses and other professionals on a regular basis during the course of its work.

5. The Council is authorized to hire a full-time Executive Director, utilizing the funds appropriated to the Council.

6. The Council is authorized to call upon any department, office, division or agency of this State to supply it with records and other information, personnel or assistance that it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Council and to furnish it with such records, information, personnel and assistance as is necessary to accomplish the purposes of this Order.

7. This Order shall take effect immediately.

Dated October 7, 2005.

EXECUTIVE ORDER No. 59

WHEREAS, Beginning on October 7, 2005, severe weather conditions, including heavy rains, high winds, main stream and river flooding, and progressing runoff now threatens homes and other structures and the flow of traffic throughout the State; and

WHEREAS, The aforesaid weather conditions make it difficult or impossible for citizens to obtain the necessities of life, as well as essential services such as police, fire and first aid; and

WHEREAS, The aforesaid weather conditions constitute a disaster from a natural cause which threatens and presently endangers the health, safety and resources of the residents of one or more municipalities and counties of this State; and which is in some parts of this State and may become in other parts of the State too large in scope to be handled by the normal county and municipal operating services; and

WHEREAS, The Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and 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, RICHARD J. CODEY, Acting Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey DO DECLARE AND PROCLAIM that a State of Emergency presently exists throughout the State of New Jersey; and I hereby ORDER AND DIRECT the following:

1. The State Director of Emergency Management to implement the State Emergency Operations Plan and to direct the activation of county and municipal emergency operation plans as necessary.

2. The State Director of Emergency Management, who is the Superintendent of State Police, in accordance with N.J.S.A. 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.

3. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, acting through the Superintendent of the Division of State Police, to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies. I further authorize all law enforcement officers to enforce any such orders of the Attorney General and the Superintendent of State Police, within their respective municipalities.

4. 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. 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. The executive head of any agency or instrumentality of the State government with authority to promulgate rules to, for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management, waive, suspend or modify any existing rule, the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Any such waiver, modification or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

7. The Adjutant General, in accordance with N.J.S.A. 38A:2-4 and 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 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.

8. In accordance with N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, as supplemented and amended, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

9. In accordance with N.J.S.A. App. A:9-40, no municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order or the orders of the State Director of Emergency Management.

10. That it shall be the duty of the members of the governing body and each and every officer, agent and employee of every political subdivision of this State and of each member of all other governmental bodies, agencies

and authorities of any nature whatsoever fully co-operate with the State Director of Emergency Management in all matters during this emergency.

11. The State Director of Emergency Management, pursuant to N.J.S.A. App.A:9-37 and N.J.S.A. App. A:9-48 and in accordance with N.J.S.A. App. A:9-36, to require any public official, citizen or resident of this State or any firm, partnership, or corporation, incorporated or doing business in this State, to furnish any information deemed reasonably necessary by the Director to carry out the purposes of this Order.

12. The cooperation of every person or entity in this State or doing business in this State in all matters concerning this state of emergency is requested.

13. In accordance with N.J.S.A. App. A:9-34, N.J.S.A. App. A:9-40.6 and 40A:14-156.4, I direct that no municipality or public or semipublic agency send public works, fire, police, emergency medical or other personnel or equipment into any non-contiguous disaster-stricken municipality within this State nor to any disaster-stricken municipality outside this State unless and until such aid has been directed by the county emergency management coordinator or his deputies in consultation with the State Director of Emergency Management.

14. 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 October 14, 2005.

EXECUTIVE ORDER No. 60

WHEREAS, Executive Order No. 59 (2005), declaring a State of Emergency, was issued on October 14, 2005, because of severe flooding caused by rains beginning on October 7, 2005 and continuing until October 14, 2005; and

WHEREAS, The severity of the conditions necessitating the declaration of a State of Emergency has eased;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the

Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State of Emergency declared in Executive Order No. 59 is terminated effective at 8:00 p.m. on October 15, 2005.

Dated October 15, 2005.

EXECUTIVE ORDER No. 61

WHEREAS, In recent years, scientists have discovered that placental and umbilical cord blood holds enormous promise in its ability to provide a rich supply of stem cells for new treatments for many diseases, conditions and injuries, including stroke, spinal cord injury, diabetes, heart disease, HIV/AIDS, multiple sclerosis, organ and nerve regeneration, Parkinson's disease, Alzheimer's disease and lupus; and

WHEREAS, Umbilical cord and placental stem cells can be isolated from placentas and umbilical cords that would normally be discarded and destroyed after a healthy birth; and

WHEREAS, Many women are not aware of their option to donate placental or umbilical cord blood, and consequently the blood is often discarded as medical waste after childbirth; and

WHEREAS, There are an estimated 4 million births annually in the United States and 115,000 births in the State of New Jersey; and

WHEREAS, There are a limited number of cord blood banks in the nation and creating a bank of placental and umbilical cord blood will greatly increase the available donor pool for currently available life-saving transplantation procedures; and

WHEREAS, The need for women from all racial and ethnic groups to donate their baby's cord blood is particularly urgent with respect to racial and ethnic minorities, who face a greater challenge in finding a donor match for currently available transplantation procedures to alleviate diseases such as leukemia and sickle cell anemia; and

WHEREAS, It is the policy of this State, as established by P.L.2003, c.203, that stem cell research shall be conducted ethically and in accordance with the highest scientific standard shall be permitted; to this end, the State has become a leader by investing in stem cell research; and

WHEREAS, Medical research advances that lead to better treatments of diseases and ultimately cures will help reduce long-term health care costs on New Jersey taxpayers; and

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Commissioner of Health and Senior Services shall develop educational materials for health care professionals to inform them of the value of placental and umbilical cord blood donation.

2. The Commissioner of Health and Senior Services, in consultation with the New Jersey Coriell Institute for Medical Research and the Elie Katz Umbilical Cord Blood Program at Community Blood Services, the State's non-profit cord blood banks and participants in the National Marrow Donor Program, shall establish two pilot programs, one each in Northern and Southern New Jersey, for the purpose of allowing consenting expectant mothers, delivering in qualified hospital facilities, to donate placental and umbilical cord blood following childbirth.

3. The Commissioner of Health and Senior Services shall develop a plan to make placental and umbilical cord blood units widely available for the purpose of stem cell research in the State.

4. The Commissioner of Health and Senior Services shall seek funding for cord blood banking and research from various funding sources, including state, federal and public/private partnerships, and nothing in this Order shall be construed to preempt those efforts.

5. This Order shall take effect immediately.

Dated October 18, 2005.

EXECUTIVE ORDER No. 62

WHEREAS, Assemblyman Donald K. Tucker, a devoted family man, spent his entire adult life committed to public service and New Jersey is a better place today because of that commitment; and

WHEREAS, Assemblyman Tucker grew up in Newark and graduated from Central High School in Newark, received a degree in Urban Planning from Goddard College in Vermont and served in the United States Air Force from 1955 to 1959; and

WHEREAS, Following his discharge from the Air Force, Assemblyman Tucker returned to Newark and became involved in the Essex County Chapter of the Congress of Racial Equality; and

WHEREAS, Assemblyman Tucker traveled to Mississippi to assist with the Civil Rights Movement; and

WHEREAS, Upon returning to Newark, Assemblyman Tucker founded the Newark Tenants' Council and was instrumental in the effort to desegregate Newark's public housing projects; and

WHEREAS, Assemblyman Tucker was elected in 1974 and served 31 continuous years as a Councilman-at-Large in Newark, and was Council President in the 1990s; and

WHEREAS, Assemblyman Tucker served in the Assembly since 1998, and in 2002, was named Speaker Pro Tempore, the third highest leadership position in the Assembly; and

WHEREAS, Assemblyman Tucker also served as Chair of the New Jersey Black Issues Convention, and formerly served on the Executive Board of the National League of Cities and as President of the National Black Caucus of Local Elected Officials; and

WHEREAS, It is with deep sadness that we mourn the loss of Assemblyman Tucker and extend our sincerest sympathy to his family and friends; and

WHEREAS, It is fitting and proper to honor the memory and the passing of Assemblyman Tucker;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, October 26, 2005, in recognition and mourning of the passing of Assemblyman Tucker.

2. This Order shall take effect immediately.

Dated October 25, 2005.

EXECUTIVE ORDER No. 63

WHEREAS, Rosa Parks became a true American hero and changed the course of history in 1955 when she remained seated on that bus in Montgomery, Alabama; and

WHEREAS, Rosa Parks' courageous actions led to a court ruling desegregating public transportation in Montgomery; and

WHEREAS, Rosa Parks, in her quiet and powerful way, stood up for equality and became known as the "mother of the civil rights movement"; and

WHEREAS, Rosa Parks, through her commitment to nonviolence, inspired a nation and helped all Americans realize the promise of freedom; and

WHEREAS, Rosa Parks was a person of extraordinary decency, courage and integrity, and an exceptional citizen who has been recognized for her resolve against injustice; and

WHEREAS, It is with deep sadness that we mourn the loss of Rosa Parks and extend our sincere sympathy to her family and friends; and

WHEREAS, it is fitting and appropriate to honor the memory and the passing of Rosa Parks;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Tuesday, November 1, 2005, in recognition and mourning of the passing of Rosa Parks.

2. This Order shall take effect immediately.

Dated October 31, 2005.

EXECUTIVE ORDER No. 64

I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. November 25, 2005, 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, preclude such absence on November 25, 2005.

Dated November 7, 2005.

EXECUTIVE ORDER No. 65

WHEREAS, In the words of President John F. Kennedy, "[n]o responsibility of government is more fundamental than the responsibility for maintaining the highest standards of ethical behavior by those who conduct the public business.... This principle must be followed not only

in reality, but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter"; and

WHEREAS, I have made it a cornerstone of my administration to transform the ethical culture in State government, with the hope of forging a renewed partnership among government, its employees, and the people of this State; and

WHEREAS, Recent events have compellingly demonstrated that our public institutions of higher education and the members of the governing boards of those institutions must conduct business in the most transparent manner possible, to ensure that the citizens of New Jersey have complete confidence in the operation of those institutions and in the persons who are governing them; and

WHEREAS, We must always remember that government officials are at all times accountable to the people of this State and that public service should never be used for private gain; and

WHEREAS, As a result, the leaders of our public institutions of higher education must constantly be mindful of the need to avoid even the appearance of impropriety in the performance of their public duties;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. No President or member of a governing board of a State University, State College or County College, nor any member of the immediate family of such official, shall do business, directly or indirectly, with the institution that they govern or by which they are employed. For purposes of this Order, "member of the immediate family" shall mean the official's spouse, child, parent or sibling residing in the same household.

2. The prohibitions in paragraph 1 shall also apply to any firm, association or partnership by which the President or member of the governing board is employed, from which the President or member receives compensation, or of which the President or member owns or controls more than one percent of the profits or assets of that firm, association or

partnership. Such prohibitions shall also apply to shareholders, associates or professional employees of a professional service corporation regardless of the extent or amount of their shareholder interest in such a corporation.

3. Any President or member of a governing board of a State University, State College or County College who is currently involved in a business relationship that is prohibited by this Order shall be given 30 days to terminate the prohibited business relationship or to resign from public office. Failure to comply with the terms of this Order shall constitute good cause for the removal from employment or office of the President or member of a governing board.

4. The Executive Director of the Executive Commission on Ethical Standards is hereby authorized to grant an exception from the terms of this Order if, in the judgment of the Executive Director, the entity that employs, provides compensation or is owned in part by the Board member is one with which the State University, State College or County College may contract pursuant to N.J.S.A. 52:13D-19 and N.J.S.A. 52:34-10, or where the public interest requires that an exception be made.

5. Each governing board of a State University, State College or County College shall incorporate the provisions of this Order into its Code of Ethics.

6. This Order shall take effect immediately.

Dated November 15, 2005.

EXECUTIVE ORDER No. 66

WHEREAS, U.S. Army Captain James M. Gurbisz, grew up in Eatontown and graduated from Monmouth Regional High School in 1998, where he was captain of the football team, played varsity baseball and served as student council president while earning a 4.5 grade point average; and

WHEREAS, Fulfilling a lifelong interest in the military, Captain Gurbisz was a 2002 honors graduate of the U.S. Military Academy at West Point with a degree in Mechanical Engineering; and

WHEREAS, Captain Gurbisz served proudly as a platoon leader of the U.S. Army's 26th Forward Support Battalion, 2nd Brigade, 3rd Infantry Division, and was deployed to Iraq in the service of his country in January 2004; and

WHEREAS, Captain Gurbisz was a courageous soldier, and a loving husband, son and brother; and

WHEREAS, Captain Gurbisz has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Captain Gurbisz's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Saturday, November 19, 2005, in recognition and mourning of U.S. Army Captain James M. Gurbisz.

2. This Order shall take effect immediately.

Dated November 17, 2005.

EXECUTIVE ORDER No. 67

WHEREAS, It has been a priority of my Administration to restore the traditional role of government by helping those citizens who need it the most; and

WHEREAS, It is critical that the State of New Jersey and its governmental agencies focus upon the ability of individuals with special needs to be gainfully employed; and

WHEREAS, The State of New Jersey is in a unique position to expand employment opportunities for special needs individuals by targeting a small percentage of its immense purchasing power to the statutorily created agency responsible for assisting the productive employment of special needs individuals;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. In furtherance of the goals of the Rehabilitation Facilities Set Aside Act, N.J.S.A. 30:6-23 et seq., and the implementing regulations set forth in N.J.A.C. 10:99-1.1 et seq., all State and local government purchasers of goods and services shall heighten their efforts to assist the productive employment of special needs individuals.

2. Every State department, agency, authority and instrumentality that is authorized to purchase goods and services shall forthwith make a good faith effort to purchase three percent of such goods and services from the Central Non-Profit Agency, which has been established to fulfill the aims of the Rehabilitation Facility Set Aside Act.

3. All political subdivisions of the State and local government entities, including counties, municipalities, school districts, quasi-State agencies, State and county colleges, volunteer fire departments, volunteer first aid and rescue squads, public authorities, commissions and independent institutions of higher learning, that are authorized to make purchases as provided in the Cooperative Purchase Program statute, N.J.S.A. 52:25-16.1 and N.J.S.A. 40A:11-12, as well as all agencies, commissions, boards and other entities that are authorized to make joint purchases with the Director of the Division of Purchase and Property as provided in N.J.S.A. 52:27B-56.1 shall also make a good faith effort to purchase three percent of its goods and services from the Central Non-Profit Agency.

4. The State Treasurer shall take the necessary steps to coordinate the implementation of the terms of this Executive Order. The Treasurer is authorized to call upon any department, office or agency of State government to provide such information, resources or other assistance deemed necessary to discharge his responsibilities under this Order. Each department, office, division and agency of this State is required to cooperate with

the Treasurer and to furnish him with assistance necessary to accomplish the purposes of this Order.

5. This Order shall take effect immediately.

Dated November 21, 2005.

EXECUTIVE ORDER No. 68

WHEREAS, Executive Order No. 65 (2005) established clear ethics guidelines designed to eliminate conflicts of interest for leaders of New Jersey's public colleges and universities; and

WHEREAS, Executive Order No. 65 prohibited the heads of New Jersey's public colleges and universities, or members of their immediate families, from doing business, directly or indirectly, with the institution that they govern or by which they are employed; and

WHEREAS, Executive Order No. 65 gave the college Presidents or Board members 30 days to terminate any prohibited business relationships or to resign from public office, unless otherwise exempted by the Executive Director of the Executive Commission on Ethical Standards; and

WHEREAS, There is a need for additional time to allow affected Presidents or Board members to address issues arising from existing business relationships or to discuss those relationships with the Executive Director;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Any President or member of a governing Board of a State University, State College or County College who is currently involved in a business relationship that is prohibited by Executive Order No. 65 shall be given until January 1, 2006 to terminate the prohibited business relationship or to resign from public office.

2. The remaining provisions of Executive Order No. 65 are hereby continued.

3. This Order shall take effect immediately.

Dated November 23, 2005.

EXECUTIVE ORDER No. 69

WHEREAS, U.S. Army First Lieutenant Dennis W. Zilinski II grew up in Middletown and graduated from Christian Brothers Academy in 2000, where he was captain of the swimming team and earned Asbury Park Press All-Shore recognition as a swimmer; and

WHEREAS, First Lieutenant Zilinski was a 2004 honors graduate of the U.S. Military Academy at West Point, where he captained the swim team and received an award for being the graduating senior who exhibited qualities of leadership and sportsmanship; and

WHEREAS, First Lieutenant Zilinski served proudly as a member of the U.S. Army's 1st Battalion, 187th Infantry Regiment, 3rd Brigade Combat Team, 101st Airborne Division, based in Fort Campbell, Kentucky, and was deployed to Iraq in the service of his country; and

WHEREAS, First Lieutenant Zilinski was a courageous soldier, and a loving fiancé, son and brother; and

WHEREAS, First Lieutenant Zilinski has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, First Lieutenant Zilinski's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Wednesday, November 30, 2005, in recognition and mourning of U.S. Army First Lieutenant Dennis W. Zilinski II.

2. This Order shall take effect immediately.

Dated November 29, 2005.

EXECUTIVE ORDER No. 70

WHEREAS, U.S. Army Staff Sergeant Edward Karolasz, a resident of Kearny, graduated from Kearny High School in 1999; and

WHEREAS, Staff Sergeant Karolasz subsequently enlisted in the U.S. Army; and

WHEREAS, Staff Sergeant Karolasz served proudly as a member of the U.S. Army's 1st Battalion, 187th Infantry Regiment, 3rd Brigade Combat Team, 101st Airborne Division, based in Fort Campbell, Kentucky, and initially served in Iraq in the service of his country from 2002 through 2003; and

WHEREAS, Staff Sergeant Karolasz was redeployed to Iraq in September 2005 for his second tour of duty; and

WHEREAS, Staff Sergeant Karolasz was a courageous soldier, and a loving son and brother; and

WHEREAS, Staff Sergeant Karolasz has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Staff Sergeant Karolasz's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Saturday, December 3, 2005, in recognition and mourning of U.S. Army Staff Sergeant Edward Karolasz.

2. This Order shall take effect immediately.

Dated December 1, 2005.

EXECUTIVE ORDER No. 71

WHEREAS, U.S. Army Sergeant Clarence L. Floyd, Jr., whose parents reside in Newark, New Jersey, earned his high school diploma while serving as a member of the Job Corps, where he assisted in relief operations in North Carolina, following Hurricane Floyd in 1999; and

WHEREAS, Sergeant Floyd, a father of five, enlisted in the U.S. Army in October 2003, hoping to be better able to provide for his family; and

WHEREAS, Sergeant Floyd served proudly as a cannon crew member of the U.S. Army's 1st Battalion, 320th Field Artillery Regiment, 2nd Brigade Combat Team, 101st Airborne Division, based in Fort Campbell, Kentucky, and was deployed to Iraq in September 2005 in the service of his country; and

WHEREAS, Sergeant Floyd was a courageous soldier and a loving husband, father and son; and

WHEREAS, Sergeant Floyd has made the ultimate sacrifice, giving his life in the line of duty while fighting for our country; and

WHEREAS, Sergeant Floyd's patriotism and dedicated service to his country make him a hero and a true role model for all Americans and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Monday, December 19, 2005, in recognition and mourning of U.S. Army sergeant Clarence L. Floyd, Jr.

2. This Order shall take effect immediately.

Dated December 16, 2005.

EXECUTIVE ORDER No. 72

WHEREAS, Executive Order No. 46 (2005) established the Governor's Task Force on Steroid Use and Prevention (hereinafter the Task Force) to assess and recommend measures to combat the growing problem surrounding the use of steroid and other performance enhancers by high school student-athletes in New Jersey; and

WHEREAS, The Task Force has provided a comprehensive report setting forth its findings and recommendations for addressing the problem of teen steroid use; and

WHEREAS, A number of those recommendations require legislative action, while others can be implemented more quickly through administrative direction; and

WHEREAS, The State of New Jersey must take immediate steps to begin to combat this problem before it becomes a public health crisis;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Education is hereby directed to work in conjunction with the New Jersey State Interscholastic Athletic Association (NJSIAA) to develop and implement a program of random testing for steroids of teams and individuals qualifying for championship games. This program shall commence with the 2006-2007 school year.

2. The Department of Health and Senior Services shall develop and implement as soon as possible a program to randomly test dietary supplement products for sale in New Jersey to detect steroid contamination.

3. The Department of Education shall take all necessary steps to ensure that steroid education is incorporated into programs currently being utilized in New Jersey schools, such as the Drug Abuse Resistance Education (DARE) Program. DARE steroid education shall be introduced at the fifth grade level.

4. The Department of Education shall take all necessary steps to ensure that each school district within New Jersey utilizes programs such as the Athletes Training and Learning to Avoid Steroids (ATLAS) and the Athletes Targeting Healthy Exercise and Nutrition Alternatives (ATHENA), models of steroid prevention for high school students.

5. The Department of Education, in conjunction with the Department of Health and Senior Services, shall take all necessary steps to integrate information on steroids, including prevention strategies, strength-building alternatives and the understanding of health food labels, into the health and physical education curricula at the 7th and 8th grade levels.

6. The Department of Education, in conjunction with the Department of Health and Senior Services, shall take all necessary steps to develop a curriculum on steroids for high school health and physical education teachers to incorporate into their classroom instruction.

7. The Department of Education, in conjunction with the Athletic Trainers Society of New Jersey, shall develop a downloadable presentation that certified athletic trainers can use to educate parent groups and students in a classroom setting.

8. The Department of Education shall develop a training program for high school science teachers, student assistant coordinators and school nurses on the harmful effects of steroids and performance enhancers.

9. The Department of Education, in conjunction with the NJSIAA, shall develop a mandatory steroids and nutritional supplements training program for all high school and middle school coaches. Such program shall include workshops and expert speakers.

10. The Department of Education shall take all reasonable steps to encourage school districts to organize school assembly programs on steroid prevention.

11. The Governor's Council on Alcoholism and Drug Abuse, in conjunction with the Partnership for a Drug Free New Jersey, shall develop posters and anti-steroid advertisements as well as Public Service Announcements (PSAs) highlighting the dangers of steroid use, steroid precursors and nutritional supplements. Such posters shall be displayed in school locker rooms, weight rooms, athletic training facilities and at all State tournament games and championships.

12. The Governor's Council on Alcoholism and Drug Abuse, in conjunction with the NJSIAA, shall provide anti-steroid ads in all school sports programs and as public service announcements at all State tournament games. The resources of the Partnership for a Drug Free New Jersey should be made available for this purpose.

13. The NJSIAA is strongly urged to incorporate steroid, steroid precursors and nutritional supplement education, as well as alternatives to strength gains, into the coaches' education program.

14. The NJSIAA is strongly urged to conduct semi-annual or annual workshops for coaches and athletic directors in identifying the components of steroid use/abuse and prevention strategies.

15. The NJSIAA is strongly urged to provide speakers on steroid prevention strategies at all coaches' workshops for all sports, particularly for those sports whose athletes are at high risk, such as football and wrestling.

16. The steroid education programs and materials developed by all State entities and by the NJSIAA pursuant to this Order shall be made available to volunteer youth league coaches in New Jersey.

17. There is hereby established a "Steroids Awareness Week," to be held the last full week in October each year. The Departments of Education and Health and Senior Services shall collaborate in organizing appropriate educational and other programs to be held during this week.

18. The Departments of Education and Health and Senior Services, in conjunction with the NJSIAA, shall provide the Governor and the Legisla-

ture with a comprehensive report concerning the implementation of this Order within a year of the effective date of this Order.

19. This Order shall take effect immediately.

Dated December 20, 2005.

EXECUTIVE ORDER No. 73

WHEREAS, Executive Order No. 56 (2005) created an Advisory Committee to the Gang Land Security Task Force (hereinafter the Advisory Committee), designed to work in close conjunction with the Gang Land Security Task Force (hereinafter Task Force); and

WHEREAS, Executive Order No. 56 recognized that it is essential that the Task Force members have the benefit of all available experts, resources and information as they perform their statutory duties; and

WHEREAS, The work of the Task Force and the current Advisory Committee will be greatly enhanced by appointing additional public members to the Advisory Committee;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The membership of the Advisory Committee established by Executive Order No. 56 is expanded to include four public members appointed by the Governor.

2. Except as herein modified, all of the provisions of Executive Order No. 56 shall remain in full force and effect.

3. This Order shall take effect immediately.

Dated December 21, 2005.

EXECUTIVE ORDER No. 74

WHEREAS, Executive Order No. 29 (2002) established a Family and Survivor Memorial Committee (Committee) to review and develop suggestions, plans and designs for a suitable September 11th Memorial (Memorial) to honor the victims of the terrible events of September 11, 2001; and

WHEREAS, Executive Order No. 29 mandated that the Committee work in conjunction with the New Jersey Family Advocate Management Corporation (NJFAM), a not-for-profit organization instrumental in providing relief to New Jersey September 11th victims and victim family members, and with the Office of Recovery and Victim Assistance in the development and management of a charitable fund to defray the costs to create and preserve the Memorial; and

WHEREAS, Executive Order No. 29 recognized that NJFAM was the appropriate vehicle to develop and maintain this fund; and

WHEREAS, The construction of the Memorial is proceeding, and the Port Authority has committed a large sum of money to build and maintain the Memorial; and

WHEREAS, Only a few hundred dollars remain in the fund maintained by NJFAM, and NJFAM is scheduled to cease active operations on December 30, 2005;

NOW, THEREFORE, I, RICHARD J. CODEY, Acting Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. NJFAM is hereby authorized to transfer the funds currently held in its account to the New Jersey Department of the Treasury, which shall provide for appropriate disposition of such funds in a manner consistent with paragraph 2 of the General Provisions of the FY'06 Appropriations Act, with the intent of the donors and with the distribution of related funds currently held by the Department.

2. This Order shall take effect immediately.

Dated December 29, 2005.

EXECUTIVE ORDER No. 75

WHEREAS, Senior Corrections Officer Wayne Clark, a loving father and brother, and a career law enforcement officer, joined the New Jersey Department of Corrections in March 1983, after serving in Southeast Asia with the United States Air Force and as a patrol officer in Cinnaminson Township; and

WHEREAS, SCO Clark proudly served the Department in various assignments at New Jersey State Prison, the Vroom Readjustment Unit and at Riverfront State Prison with exceptional courage, dedication and professionalism, genuine courtesy and abiding commitment to the finest law enforcement traditions; and

WHEREAS, SCO Clark was a member of the Riverfront State Prison honor guard, was cited as officer of the year on three occasions, and received numerous citations for meritorious service; and

WHEREAS, SCO Clark served as a mentor to newly-hired officers, and made a positive impact on the lives of uniformed and non-uniformed staff; and

WHEREAS, SCO Clark passed away while on duty, and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory;

NOW, THEREFORE, I, RICHARD J. CODEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half staff at all State departments, offices, agencies and instrumentalities during appropriate hours on Thursday, January 12, 2006, in recognition and mourning of Senior Corrections Officer Wayne Clark.

2. This Order shall take effect immediately.

Dated January 11, 2006.

EXECUTIVE ORDER No. 76

WHEREAS, It has been a priority of my Administration to protect the environment and the health and safety of workers and citizens of New Jersey; and

WHEREAS, Cleaning products are necessary for maintaining sanitary conditions in State facilities; and

WHEREAS, Chemicals contained in certain cleaning products can be released into the environment during normal use; and

WHEREAS, Utilizing less hazardous cleaning products in our State facilities and workplaces, and implementing measures to reduce exposure to those products, can minimize harmful impacts to office and custodial workers, as well as improve air quality and reduce water and air pollution;

NOW, THEREFORE, I, RICHARD J. CODEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. All State departments, authorities and instrumentalities with purchasing responsibility shall procure and use cleaning products having properties that minimize potential impacts to human health and the environment, consistent with maintaining the effectiveness of these products for the protection of the public health and safety.

2. The Department of the Treasury, in consultation with the Department of Health and Senior Services and the Department of Environmental Protection, shall establish guidelines or regulations to provide guidance to covered State entities in connection with the implementation of this Order.

3. The Department of the Treasury shall provide the Governor and the Legislature with a report assessing the effectiveness of and compliance with this Order within one year of the effective date of this Order.

4. County and municipal governments and school districts that are not expressly subject to the requirements of this Order are encouraged to review their purchasing and use of cleaning products and are urged to comply with the provisions of this Order where deemed appropriate.

5. Wherever feasible, State entities covered by this Order shall transition to environmentally and health-friendly cleaning products as soon as possible in a manner that avoids wasting of existing inventories, accommodates establishment of supply chains for new products, enables the training of personnel in appropriate work practices, and allows the phase-out of products and practices inconsistent with this Order. Additionally, new purchasing contracts for the purchase of such products or cleaning services shall include an appropriate requirement consistent with this Order and the guidelines provided by the Department of the Treasury.

6. This Order shall take effect immediately.

Dated January 12, 2006.

EXECUTIVE ORDER No. 77

WHEREAS, It has been the priority of my Administration to restore the traditional role of government by helping those citizens who need it the most; and

WHEREAS, Throughout my years of public service and my tenure as Governor, I have strived to better the lives of those persons with mental illness and to improve New Jersey's mental health system; and

WHEREAS, Working cooperatively with many dedicated non-profit providers, the State of New Jersey, through its Department of Human Services, has made great strides in caring for those citizens in need of assistance; and

WHEREAS, Despite those accomplishments, there remains much to be done by the State in fostering improvements to our current system and in assisting the non-profit contractual providers in developing sufficient reserves or working capital to assist them in such endeavors as upgrading or replacing infrastructure, or defraying short-term liabilities;

NOW, THEREFORE, I, RICHARD J. CODEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Human Services (the Department) shall develop a pilot program of Operational Incentives for its Division of Mental Health Services (DMHS) contracts.

2. This Operational Incentives Pilot Program shall apply to all DMHS non-profit, non-hospital and non-governmental agencies with cost reimbursement contracts. Fixed price and fixed rate contracts shall not be included in this pilot program, nor are contracts with hospital-based or governmental organizations.

3. The Department shall establish this pilot program that will allow the contract provider to earn an Operational Incentive when the provider's final contract expenditure report indicates that a net contract surplus exists. Providers should be allowed to retain 100 percent of the current contracts' net savings identified from contract deficiencies. The Department shall establish reasonable restrictions and limits on the earned incentives, including an annual cap and a provision that federal funds cannot be included in the Operational Incentive.

4. The Operational Incentive shall be utilized by the provider agencies as a savings reserve, available to meet cash flow needs as working capital and for assisting the provider agency in meeting its mission. The guidelines adopted by the Department shall prohibit providers from utilizing the Operational Incentive funds to expand programming that would require ongoing funding, thereby creating obligations for future budget cycles. The guidelines shall also prohibit providers from utilizing Operational Incentive funds for executive management staff bonuses.

5. The guidelines adopted by the Department shall further provide that, upon termination of the contractual relationship with DMHS, or upon dissolution of the provider's corporate entity, the provider shall refund to DMHS all remaining funds in the Operational Incentives reserve account.

6. The Department may expand the pilot program established by this Order to include providers under contract with the Department's Division of Developmental Disabilities, or any of the other Divisions within the Department.

7. This Order shall take effect immediately, and shall be retroactive to DMHS contracts entered into on or after July 1, 2005.

Dated January 13, 2006.

EXECUTIVE ORDER No. 78

WHEREAS, It has been the priority of my Administration to restore the traditional role of government by helping those citizens who need it the most; and

WHEREAS, Throughout my years of public service and my tenure as Governor, I have strived to better the lives of those persons with mental illness and to improve New Jersey's mental health system; and

WHEREAS, Consumers, family members, mental health providers and public health practitioners endorse a recovery-oriented mental health system which enables persons suffering from mental illness to live, work, learn and participate fully in their communities; and

WHEREAS, The recovery process enables a person to re-establish a sense of integrity and purpose and to live a satisfying, hopeful and contributory life, within the limitations of the illness; and

WHEREAS, The wellness process is a conscious, deliberate and ongoing process in which a person becomes aware of and makes choices towards a more satisfying lifestyle; and

WHEREAS, The public mental health system must continue to move from an institutional system of care to a community system of care based upon the principles of wellness and recovery;

NOW, THEREFORE, I, RICHARD J. CODEY, 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 financing of the State of New Jersey's mental health system should be changed to promote state-of-the-art treatment alternatives. These alternatives would include, but not be limited to, permanent supportive housing, supportive employment, in-home services and consumer self-help.

2. The Department of Human Services (the Department) shall commence an immediate review of currently licensed partial-care and partial-hospitalization programs to determine the appropriateness of utilizing and funding, where appropriate, recovery-based programming and services. The Department shall also commence an immediate review of its

existing regulations dealing with mental health services and programs for adults and children, with an eye towards revising those rules to allow for the shift to a system based on wellness and recovery. This shift should include staff training, mission, vision, treatment and recovery modalities, contracting and funding.

3. The Department shall examine whether the State Medicaid Plan should adopt the Medicaid Rehabilitation Option, which would allow greater flexibility than currently exists to bill for non-facility-based services such as outreach, peer services, family education, supportive housing services, case management and social and recreational activities. This Option would provide more flexibility to meet consumers' needs by allowing services to be community-based rather than clinic-based, and would better maximize federal dollars, resulting in more financial resources.

4. The Department of Labor and Workforce Development and the Department of Human Services shall develop a cooperative training series for individuals with mental illness, family members and providers, in order to increase awareness and utilization of the Ticket to Work Program, to ensure that New Jersey is maximizing the benefits of this federal program and resources for individuals with mental illness and other disabilities.

5. New Jersey should continue and expand its emphasis on evidence-based and/or promising practices, such as physical wellness and recovery programs now offered at the University of Medicine and Dentistry's Centers for Excellence.

6. Performance and outcome measures are essential to the evaluation of treatment and value. The Division of Mental Health Services should move away from its current funding paradigm, which is historical in nature, to one that pays for services based upon quality performance and measurable outcomes.

7. This Order shall take effect immediately.

Dated January 13, 2006.

EXECUTIVE ORDER No. 79

WHEREAS, It has been the priority of my Administration to restore the traditional role of government by helping those citizens who need it the most; and

WHEREAS, Throughout my years of public service and my tenure as Governor, I have strived to better the lives of those persons with mental illness and to improve New Jersey's mental health system; and

WHEREAS, The care and treatment of children with emotional disturbances or mental illnesses is of particularly great concern and must be a top priority;

NOW, THEREFORE, I, RICHARD J. CODEY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. I urge my successor as Governor to reconstitute, strengthen and expand the Governor's Cabinet for Children created by Executive Order No. 60 (2003) and Executive Order No. 83 (2003). Specifically, I would recommend that membership of the Children's Cabinet be expanded to include two members of the Task Force on Mental Health, a minimum of two pediatricians, and a minimum of two child psychiatrists and child psychologists. I would further recommend that the Commissioner of Human Services be designated by the Governor as a Co-Chair and that a second Co-Chair be designated from among the members who are professionals in the community.

2. The Department of Human Services shall take all necessary steps to strengthen its prevention and early intervention programs. Service delivery should occur at sites such as preschools and pediatric health care clinics where children and families already access other services. The Department shall take steps to ensure that personnel who interact with children in preschools, schools, health care facilities and juvenile justice agencies receive ongoing training on how to identify and respond to early childhood development issues and risk factors.

3. The Department shall examine how screening of young children for development and mental health issues can be implemented on a Statewide basis, and how follow-up assessments and linkage to services can be made

available to all who need them. The Department shall launch a public awareness campaign to alert educators, parents, pediatricians and the general public to early intervention issues such as positive parenting skills, identifying at-risk children, available resources and how to access those resources.

4. This Order shall take effect immediately.

Dated January 13, 2006.

REORGANIZATION PLANS

(2703)

**REORGANIZATION PLAN NO. 001-2005
MOTORCYCLE SAFETY EDUCATION PROGRAM--
TRANSFER TO MOTOR VEHICLE COMMISSION
NOTICE OF A PLAN FOR THE REORGANIZATION AND
TRANSFER OF THE MOTORCYCLE SAFETY EDUCATION
PROGRAM**

PLEASE TAKE NOTICE that on January 24, 2005, Acting Governor Richard J. Codey hereby issues the following Reorganization Plan (No. 001-2005) to reorganize the State's motorcycle safety education program by transferring responsibility for the program and all related duties from the Office of Highway Traffic Safety in the Department of Law and Public Safety to the New Jersey Motor Vehicle Commission allocated in, but not of, the Department of Transportation.

GENERAL STATEMENT OF PURPOSE

Pursuant to existing statutory authority, P.L.1991, c.451 (C.27:5F-36 et seq.), the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety has established a motorcycle safety education program. The program consists of a motorcycle safety education course of instruction and training that meets or exceeds the standards and requirements of the rider's course developed by the Motorcycle Safety Foundation. The course is open to any person who is an applicant for or who has been issued a New Jersey motorcycle license or endorsement. The Director offers courses to the public and may assign employees of the Office to serve as course instructors. He may also contract with other persons qualified to serve as instructors. The Motorcycle Safety Education Fund supports the program and is established in the Office of Highway Traffic Safety to be used exclusively by the Office to defray the costs of the program. Five dollars of the fee collected by the New Jersey Motor Vehicle Commission for the issuance of each motorcycle license or endorsement is deposited in the Fund and any other moneys which may become available for motorcycle safety education. The Director is also authorized to approve public or private educational institutions to provide the course. Additionally, the Director is charged with certifying that an instructor of the motorcycle safety education course has been qualified by the Motorcycle Safety Foundation and has the riding experience and driving record required by statute. Pursuant to its statutory authority, section 6 of P.L.1991, c.452 (C.39:3-10.31), the New Jersey Motor Vehicle Commission is authorized to grant a waiver of the road test portion of the examinations required for a

motorcycle license or endorsement for the holder of a motorcycle examination permit who has successfully passed the motorcycle safety education course established by the Director.

This Plan provides for the transfer of the functions, powers, and duties of the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety with respect to the program, and the offering of the course by the State and others to the Motor Vehicle Commission allocated in, but not of, the Department of Transportation. The transfer will allow the same agency responsible for issuing motorcycle licenses and endorsements, depositing monies in the Motorcycle Safety Education Fund, and granting the road test waiver to schedule and staff classes in the motorcycle safety education course open to the public. It will also transfer oversight of the public and private educational institutions approved to offer the course and the certification of instructors of the course to the Commission, the same agency that regulates driver's schools and instructors. These schools may also offer the motorcycle safety education course through instructors who apply to the Commission for an endorsement as an instructor of the motorcycle safety education course. Furthermore, the Plan provides for the transfer of the Motorcycle Safety Education Fund to the Commission and continues the Motorcycle Safety Education Advisory Committee as an advisory body to the Commission. The overall effect of the transfer will be to consolidate the State's motor vehicle and motorcycle education, testing and licensing activities in one agency, thereby eliminating unnecessary duplication of effort and promoting overall efficiency, effectiveness, and economy by realigning similar functions in one agency.

NOW, THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find with respect to the reorganization and transfers included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. Promote more effective management of the Executive Branch and of its agencies by grouping similar motorcycle licensing and education activities and related functions within one agency;
2. Promote better and more efficient execution of the laws and expeditious administration of the public business by consolidating and integrating within one agency similar regulatory functions, particularly the

licensing of persons to operate motorcycles and the regulating of motorcycles, instructors, and motorcycle training programs;

3. Group, coordinate and streamline regulatory functions in a more consistent and practical way;

4. Reduce expenditures and promote economy to the fullest extent consistent with the efficient operations of the Executive Branch;

5. Increase the efficiency of the operations of the Executive Branch to the fullest extent practicable; and

6. Eliminate overlapping and duplication of effort by consolidating certain functions which will result in a savings of State funds.

PROVISIONS OF THE REORGANIZATION PLAN:

I. The functions, powers and duties assigned to the Director of the Office of Highway Traffic Safety in the Department of Law and Public Safety by P.L.1991, c.452 (C.27:5F-36 et seq.) and the motorcycle safety education program established by the Director pursuant thereto are continued and hereby transferred to the New Jersey Motor Vehicle Commission allocated in, but not of, the Department of Transportation (hereinafter the "Motor Vehicle Commission").

II. The Motorcycle Safety Education Fund established in the Office of Highway Traffic Safety by P.L.1991, c.248, s. 4 (C.27:5F-39) is continued and hereby transferred to and established in the Motor Vehicle Commission, to be used exclusively by the Motor Vehicle Commission to defray the costs of the motorcycle safety education program and any other costs permitted by the terms of P.L.1991, c.248, s.4 (C.27:5F-39). Any unobligated balances of the Motorcycle Safety Education Fund and any unexpended funds shall be transferred to the Commission on the effective date of this Reorganization Plan. The Motor Vehicle Commission shall continue to deposit in the Fund five dollars of the fee collected for a motorcycle license or endorsement and any other funding that becomes available for the program.

III. Full-time employees of the Office of Highway Traffic Safety whose positions are funded by Federal and State funds in accordance with the State's Federally funded highway safety program, 23 U.S.C. s.402, perform chiefly supervisory duties related to the motorcycle safety education

program. Employees, including temporary service employees, whose compensation is provided by the Motorcycle Safety Education Fund perform program-related duties such as serving as course instructors in the classes offered by the Office. Accordingly, the following transfers shall occur:

A. Any person employed by the Office of Highway Traffic Safety on a full or part-time basis whose position is funded by the Motorcycle Safety Education Fund is hereby transferred to and shall become, as the case may be, a full time or part time employee of the Motor Vehicle Commission. The transfer of such employees shall not deprive any person of any tenure rights or any right or protection provided the person by Title 11A, Civil Service, of the New Jersey Statutes, or any pension law or retirement system.

B. Any temporary employment service positions funded by the Motorcycle Safety Education Fund established or continued in the Office of Highway Traffic Safety with the approval of the Department of Personnel for the purpose of employing temporary services employees at an hourly rate to perform functions and duties pertaining to the motorcycle safety education responsibilities of the Office are hereby transferred to the Motor Vehicle Commission until such time as the term for which the positions have been established expires.

IV. All records belonging to the Office of Highway Traffic Safety related to the motorcycle safety education program and the functions, powers, and duties of the Director and Office pursuant to P.L.1991, c.452 (C.27:5F-36 et seq.), including records related to public and private educational institutions approved to provide the motorcycle safety education course and the certification of instructors of the course, and any personal property, including motorcycles, equipment or supplies, purchased with monies from the Motorcycle Safety Education Fund or otherwise obtained to offer the motorcycle safety education program to the public or to support, approve or oversee motorcycle safety education courses offered by public and private educational institutions and their instructors, shall be transferred to the Motor Vehicle Commission in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

V. The Motorcycle Safety Education Advisory Committee established pursuant to P.L.1991, c.452, s.3 (C.27:5F-38) and its membership are continued and are transferred to the Motor Vehicle Commission, and the

Committee's advisory functions on behalf of the Director shall be performed on behalf of the Motor Vehicle Commission.

VI. Whenever in P.L.1991, c.452 (C.27:5F-36 et seq.) or in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise reference is made to the Director of the Office of Highway Traffic Safety or the Office of Highway Traffic Safety pertaining to the functions, powers or duties of the Director of the Office of Highway Traffic Safety or the Office of Highway Traffic Safety set forth in P.L.1991, c.452 (C.27:5F-36 et seq.) or the motorcycle safety education program established pursuant thereto, the same shall mean and refer to the Motor Vehicle Commission or the motorcycle safety education program transferred to the Motor Vehicle Commission by this Plan, as the case may be. Whenever in P.L.1991, c.452 (C.27:5F-36 et seq.) or in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise reference is made to the Motorcycle Safety Education Fund established in the Office of Highway Traffic Safety or to the Motorcycle Safety Education Advisory Committee, the same shall mean and refer to the Motorcycle Safety Education Fund established in the Motor Vehicle Commission or the Motorcycle Safety Education Advisory Committee continued by this Plan and transferred to the Motor Vehicle Commission whose advisory functions are performed on behalf of the Motor Vehicle Commission, as the case may be.

VII. All regulations promulgated by the Director of the Office of Highway Traffic pursuant to P.L.1991, c.452, s.5 (C.27:5F-40) shall remain in effect as if promulgated by the Motor Vehicle Commission until such time as they may be amended or repealed or new regulations are promulgated by the Motor Vehicle Commission. Whenever reference in the regulations is made to the Director of the Office of Highway Traffic Safety, the same shall mean and refer to the Chief Administrator of the Motor Vehicle Commission.

VIII. Nothing in this Reorganization Plan shall affect provisions 1e through 1f of Reorganization Plan No. 002-1995, effective July 22, 1995. These provisions require the approval of the Attorney General prior to the Motor Vehicle Commission's engaging in certain activities, including the promulgation of regulations, related to civil or criminal law enforcement. The requirement is based on the close connection between the criminal, regulatory and administrative authority of the Attorney General and the authority and functions of the Commission with respect to motor vehicles.

GENERAL PROVISIONS

1. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

2. Unless otherwise specified in this Reorganization Plan, all transfers directed by this Reorganization Plan shall be effected pursuant to the State Agency Transfer Act, P.L.1971, c.375 (C.52:14D-1 et seq.).

3. If any provisions of this Reorganization Plan or the application thereto to any persons, or circumstances, or the exercise of any power or authority hereunder is 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, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Reorganization Plan are declared to be severable.

A copy of this Reorganization Plan was filed on January 24, 2005 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 25, 2005 unless disapproved by each House of the Legislature by passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a later date should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under a heading of "Reorganization Plans."

Filed January 24, 2005.

Effective March 25, 2005.

**REORGANIZATION PLAN NO. 002-2005
A PLAN TO PROVIDE FOR THE TRANSFER,
CONSOLIDATION AND REORGANIZATION OF THE**

**LICENSING AND REGULATION OF RESIDENTIAL HEALTH
CARE FACILITIES FROM THE DEPARTMENT OF HEALTH
AND SENIOR SERVICES TO THE
DEPARTMENT OF COMMUNITY AFFAIRS**

PLEASE TAKE NOTICE that on March 14, 2005, Acting Governor Richard J. Codey hereby issues the following Reorganization Plan No. 002-2005 to provide for the transfer, consolidation and reorganization of the licensing and regulation of residential health care facilities from the Department of Health and Senior Services to the Department of Community Affairs.

GENERAL STATEMENT OF PURPOSE

This Plan transfers responsibility for all license, regulatory and enforcement activities related to residential health care facilities, as defined in P.L.1953, c.212, s.1, as amended (C.30:11A-1), from the Department of Health and Senior Services to the Department of Community Affairs. The Department of Community Affairs currently has jurisdiction over the regulation of rooming and boarding houses, facilities that are similar in nature to residential health care facilities, and serve a population with similar needs. The health, safety and rights of residents of residential health care facilities can be most effectively and efficiently protected by consolidating the oversight of such facilities with the regulation of rooming and boarding houses.

**THE RATIONALE FOR RELOCATING THE LICENSING AND
REGULATION OF RESIDENTIAL HEALTH CARE FACILITIES
WITHIN THE DEPARTMENT OF COMMUNITY AFFAIRS**

The purpose of the Reorganization Plan is to consolidate oversight of residential health care facilities, P.L.1953, c.212, as amended (C.30:11A-1 et seq.), and rooming and boarding houses, P.L.1979, c.496, as amended (C.55:13B-1 et seq.), within a single executive department, the Department of Community Affairs. Such consolidation is appropriate given the similarities between residential health care facilities and boarding houses. Both residential health care facilities and boarding houses provide services to similar populations, and also provide roughly equivalent levels of services. Specifically, in addition to the basic provision of food and shelter, both types of facilities provide assistance to residents in terms of coping with issues of daily living. The level of such services, however, does not

generally rise in either case to the point where skilled nursing care is required. Currently the Department of Community Affairs regulates and inspects boarding houses. The Department of Community Affairs currently performs two separate yearly inspections on each boarding house in the State. One inspection, designated as the property maintenance inspection, is to insure that the physical facility itself is in compliance with all requirements. The second inspection is to insure that all social services offered by that particular boarding house are being appropriately provided. The Department of Health and Senior Services' staff currently regulating and inspecting residential health care facilities also oversee and/or inspect nursing homes, assisted living facilities, intermediate care facilities, and medical day care facilities, all of which provide skilled healthcare services to the population they serve. Transferring all licensing, regulatory and enforcement activities involving residential health care facilities to the Department of Community Affairs will enable the Department of Health and Senior Services to focus on the regulation of those facilities that provide skilled healthcare services.

NOW, THEREFORE, in accordance with the provisions of the Executive Reorganization Act of 1969, P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer, consolidation and reorganization provided for in this Plan, that they are necessary in order to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. Promote more effective management of the Executive Branch by combining similar functions and activities within one agency, thus eliminating overlapping and duplication of effort;
2. Promote better and more efficient execution of the laws and expeditious administration of the public business by consolidating and integrating within one agency similar functions;
3. Group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes;
4. Promote economy to the fullest extent consistent with the efficient operation of the Executive Branch; and
5. Increase the efficiency of the operations of the Executive Branch to the fullest extent possible.

PROVISIONS OF THE REORGANIZATION PLAN

THEREFORE, I hereby order the following reorganization:

1. All of the powers, functions and duties exercised by the Commissioner of Health and Senior Services, or any division, bureau or office within the Department of Health and Senior Services (collectively DHSS), to the extent they relate to residential health care facilities, except those located with, and operated by, licensed health care facilities including, but not limited to, the powers, functions and duties relating to residential health care facilities under:

- a) L.1971, c.136, as amended (C.26:2H-1 et seq.)
- b) L.1979, c.496, as amended (C.26:2H-5.1 et seq.)
- c) L.1999, c.154, s.14 (C.26:2H-12.12)
- d) L.2003, c.246, s.13 (C.26:2H-12.22)
- e) L.1988, c.113, s.2 (C.26:2H-13.1)
- f) L.1988, c.114, as amended (C.26:2H-14.2 et seq.)
- g) L.1989, c.173, s.2 (C.26:2H-14.4)
- h) L.1993, c.282 (C.26:2H-14.5 et seq.)
- i) L.1977, c.238, as amended (C.26:2H-36 et seq.)
- j) L.1991, c.201, as amended (C.26:2H-53 et seq.)
- k) L.1979, c.496, as amended (C.30:1A-2 et seq.)
- l) L.1986, c.205, as amended (C.30:1A-4 et seq.)
- m) L.1997, c.258, s.3 (C.30:4-177.55)
- n) L.1953, c.212, as amended (C.30:11A-1 et seq.)

are continued, transferred to, and established within, the Department of Community Affairs, and shall henceforth be exercised by the Commissioner of Community Affairs, provided, however, that all powers, functions and duties exercised by DHSS relating to all other health care facilities that are not residential health care facilities, and all DHSS personnel, shall remain with DHSS; and provided further that all penalties imposed and collected by the Department of Community Affairs from residential health care facilities shall be retained by the Department of Community Affairs for the purpose of the enforcement of the responsibilities transferred to the Department pursuant to this Plan.

2. The powers, functions and duties hereby transferred shall be organized and implemented within the Department of Community Affairs as determined by the Commissioner of Community Affairs.

3. All records held by the Department of Health and Senior Services for purposes of the program hereby transferred are transferred to the Department of Community Affairs, pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

4. Whenever any law, rule, regulation, contract, order, document, judicial or administrative proceeding or otherwise, expressly references residential health care facilities and refers to the Department of Health and Senior Services or the Commissioner of Health and Senior Services, the same shall mean the Department of Community Affairs or the Commissioner of Community Affairs, respectively, except where the context clearly requires otherwise.

5. The Commissioners of the Department of Community Affairs and the Department of Health and Senior Services shall enter into inter-agency agreements, as necessary and appropriate, to effectuate the provisions of this Plan.

GENERAL PROVISIONS

1. 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, and it will promote economy to the fullest extent consistent with the efficient operation of the Executive Branch according to major purposes. It will group, coordinate and consolidate functions in a more consistent and practical manner and eliminate overlapping and duplication of functions. This Plan will provide greater protection for the residents of residential health care facilities and for the public at large.

2. Any section or part of this Plan that conflicts with Federal law or regulations shall be considered null and void unless and until addressed and corrected through an interagency agreement, Federal waiver or other means.

3. All acts and parts of acts and plans or parts of plans inconsistent with the provisions of this Plan are superseded to the extent of such inconsistencies.

4. If any provision of this Plan, or the application thereof to any person, or circumstance, or the exercise of any power or authority thereunder, is

held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, or affect other exercises or power or authority under such provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

5. This Plan is intended to protect and promote public health, safety and welfare, and shall be liberally construed to attain the objectives and effect the purposes thereof.

6. 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.).

7. A copy of this Reorganization Plan was filed on March 15, 2005 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days on May 13, 2005 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than May 13, 2005, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under the heading of "Reorganization Plans."

Filed March 15, 2005.
Effective May 13, 2005.

REORGANIZATION PLAN NO. 003-2005
A PLAN FOR THE TRANSFER OF CERTAIN FUNCTIONS,
POWERS AND DUTIES OF THE PUBLIC HEALTH COUNCIL
TO THE DEPARTMENT OF HEALTH AND
SENIOR SERVICES

PLEASE TAKE NOTICE that on June 27, 2005, Acting Governor Richard J. Codey hereby issues this Reorganization Plan No. 003-2005 (Plan), providing for the transfer of certain functions, powers and duties of the Public Health Council to the Department of Health and Senior Services.

GENERAL STATEMENT OF PURPOSE

The Commissioner of the Department of Health and Senior Services is the chief public health official directly responsible to the Governor on all matters relating to the public health. The Commissioner supervises and directs the Department of Health and Senior Services in carrying out its public health functions, including in times of emergency. As such, it is vitally important that the Commissioner have direct responsibility for and control of health policy and practices as well as the ability to respond quickly to any changes necessary to meet public needs and to ensure that policies are coordinated throughout the State.

The Public Health Council has been created in the Department of Health and Senior Services and been given authority independent of the Commissioner on matters affecting the public health. Specifically, the Council is vested with the responsibility to establish the State Sanitary Code which may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in this State, including the immunization of school children. In addition, the State Sanitary Code may contain, among other things, sanitary regulations prohibiting nuisances hazardous to human health, regulating the detection, reporting, prevention and control of communicable and preventable diseases, regulating the conduct of public funerals, and regulating the preparation, handling, transportation, burial or other disposal, disinterment and reburial of dead human bodies. While the Commissioner is available to the Governor at all times, the Council meets monthly.

The current structure of the Council does not afford the Commissioner the necessary level of coordination of and control over these fundamentally important public health activities. In current times, it is imperative that the Commissioner have the ability to control and direct all matters relating to the public health so as to ensure that the Commissioner and the Governor are able to respond to immediate and changing public health needs, particularly those relating to domestic security preparedness, planning and response.

The transfer of power will ensure effective and coordinated exercise of powers in a way that is directly responsible to the Governor as the Chief Executive. In light of its experience in considering and addressing issues of public health, the Public Health Council will continue to serve the Commissioner and the Department in an advisory capacity.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.) (Act), I find, with respect to the transfer, reorganization 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:

1. The functions, powers and duties of the Public Health Council under P.L.1947, c.177, as amended (C.26:1A-5 et seq.), other than the Council's advisory and consultative functions, are continued and are transferred to the Department of Health and Senior Services to be allocated within the Department as determined by the Commissioner.

GENERAL PROVISIONS

1. I find 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, and it will promote economy to the fullest extent consistent with the efficient operation of the Executive Branch according to major purposes. It will group, coordinate and consolidate functions in a more consistent and practical manner, improve services and service delivery to New Jersey citizens and businesses, and eliminate overlapping and duplication of functions.

2. All acts and parts of acts and plans or parts of plans inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

3. If any provision of this Plan or the application thereof to any person, or circumstance, or the exercise of any power or authority hereunder is 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 the Plan are declared to be severable.

4. 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.

5. 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.).

A copy of this Reorganization Plan was filed on June 27, 2005 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 August 26, 2005 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than August 26, 2005, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under the heading of "Reorganization Plans."

Filed June 27, 2005.

Effective August 26, 2005.

REORGANIZATION PLAN NO. 004-2005
A PLAN FOR THE TRANSFER OF THE RESPONSIBILITIES
FOR DEBT COLLECTION FUNCTIONS FROM VARIOUS

**STATE AGENCIES AND CONSOLIDATING THEM WITHIN
THE DEPARTMENT OF THE TREASURY**

PLEASE TAKE NOTICE that on June 27, 2005, Acting Governor Richard J. Codey hereby issues this Reorganization Plan No. 004-2005 (the Plan), to provide for the transfer of responsibilities for certain debt collection functions from State agencies in the Executive Branch of government to 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 functions into a single organization.

GENERAL STATEMENT OF PURPOSE

In 1997-1998, the State began the process of consolidating the debt collection and receipts processing functions of the Executive Branch of government by creating a Division of Revenue in the Department of the Treasury and assigning to it responsibility for revenue management of many programs in the Executive Branch. That process was continued in 2004 under Reorganization Plan 004-2004, which reassigned overall responsibility for the Division of Revenue's debt collection and receipts processing functions to the Department of the Treasury. This move gave the Treasurer the flexibility to assign various revenue management functions to the unit in that Department able to carry out those responsibilities most efficiently.

The current Plan is designed to further this process of consolidating in a single organization all responsibility for revenue management, in particular, debt collection, by transferring the remaining debt collection responsibilities of State departments and agencies in the Executive Branch to the Department of the Treasury, after those departments and agencies have had an opportunity to collect the fee, fine, costs, penalties and assessments owed to the department or agency. This Plan does not, however, affect the debt collection responsibilities of independent authorities and instrumentalities allocated to departments in the Executive Branch, but otherwise independent of the operational and budgetary control of the department to which they are allocated. Also, this Plan recognizes that, with respect to matters that are the subject of litigation in which representation is provided by or on behalf of the Attorney General, the State may profit from the prompt application by the Attorney General of the legal tools for

the collection of debt. Accordingly, with respect to this select category of outstanding debt, it is appropriate to reserve to the Attorney General the first opportunity to exhaust lawful and appropriate measures to collect outstanding fees, fines, costs, penalties and assessments before such debt is referred to the Department of the Treasury for collection.

There are several reasons why consolidation of debt collection functions is in the best interest of the State. Centralizing debt collection responsibility in the Department of the Treasury has allowed that Department to define and control the policies and procedures governing the processing of collections and to approach collections in an organized, systematic way. Centralizing collections processing and related data entry functions in the Treasury will assist the State by taking advantage of Treasury's specialized collections services in an efficient and cost-effective manner. This consolidation will improve the State's overall ability to collect revenue and improve service to citizens. Moreover, the consolidation will eliminate duplication of effort in the area of collections.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.) I find with respect to the 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; and
5. eliminate overlapping and duplication of effort.

PROVISIONS OF THE REORGANIZATION PLAN

THEREFORE, I hereby order the following reorganization:

1. For purposes of this Plan the term "debt" means a fee, fine, cost, penalty or assessment owed to a State department or agency in the Executive Branch, other than an independent authority or instrumentality that is independent of the operational and budgetary control of the department to which it is allocated. The term "debt" does not include interagency debts and debts associated with loans, notes, grants and contracts. For purposes of the transfer of responsibility under this Plan, a fee, fine, cost, penalty or assessment constitutes a "debt" three months after it becomes due and owing.

2. Except as provided in paragraph 4, the functions, powers and duties relating to collection of debt are continued and are transferred to the Department of the Treasury.

3. All functions, powers and duties not transferred to the Department of the Treasury by this Plan remain with the department or agency of origin. 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.

4. The functions, powers and duties for the collection of a debt owed to a department or agency in the Executive Branch in any matter in which: (i) the Attorney General or special counsel approved by the Attorney General has participated in the negotiation or approval of the debt; or (ii) the debt arises from litigation or administrative action shall be transferred to the Department of the Treasury six months after the fee, fine, cost, penalty or

assessment becomes a debt, if the Attorney General has taken no action to collect that debt within that time; provided, the Attorney General may determine at any time to transfer a debt to Treasury for collection.

5. Each Executive Branch department or agency shall be responsible for ensuring that its internal systems for collecting any fees, fines, costs, penalties or assessments owed to it are adequate and effective. Account records for all debts shall be transferred promptly from the department or agency of origin to the Department of the Treasury three months after the fine, fee, cost, penalty or assessment is due and owing. Once such records are transferred, the Department of the Treasury shall be the legal custodian thereof and shall be responsible for conducting all collection operations on the accounts using all available methods, and for the maintenance and disposition of the records as required by law.

GENERAL PROVISIONS

1. 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 more efficiently direct, administer and control the State's revenue management functions, in particular the collections functions. This Plan provides for the consolidation and coordination of this activity into a single organization, the Department of the Treasury. This consolidation will improve the State's overall ability to collect revenue. Moreover, the consolidation will eliminate duplication of effort in the area of collections.

2. Monies collected or received by the Department of the Treasury shall be deposited in such accounts or funds and shall otherwise be disposed of as may be provided by State or Federal law for deposit or disposition of such monies.

3. All acts or parts of acts or Plans or parts of Plans inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

4. 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.).

5. 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.

6. 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 June 27, 2005 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 August 26, 2005, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Plan, or at a date later than August 26, 2005, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under the heading of "Reorganization Plans."

Filed June 27, 2005.

Effective August 26, 2005.

**REORGANIZATION PLAN NO. 005-2005
A PLAN TO PROVIDE FOR THE TRANSFER,
CONSOLIDATION AND REORGANIZATION OF THE OFFICE
OF MANAGED CARE FROM THE DEPARTMENT OF
HEALTH AND SENIOR SERVICES TO THE DEPARTMENT
OF BANKING AND INSURANCE**

PLEASE TAKE NOTICE that on June 30, 2005, Acting Governor Richard J. Codey hereby issues the following Reorganization Plan No. 005-2005 to provide for the transfer, consolidation and reorganization of the

Office of Managed Care from the Department of Health and Senior Services to the Department of Banking and Insurance.

GENERAL STATEMENT OF PURPOSE

This Plan transfers responsibility for the licensing and regulation of health maintenance organizations (HMOs), the regulation of other carriers licensed by the Department of Banking and Insurance that offer managed care plans subject to the Health Care Quality Act, P.L.1997, c.192 (C.26:2S-1 et seq.), and the certification and regulation of entities subject to the Organized Delivery System Act, P.L.1999, c.409 (C.17:48H-1 et seq.), from the Department of Health and Senior Services to the Department of Banking and Insurance. The Department of Banking and Insurance currently has jurisdiction over the regulation of various types of insurance carriers, including HMOs, with respect to certain aspects of their operations, such as marketing, claims processing, and financial examination and solvency. Transferring the Office of Managed Care to the Department of Banking and Insurance will create a more centralized, coordinated and integrated approach to the oversight of all managed care entities.

THE RATIONALE FOR RELOCATING THE LICENSING AND REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS AND ORGANIZED DELIVERY SYSTEMS WITHIN THE DEPARTMENT OF BANKING AND INSURANCE

The Office of Managed Care (OMC) is a unit in the Department of Health and Senior Services (DHSS) responsible for licensing and regulating HMOs, regulating certain aspects of managed care plans offered by carriers subject to the Health Care Quality Act and certifying and regulating entities subject to the Organized Delivery System Act, with respect to certain aspects of such entities' business, including, but not limited to, adequacy of provider networks, utilization management systems, and the Independent Health Care Appeals Program. OMC has regulatory authority with respect to both risk-bearing and non-risk bearing entities seeking the status of an Organized Delivery System (ODS). Risk-bearing ODSs are licensed by the Department of Banking and Insurance (DOBI); however, because those entities must comply with the majority of OMC's requirements for certification, OMC currently works in a consultative capacity with DOBI, providing licensing recommendations to it regarding risk-bearing ODSs. OMC currently certifies non-risk bearing ODSs.

OMC handles managed care complaints and tracks external appeal requests processed through the Independent Health Care Appeals Program and the outcomes of such appeals. OMC produces a semi-annual report regarding the activities of the Independent Health Care Appeals Program, which it provides to the Legislature and the Governor, pursuant to P.L.1997, c.192, s.14 (C.26:2S-14). OMC compiles an annual HMO Report Card, which contains information on the performance of New Jersey's HMOs with respect to their commercial plans, including how well the plans deliver important health care services, and how members rate the services they receive, in accordance with N.J.S.A.26:2S-15.

DOBI regulates the banking, insurance, and real estate industries in order to protect and educate consumers and promote the growth, financial stability, and efficiency of those industries. DOBI consists of two Divisions: the Division of Banking and the Division of Insurance. The Division of Insurance is further divided into units that oversee Consumer Protection Services, Solvency Regulation, Life and Health Insurance, and Property and Casualty Insurance.

Within the Life and Health unit, the Health Insurance Bureau ("HIB") is responsible for the review and approval of individual and group health insurance forms and those rates, which are within DOBI's jurisdiction. HIB reviews all dis-ability income, long term care, Medicare supplement, accident-only, hospital confinement indemnity, dental care and vision care health insurance contracts sold to individuals. HIB also reviews and approves rates for such coverages in the individual market. With the exception of group hospital-medical contracts sold to individuals and small employers, HIB is responsible for the review of all group health insurance policies, group term life insurance policies, and health maintenance organization contracts.

Also within the Life and Health unit is the Valuation Bureau ("VB"), which is responsible for the licensing of all health insurance companies and service corporations, dental plan organizations, prepaid prescription service organizations and ODSs. The VB also licenses and/or registers third party administrators and self-funded multiple employer welfare arrangements. Moreover, the VB regulates health joint insurance funds operated by local governments and school boards.

The Actuarial Bureau within the Life and Health unit reviews prompt pay reports submitted by all health carriers as well as rate filings.

The Office of Solvency Regulation (OSR) monitors the financial solvency of insurers and HMOs doing business in New Jersey. The OSR performs a detailed financial analysis on all domestic insurers and HMOs on at least a quarterly basis and on-site financial examinations of these entities every three to five years. The OSR is accredited by the National Association of Insurance Commissioners Financial Standards and Accreditation Program and must perform these analyses and reviews in accordance with the standards of the Program in order to maintain such accreditation.

In 1992, the New Jersey Legislature created two programs to guarantee access to health coverage for individuals and employees of small employers, regardless of health status, age, claims history, or any other risk factor. The Individual Health Coverage Program ("IHC") and the Small Employer Health Benefits Program ("SEH") have reformed the individual and small employer (employers with 2-50 employees) health insurance markets.

The Consumer Protection Services unit in DOBI responds to complaints and inquiries on all aspects of the business of insurance, including the activities of insurance producers; payment disputes involving "clean claims;" the carriers' implementation of internal and external appeals procedures mandated by N.J.A.C.11:22-1 et seq., regarding the payment of claims to participating providers; financial and contractual matters; and medical and dental claim disputes. The CPS unit also performs market conduct examinations of health claims which reviews, among other things, the carrier's payment of claims, provisions of mandated benefits and compliance with appeal procedures. Moreover, a sub-unit within CPS, Enforcement, investigates and initiates sanctioning proceedings against carriers and producers that commit violations involving health and dental insurance matters.

NOW, THEREFORE, in accordance with the provisions of the Executive Reorganization Act of 1969, P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer, consolidation and reorganization provided for in this Plan, that they are necessary in order to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. Promote more effective management of the Executive Branch by combining similar functions and activities within one agency, thus eliminating overlapping and duplication of effort;

2. Promote better and more efficient execution of the laws and expeditious administration of the public business by consolidating and integrating within one agency similar functions;
3. Group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes;
4. Promote economy to the fullest extent consistent with the efficient operation of the Executive Branch; and
5. Increase the efficiency of the operations of the Executive Branch to the fullest extent possible.

PROVISIONS OF THE REORGANIZATION PLAN

THEREFORE, I hereby order the following reorganization:

1. All of the powers, functions and duties exercised by the Office of Managed Care, including, but not limited to, the powers, functions and duties under:
 - a) L.1999, c.409, as amended (C.17:48H-1 et seq.)
 - b) L.2001, c.67 (C.17:48H-33.1 et seq.)
 - c) L.1973, c.337, as amended (C.26:2J-1 et seq.)
 - d) L.1990, c.71, s. 6 (C.26:2J-4.1)
 - e) L.1991, c.187, as amended (C.26:2J-4.2 et seq.)
 - f) L.1991, c.279, s. 6, as amended (C.26:2J-4.4)
 - g) L.1993, c.321, s.7 (C.26:2J-4.5)
 - h) L.1993, c.327, s. 8, as amended (C.26:2J-4.6)
 - i) L.1993, c.378, s.6, as amended (C.26:2J-4.7)
 - j) L.1995, c.100, s. 6 (C.26:2J-4.8)
 - k) L.1995, c.138, s. 8 (C.26:2J-4.9)
 - l) L.1995, c.316, s.4, as amended (C.26:2J-4.10)
 - m) L.1995, c.331, s.6 (C.26:2J-4.11)
 - n) L.1995, c.415, s.5, as amended (C.26:2J-4.12)
 - o) L.1996, c.125, s. 5 (C.26:2J-4.13)
 - p) L.1997, c.75, s.6 (C.26:2J-4.14)
 - q) L.1997, c.149, s.8 (C.26:2J-4.15)
 - r) L.1997, c.192 (C.26:2J-4.16 et seq.)
 - s) L.1997, c.338, s.8 (C.26:2J-4.17)
 - t) L.1998, c.97, s. 6 (C.26:2J-4.18)
 - u) L.1999, c.49, s. 6 (C.26:2J-4.19)
 - v) L.1999, c.106, s. 8(C.26:2J-4.20)

- w) L.1999, c.332, s.1 (C.26:2J-4.21)
- x) L.2000, c.121, s. 10 (C.26:2J-4.22)
- y) L.2001, c.236, s. 5 (C.26:2J-4.23)
- z) L.2001, c.295, s. 8 (C.26:2J-4.24)
- aa) L.2001, c.361, s. 6 (C.26:2J-4.25)
- bb) L.2001, c.367, s. 10 (C.26:2J-4.26)
- cc) L.2003, c.246, s.52 (C.26:2J-4.27)
- dd) L.1999, c.154, s. 7 (C.26:2J-8.1)
- ee) L.1995, c.288 (C.26:2J-10.1 et seq.)
- ff) L.1989, c.321, s. 2 (C.26:2J-11.1)
- gg) L.1996, c.126, s. 16 (C.26:2J-15.1)
- hh) L.1992, c.164 (C.26:2J-31 et seq.)
- ii) L.1995, c.73 (C.26:2J-42 et seq.)
- jj) L.1997, c.192, as amended (C.26:2S-1 et seq.)
- kk) L.2001, c.367, s. 2 (C.26:2S-6.1)
- ll) L.2001, c. 88 (C.26:2S-7.1 et seq.)
- mm) L.1999, c.390, s.1 (C.26:2S-9.1)
- nn) L.2000, c.121 (C.26:2S-10.1 et seq.)
- oo) L.2001, c.14 (C.26:2S-19 et seq.)

are continued, transferred to, and established within, the Department of Banking and Insurance.

2. The personnel, support services or funds to purchase such services utilized for the support of the Office of Managed Care within the Department of Health and Senior Services shall be transferred to the Department of Banking and Insurance. These transfers shall be made as determined by mutual agreement between the Commissioner of Health and Senior Services and the Commissioner of Banking and Insurance, as set forth in a Memorandum of Understanding, after considering the number and type of positions presently utilized for support of the Office of Managed Care and the appropriateness of transferring personnel, positions, and/or funding. All records, property, appropriations and any unexpended balance of funds appropriated or otherwise available to the Department of Health and Senior Services in connection with the administration of the Office of Managed Care shall be transferred to the Department of Banking and Insurance, pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). The transfers of specific resources and personnel shall be operative when, and effectuated as determined by agreement between the Commissioner of Health and Senior Services and the Commissioner of Banking and Insurance, after considering the processes necessary to provide an orderly transition.

3. The powers, functions, duties, and personnel transferred hereunder shall be organized and implemented within the Department of Banking and Insurance, as determined by the Commissioner of Banking and Insurance.

4. Whenever any law, rule, regulation, contract, order, document, judicial or administrative proceeding, or otherwise expressly references the Office of Managed Care or managed care organizations, including HMOs, and refers to the Department of Health and Senior Services or the Commissioner of Health and Senior Services, the same shall mean the Department of Banking and Insurance or the Commissioner of Banking and Insurance, respectively, except where the context clearly requires otherwise.

5. Nothing in the Plan shall be construed to prevent the Department of Banking and Insurance and the Department of Health and Senior Services from including other matters in the Memorandum of Understanding to effectuate with the implementation of the Plan.

GENERAL PROVISIONS

1. 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, and it will promote economy to the fullest extent consistent with the efficient operation of the Executive Branch according to major purposes. It will group, coordinate and consolidate functions in a more consistent and practical manner and eliminate overlapping and duplication of functions.

2. Any section or part of this Plan that conflicts with federal law or regulations shall be considered null and void unless and until addressed and corrected through an interagency agreement, federal waiver or other means.

3. All acts and parts of acts and plans or parts of plans inconsistent with the provisions of this Plan are superseded to the extent of such inconsistencies.

4. If any provision of this Plan, or the application thereof to any person, or circumstance, or the exercise of any power or authority thereunder, is held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, or affect other exercises of power or authority under such provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

5. This Plan is intended to protect and promote public health, safety and welfare, and shall be liberally construed to attain the objectives and effect the purposes thereof.

6. 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.).

A copy of this Reorganization Plan was filed on June 30, 2005 with the Secretary of State and with the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days on August 29, 2005 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than August 29, 2005, should the acting Governor establish such a later date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public Laws and in the New Jersey Register under the heading of "Reorganization Plans."

Filed June 30, 2005.

Effective August 29, 2005.

REORGANIZATION PLAN NO. 006-2005
A PLAN TO PROVIDE FOR THE TRANSFER, CONSOLIDA-
TION AND REORGANIZATION OF THE LICENSING OF
PRIVATE LICENSED FACILITIES FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES FROM THE DEPART-
MENT OF HEALTH AND SENIOR SERVICES TO THE DE-
PARTMENT OF HUMAN SERVICES

PLEASE TAKE NOTICE that on June 30, 2005, Acting Governor Richard J. Codey hereby issues the following Reorganization Plan No. 006-2005 to provide for the transfer, consolidation and reorganization of the licensing of private facilities for persons with developmental disabilities from the Department of Health and Senior Services to the Department of Human Services.

GENERAL STATEMENT OF PURPOSE

This Plan concerns health care facilities that are privately owned, licensed facilities for persons with developmental disabilities and subject to N.J.A.C.10:47-1.1 (Facilities) . This Plan transfers responsibility for the licensing of these Facilities from the Department of Health and Senior Services to the Department of Human Services. The Department of Health and Senior Services currently has jurisdiction over the licensing of health care facilities, including the Facilities. The Department of Human Services currently has responsibility for developing the standards for, and inspecting these Facilities. The health, safety and rights of residents of these Facilities can be most effectively and efficiently protected by consolidating the licensure, inspection, and enforcement authority for such facilities within one agency.

THE RATIONALE FOR RELOCATING THE LICENSING OF PRIVATE FACILITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES WITHIN THE DEPARTMENT OF HUMAN SERVICES

The purpose of the Reorganization Plan is to consolidate oversight of these Facilities within a single executive department, the Department of Human Services. Such consolidation is appropriate given the fact that the Department of Human Services, through its Division of Developmental Disabilities (DDD), is responsible for protecting the rights of persons with developmental disabilities, and establishing standards for the provision of services to such individuals, in accordance with the Developmentally Disabled Rights Act, P.L.1977, c.82, as amended (C.30:6D-1 et seq.). DDD's mission is to assist people with developmental disabilities to live as independently as possible. DDD currently serves over 33,000 individuals. The Department of Human Services has responsibility for the development of minimum operating standards for, and the inspection of, private licensed facilities serving persons with developmental disabilities, pursuant to P.L.1918, c.147, s.119, as amended (C.30:1-12), P.L.1918, c.147, s.125, as amended (C.30:1-15), P.L.1965, c.59, s.3, as amended (C.30:1-15.1), and P.L.1977, c.82, as amended (C.30:6D-1 et seq.). Currently, the Department of Health and Senior Services licenses four facilities as private licensed facilities for persons with developmental disabilities.

The Health Care Facilities Planning Act, P.L.1971, c.136, as amended (C.26:2H-1 et seq.), vests responsibility for the licensing of health care

facilities, including these Facilities, within the Department of Health and Senior Services.

This Plan will allow the same agency to assume all regulatory authority, including licensure, inspection and enforcement authority, over these Facilities, and to incorporate the regulation of such Facilities into the comprehensive program of residential services administered by the Department of Human Services. This will provide more efficient and effective protection for those persons with developmental disabilities who require such residential supervision, and will provide for overall improvement in the quality of life for those residents.

NOW, THEREFORE, in accordance with the provisions of the Executive Reorganization Act of 1969, P.L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to the transfer, consolidation and reorganization provided for in this Plan, that they are necessary in order to accomplish the purposes set forth in section 2 of that Act and will do the following:

1. Promote more effective management of the Executive Branch by combining similar functions and activities within one agency, thus eliminating overlapping and duplication of effort;
2. Promote better and more efficient execution of the laws and expeditious administration of the public business by consolidating and integrating within one agency similar functions;
3. Group, coordinate and consolidate functions in a more consistent and practical manner according to major purposes;
4. Promote economy to the fullest extent consistent with the efficient operation of the Executive Branch; and
5. Increase the efficiency of the operations of the Executive Branch to the fullest extent possible.

PROVISIONS OF THE REORGANIZATION PLAN

THEREFORE, I hereby order the following reorganization:

1. All of the powers, functions and duties exercised by the Commissioner of Health and Senior Services, or any division, bureau or office within the Department of Health and Senior Services (collectively DHSS),

to the extent they relate to private licensed facilities for persons with developmental disabilities, including, but not limited to, the powers, functions and duties relating to private licensed facilities for persons with developmental disabilities under:

- a) L.1971, c.136, as amended (C.26:2H-1 et seq.)
- b) L.1979, c.496, as amended (C.26:2H-5.1 et seq.)
- c) L.1999, c.154, s.14 (C.26:2H-12.12)
- d) L.2003, c.246, s.13 (C.26:2H-12.22)
- e) L.1988, c.113, s.2 (C.26:2H-13.1)
- f) L.1988, c.114, as amended (C.26:2H-14.2 et seq.)
- g) L.1989, c.173, s.2 (C.26:2H-14.4)
- h) L.1993, c.282 (C.26:2H-14.5 et seq.)
- i) L.1977, c.238, as amended (C.26:2H-36 et seq.)
- j) L.1991, c.201, as amended (C.26:2H-53 et seq.)

are continued, transferred to, and established within, the Department of Human Services, and shall henceforth be exercised by the Commissioner of Human Services, provided, however, that all powers, functions and duties exercised by DHSS relating to all other health care facilities that are not private licensed facilities for persons with developmental disabilities shall remain with DHSS; and provided further that all penalties collected by the Department of Human Services from these Facilities pursuant to the powers, duties and functions transferred herein and specifically, pursuant to P.L.1971, c.136, s.16, as amended (C.26:2H-16), shall be paid to the Department of Human Services.

2. The personnel, support services or funds to purchase such services utilized for the support of the licensing of these Facilities within the Department of Health and Senior Services shall be transferred to the Department of Human Services. These transfers shall be made as determined by mutual agreement between the Commissioner of Health and Senior Services and the Commissioner of Human Services, as set forth in a Memorandum of Understanding, after considering the number and type of positions presently utilized for support of the licensing of these facilities and the appropriateness of transferring personnel, positions, and/or funding. All records, property, appropriations and any unexpended balance of funds appropriated or otherwise available to the Department of Health and Senior Services in connection with the licensing of these Facilities shall be transferred to the Department of Human Services, pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). The transfers of specific resources and personnel shall be effectuated as determined by agreement between the Commissioner of Health and Senior Services and

the Commissioner of Human Services, after considering the processes necessary to provide an orderly transition.

3. The powers, functions, duties and personnel hereby transferred shall be organized and implemented within the Department of Human Services as determined by the Commissioner of Human Services.

4. Whenever any law, rule, regulation, contract, order, document, judicial or administrative proceeding or otherwise, expressly references private facilities for persons with developmental disabilities and refers to the Department of Health and Senior Services or the Commissioner of Health and Senior Services, the same shall mean the Department of Human Services or the Commissioner of Human Services, respectively, except where the context clearly requires otherwise.

5. The Commissioners of the Department of Human Services and the Department of Health and Senior Services shall enter into inter-agency agreements, as necessary and appropriate, to effectuate the provisions of this Plan.

GENERAL PROVISIONS

1. 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, and it will promote economy to the fullest extent consistent with the efficient operation of the Executive Branch according to major purposes. It will group, coordinate and consolidate functions in a more consistent and practical manner and eliminate overlapping and duplication of functions. This Plan will provide greater protection for the residents of private licensed residential facilities for persons with developmental disabilities, and for the public at large.

2. All acts and parts of acts and plans or parts of plans inconsistent with the provisions of this Plan are superseded to the extent of such inconsistencies.

3. If any provision of this Plan, or the application thereof to any person, or circumstance, or the exercise of any power or authority thereunder, is held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, or affect other exercises or power or authority

under such provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

4. This Plan is intended to protect and promote public health, safety and welfare, and shall be liberally construed to attain the objectives and effect the purposes thereof.

5. 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.).

A copy of this Reorganization Plan was filed on June 30, 2005 with the Secretary of State and with the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days on August 29, 2005 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than August 29, 2005, should the acting Governor establish such a later date of the Plan, or any part thereof, by Executive Order.

PLEASE TAKE NOTICE that this Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the New Jersey Register under the heading of "Reorganization Plans."

Filed June 30, 2005.

Effective August 29, 2005.

REORGANIZATION PLAN NO. 007-2005
A PLAN TO PROVIDE FOR THE TRANSFER WITHIN THE
DEPARTMENT OF HUMAN SERVICES OF THE OFFICE OF
LICENSING FROM THE DIVISION OF YOUTH AND FAMILY
SERVICES, THE DIVISION OF DEVELOPMENTAL DISABILI-
TIES, AND THE DIVISION OF MENTAL HEALTH SERVICES
TO THE OFFICE OF PROGRAM INTEGRITY AND AC-
COUNTABILITY; AND FURTHER PROVIDING FOR THE
TRANSFER WITHIN THE DEPARTMENT OF HUMAN SER-
VICES OF THE INSTITUTIONAL ABUSE INVESTIGATIONS
UNIT OF THE OFFICE OF CHILDREN'S SERVICES

PLEASE TAKE NOTICE that on November 10, 2005, Acting Governor Richard J. Codey hereby issues this Re-organization Plan No. 007-2005 (the

Plan), providing for the transfer within the Department of Human Services (DHS) of the division level Office of Licensing (OOL), and all of its functions, powers, duties and personnel, from the Division of Youth and Family Services (DYFS), the Division of Developmental Disabilities (DDD), and the Division of Mental Health Services (DMHS) to the Office of Program Integrity and Accountability (OPIA) within DHS; and further providing for the transfer within DHS of the Institutional Abuse Investigations Unit (IAIU) and all of its functions, powers, duties and personnel to the Office of Children's Services (OCS).

Recent data and assessments of the child welfare system in this State demonstrated the need for a new approach to delivering services to abused and neglected children. A comprehensive child welfare reform plan was issued in June, 2004 by DHS as part of a federal class action settlement. This Reorganization Plan is consistent with that child welfare reform plan. It furthers DHS' intention to effectively manage OOL and IAIU, which license and handle allegations of maltreatment in facilities providing out of home placements for children. It also prevents potential conflicts of interest between OOL and IAIU, on the one hand, and DYFS, the primary user of out of home placements being licensed or investigated, on the other hand. The transfer of OOL and the IAIU allows DYFS to focus its mission on abused and neglected children and to allow responsibilities for licensure and investigating institutional abuse to be met by the DHS' OPIA and OCS. P.L.2004, c.130.

Additionally, the consolidation of the licensing function of DYFS, DDD and DMHS will result in the development of licensing processes that are standardized, consistent and possess intrinsic value to our consumers. The reorganization of these three licensing units will result in the DHS OOL functioning as a single licensing and regulatory authority across DHS that supports the provision of a safe environment in which DHS consumers receive services that sustain, nurture and assist in growth and well-being.

GENERAL STATEMENT OF PURPOSE

The Division of Youth and Family Services (DYFS) was created by P.L.1951, c.138 as the successor to the Bureau of Children's Services as the State agency for the care, custody, guardianship, maintenance and protection of children. P.L.1979, c.309. (C.30:4C-1 et seq.). In accordance with this law, DYFS was authorized to administer for the Department of Human Services and the Commissioner of Human Services, the powers and duties of visitation and inspection with respect to institutions, organizations and

noninstitutional agencies for the care, custody and welfare of children and to issue such reasonable rules and regulations as may be necessary for the purpose of carrying these purposes into effect. The DYFS Director was also authorized to issue final agency decisions concerning licensure and investigation of abuse and neglect allegations arising in these facilities. (See, e.g., N.J.A.C. 10:120-2.13)

The Division of Developmental Disabilities (DDD) was established by P.L.1985, c.145 as a new division that incorporates the existing Division of Mental Retardation (DMR) and expands the population. The DDD Director, as the agency head (see N.J.S.A. 52:14B-2 and N.J.A.C. 1:1-2.1), was authorized to issue final agency decisions concerning DDD licensure of community residences for the developmentally disabled (see N.J.S.A. 30:6D-24 et seq., N.J.S.A 30:11B-1 et seq., and N.J.A.C. 10:44A, B and C).

The Division of Mental Health Services (DMHS) replaced the Division of Mental Health and Hospitals in 1995, pursuant to P.L.1995, c.4, s.11, which had been established by the Commissioner of Institutions and Agencies pursuant to the powers conferred by N.J.S.A. 30:1-9 and transferred to the Department of Human Services in 1976 (see P.L.1976, c.98). The DMHS Director, as the agency head (see N.J.S.A.52:14B-2 and N.J.A.C.1:1-2.1), was authorized to issue final agency decision licensure authority pursuant to P.L.1995, c.321 regarding certain providers of community mental health services (see N.J.A.C.10:37-10.1 et seq.).

In order to promote consistent practice among the licensing units within the Department of Human Services, the Office of Program Integrity and Accountability was created under the direction of an Assistant Commissioner. The OOL, included in the OPIA, renders all administrative licensing decisions concerning DYFS, DDD and DMHS. Pursuant to the child welfare plan, the Office of Children's Services was created under the direction of the Deputy Commissioner for Children's Services within the Department to oversee such entities as are designated by the Commissioner of Human Services including, but not limited to, DYFS, the Division of Child Behavioral Health Services and the Division of Prevention and Community Partnerships. P.L.2004, c.130 (see N.J.S.A.30:4C-2.2).

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 transfer, reorganization 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 law, 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:

1. a) The Bureau of Licensing formerly in the Division of Youth and Family Services and the licensing units the Division of Developmental Disabilities and the Division of Mental Health Services in the Department of Human Services and their functions, powers, duties and personnel are continued and are transferred to the Office of Program Integrity and Accountability in the Department of Human Services.
- b) The functions, powers, and duties of the Director and/or Assistant Commissioner, as applicable, of the Division of Youth and Family Services, the Division of Developmental Disabilities and the Division of Mental Health Services, concerning division related licensing, including authority to serve as final agency decision maker in certain contested cases, are continued and are transferred to the Assistant Commissioner of the Office of Program Integrity and Accountability in the Department of Human Services.
- c) The Institutional Abuse Investigations Unit, formerly in the Division of Youth and Family Services in the Department of Human Services and its

functions, powers, duties and personnel are continued and are transferred to the Office of Children's Services in the Department of Human Services.

d) The functions, powers, and duties of the Director and/or Assistant Commissioner, as applicable, of the Division of Youth and Family Services concerning functions of the IAIU, including authority to serve as final agency decision maker in certain contested cases, are continued and are transferred to the Deputy Commissioner of the Office of Children's Services in the Department of Human Services.

e) The functions, powers, and duties of the Director of the Division of Youth and Family Services, including authority to serve as final agency decision maker in certain contested cases, are continued and are transferred to the Deputy Commissioner of the Office of Children's Services in the Department of Human Services.

f) I find this plan is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203 (C.52:14C-2). In addition to the reasons set forth above, this Plan will result in increased efficiency, due to economies of scale, and also will result in greater coordination and improved functioning of the State's regulation of resource family homes, residential youth treatment centers, licensed child care centers and adoption agencies and other facilities serving children, youth and families. Further, the consolidation of the licensing function of DYFS, DDD and DMHS will result in the development of licensing processes that are standardized, consistent and possess intrinsic value to our consumers. The reorganization of these three licensing units will result in the DHS OOL functioning as a single licensing and regulatory authority across DHS that supports the provision of a safe environment in which DHS consumers receive services that sustain, nurture and assist in growth and well-being. This Plan will streamline State government for the benefit of all New Jersey citizens.

2. All records, property, appropriations, and any unexpended balance of funds appropriated or otherwise available to the OOL, are transferred to the OOL as constituted in the OPIA.

3. Whenever in P.L.2004, c 130, P.L.1985, c.145, P.L.1995, c 4, or in any rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise thereunder, reference is made to the OOL in the Division of Youth and Family Services, the Division of Developmental Disabilities, or the Division of Mental Health Services, it shall now be amended to refer to the OOL in the OPIA in the Department of Human Services.

4. All acts and parts of acts inconsistent with any of the provisions of this Plan are superseded to the extent of such inconsistencies.

5. Unless otherwise specified in this Plan, all transfers directed by this Plan shall be effected pursuant to the "State Agency Transfer Act", P.L.1971, c.375 (C.52:14D-1 et seq.).

6. If any provision of this Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder are held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan, which can be given effect without the invalid provisions or applications of the Plan, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Plan are declared to be severable.

7. This Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Reorganization Plan was filed on November 10, 2005 with the Secretary of State and the Office of Administrative Law for publication in the New Jersey Register. This Plan shall become effective in 60 days, on January 9, 2006, 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 January 9, 2006 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 November 10, 2005.

Effective January 9, 2006.

INDEX

(2741)

ADMINISTRATIVE LAW

Administrative law judges, judges of compensation, retired, recall, certain circumstances; permitted, amends C.52:14F-4 et al., Ch. 6.

AGRICULTURE

Commercial nonagricultural activities, wireless service facilities, certain, establishment on preserved farmland, certain circumstances; permitted, C.4:1C-32.1 et seq., Ch.314.

Farm vehicles, certain, expanded usage; permitted, amends R.S.39:3-25, Ch.76.

Fertilizers, commercial, certain, identification, record keeping relative to sales, certain; required, C.4:9-15.43 et seq., amends C.4:9-15.3, Ch.37.

"Perishable Agricultural Commodity Surety Fund," establishment; authorized, amends R.S.4:11-20, Ch.61.

State Agriculture Development Committee, project listing for farmland preservation funds, method; changed, C.13:8C-38.1 et seq., amends C.13:8C-23, Ch.178.

ALCOHOLIC BEVERAGES

"Malt Alcoholic Beverage Practices Act," C.33:1-93.12 et al., Ch.243.

ANIMALS

ASPCA, county societies for prevention of cruelty to animals; reorganized, C.4:22-11.1 et seq., amends N.J.S.2C:39-6 et al., repeals R.S.4-22-1 et al., Ch.372.

Cruelty to animals, definition; broadened, amends R.S.4:22-17 et al., Ch.105.

Search and rescue dogs, penalty for injuring, killing; provided, amends C.2C:29-3.1, Ch.24.

APPROPRIATIONS

Agriculture, Department:

Asian Longhorn Beetle Program, \$1,300,000, Ch.57.

Garden State Ethanol Project, \$1,000,000, Ch.56.

Annual, Ch.132.

Asian American Study Foundation, \$10,000, Ch.371.

Budget message, Governor's transmittal to Legislature, time extended, Ch.32.

Commission on Higher Education:

James Kerney Campus, Mercer County College, addition, renovation, \$1,289,407, Ch.175.

APPROPRIATIONS (Continued)

Community Affairs, Department:

Brownfields Redevelopment Task Force, \$285,000, Ch.365.

Corrections, Department:

For county facilities, \$22,000,000, budget language, various, amended, Ch.363.

Environmental Protection, Department:

Diesel air pollution control program, administrative costs of underground storage tank program, allocation of previously appropriated funds; provided, repeals C.58:10B-4.1, Ch.358.

From "Garden State Green Acres Preservation Trust Fund," for development of land for recreation, conservation purposes, \$70,651,800, Ch.7; for projects in northern New Jersey, \$22,468,700, Ch.8; for projects in central New Jersey, \$16,181,750, Ch.9; for projects in southern New Jersey, \$17,623,600, Ch.10; for acquisition, development of lands for recreation and conservation purposes, \$75,000,000, Ch.11; for acquisition, development of lands for recreation and conservation purposes by nonprofit entities, \$22,906,600, Ch.12; to Save Ellis Island, Inc., \$120,000, Ch.13; acquisition, development of lands for recreation, conservation purposes, \$75,000,000, Ch.177; grants for tax exempt nonprofit organizations to acquire, develop lands for recreation, conservation purposes, \$26,743,525, Ch.187; Save Ellis Island, Inc., \$150,000, Ch.188.

From "2003 Dam, Lake and Stream Project Revolving Loan Fund," dam restoration, repair projects, \$110,000,000, Ch.94.

From "2003 Dam, Lake, Stream and Flood Control Project Fund, for State flood control projects, \$25,000,000, Ch.231.

From various funds, for zero interest loans for environmental infrastructure projects, various, Ch.196.

From "Wastewater Treatment Fund," grants to local government units for wastewater treatment system projects, \$30,000,000, Ch.301.

Local government units, grants from various funds to develop lands for recreation, conservation projects, \$65,822,075, Ch.183; projects in northern New Jersey, \$25,389,500, Ch.184; projects in central New Jersey, \$16,575,000, Ch.185, projects in southern New Jersey, \$13,845,980, Ch.186.

From "Water Supply Fund" for various projects, \$53,000,000, Ch.349.

New Jersey Statewide Water Supply Plan, revisions, updates, \$2,500,000, Ch.285.

Wildlife, wildlife habitat, State provision of matching funds for federal grants, \$381,715, Ch.211.

APPROPRIATIONS (Continued)

Health and Senior Services, Department:

Cancer Institute of New Jersey, \$6,000,000, Ch.25.

Cancer Screening - Early Detection and Education Program for lung cancer in women, \$75,000, Ch.277.

Medical day care services, reimbursement rate provisions; changed, Ch.69.

Nut, food allergies, public information campaign, \$250,000, Ch.26.

Office of the Public Guardian for Elderly Adults, \$95,000, Ch.370.

Higher Education, Commission:

Kean University, building renovations, \$537, 965, Ch.242.

Higher Education Student Assistance Authority, NJ STARS II tuition assistance program, \$1,000,000, Ch.359.

Historic preservation, from various funds for projects in northern New Jersey, \$12,720,933, Ch.88; for southern New Jersey, \$6,585,306, Ch.89; for central New Jersey, \$6,435,602, Ch. 90.

Human Services, Department:

Home heating assistance, \$4,000,000, Ch.300.

Law and Public Safety, Department:

Criminal street gangs, sharing of information, reporting, \$70,000, Ch.332.

Memorial for victims of September 11, 2001 attacks, appropriation; authorized, Ch.87.

New Jersey Environmental Infrastructure Trust, loans for projects, various; authorized, Ch.197.

Office of the Attorney General for pamphlet educating children about pedophile crimes, \$95,000, Ch.347.

Rental assistance grants, \$15,000,000, Ch.66.

SMART Organization, \$25,000, Ch.377.

State Agricultural Development Committee:

From "Garden State Farmland Preservation Trust Fund," for various local projects, \$39,800,000, Ch.14; \$8,000,000 in the pinelands area, Ch.15; \$25,000,000 for planning incentive grants, Ch.16; \$2,500,000 for grants to nonprofits, Ch.17; \$52,432,378 for various SADC projects, Ch.18; for farmland preservation purposes, \$44,000,000; \$1,009,225 for soil, water conservation grants, Ch.178; farm preservation programs, Highlands Region, \$15,000,000, Ch.179; grants to tax exempt nonprofit organizations, \$5,015,000, Ch.180; for acquisition of development easements, \$46,225,000, Ch.181; for planning incentive grants to counties, municipalities, \$31,415,464, Ch.182.

APPROPRIATIONS (Continued)

State Parole Board:

"Sex Offender Monitoring Pilot Project Act," \$3,000,000, Ch.189.

Supplemental, FY2005, various purposes, \$215,044,000, Ch.120.

Treasury, Department of the

Energy assistance programs,\$9,000,000, Ch.300.

Homestead Property Tax Rebates for Homeowners and Tenants,
\$400,000,000, Ch.121.

AUTHORITIES

Affordable housing projects, certain, reduced sewer, water connection fees
for MUAs, CUAs, Passaic Valley Sewerage District; required,
C.40:14A-8.3 et al., amends C.40:14A-8 et al., Ch.29.

New Jersey Sports and Exposition Authority, development of professional
football league training facilities, powers, certain; expanded, amends
C.5:10-6 et al., Ch.302.

Sewer, water connection fees, credit by municipal, county sewerage, utilities
authorities for certain units damaged by catastrophic events; required,
C.40:14A-8.4 et al., amends C.40:14A-8 et al., Ch.173.

AVIATION

Pilots renting aircraft, photo ID verification; required, C.6:1-50.1 et seq.,
Ch.101.

BANKING

Department of Banking and Insurance, enforcement powers relative to
regulated financial institutions, certain; increased, C.17:1-25 et seq.,
repeals C.17:9A-249, Ch.195.

Division of Banking, assessment funding mechanism, fees, reporting re-
quirements; established, C.17:1C-33 et seq., amends C.17:11C-8 et al.,
Ch.199.

BOATING

Boat safety course required to operate boat on State waters, laws concerning
recreational boating; revised, C.12:7-61.1 et seq., amends C.12:7-61 et
al., repeals section 3 of P.L.1997, c.152, Ch.292.

CEMETERIES

"New Jersey Cemetery Act, 2003"; revised, amends C.45:27-22, repeals
N.J.S.3B:10-21 et al., Ch.324.

CHARITIES

Charitable organizations, certain sexual offenses, immunity from liability; inapplicable, C.2A:53A-7.4 et seq., Ch.264.

Charitable Registration and Investigation Act, enhanced disclosure requirements, prohibitions against misleading prospective donors; revised, C.45:17A-30.1, amends C.45:17A-20 et al., Ch.283.

CHILDREN

Adoptees born in foreign countries, other states, procedures, recognition, C.9:3-43.1 et seq., amends R.S.26:8-40.1, Ch.81.

Bicycle, roller skate, skateboard helmets, wearing until age 17; required, amends C.39:4-10.1 et al., Ch.208.

Child Labor Law Enforcement Trust Fund, advisory board; established, amends C.34:2-21.19, Ch.167.

Child protective services, laws; revised, amends C.9:6-8.21 et al., Ch.169.

Child support, continuation in cases of mental, physical incapacity, certain; required, amends N.J.S.2A:34-23 et al., Ch.171.

Domestic violence public awareness campaign; established, C.52:27D-43.35 et seq., Ch.204.

Jersey Shore University Medical Center, Monmouth Medical Center, specialty acute care children's hospitals for Monmouth, Ocean counties; designated, C.26:2H-18g, amends C.26:2H-18c et seq., Ch.116.

Juvenile detention centers, courses of study taken by juveniles, credits applied by public school districts, C.18A:7C-12, Ch.265.

Juvenile Justice Master Plans, county youth services plans, submittal by Juvenile Justice Commission every three years; required, amends C.52:17B-170 et al., Ch.164.

Juvenile, placement in detention, criteria; revised, amends C.2A:4A-34, Ch.361.

Minors, certain, consent to medical care, treatment for HIV infection or AIDS; permitted, amends C.9:17A-4, Ch.342.

Neonatal jaundice, severe, report; required, amends C.26:8-40.20 et al., Ch.176.

Protective eyewear for children wearing eyeglasses, participation in sports activities, certain; required, C.5:18-1 et seq., Ch.306.

Safe Haven Awareness Promotion Task Force; established, Ch.294.

Sudden Infant Death Syndrome, participation of State Medical Examiner in research; authorized, C.52:17B-88.11, amends C.52:17B-88.10, Ch.227.

CIVIL ACTIONS

- Alternative procedure for dispute resolution; appeals as of right in accordance with rules adopted by the New Jersey Supreme Court, amends C.2A:23A-19, Ch.338.
- Charitable organizations, certain sexual offenses, immunity from liability; inapplicable, C.2A:53A-7.4 et seq., Ch.264.
- Contaminated property, liability protection, certain circumstances; provided, C.58:10-23.11f22, amends C.58:10B-17.1 et al., Ch.4.
- Discharge of hazardous substances, civil action for damages brought by State, statute of limitations; extended, amends C.58:10B-17.1, Ch.245.
- "New Jersey Baseball Spectator Safety Act of 2006," C.2A:53A-43 et seq., Ch.362.
- Punitive damage awards, limitation on award for certain causes of action; removed, amends C.2A:15-5.14, Ch.323.

CIVIL DEFENSE

- Emergency management volunteers, certain, display of blue emergency warning lights on vehicles; permitted, C.39:3-54.22 et seq., amends C.39:3-54.7 et al., Ch.34.
- New Jersey Public Broadcasting Authority, broadcast of emergency information to law enforcement agencies, emergency personnel; permitted, amends C.48:23-2 et al., Ch.35.

CIVIL RIGHTS

- Interference with guide or service dog assisting handicapped, blind, deaf person; fines, amends C.10:5-29.5, Ch.258.

CIVIL SERVICE

- Collective negotiations unit categories for Executive Branch employees, ten; designated, C.34:13A-5.10, Ch.142.
- State Parole Board hearing officers, civil service protection; provided, amends C.30:4-123.48, Ch.344.
- Veterans of operations Northern and Southern Watch, extension of veterans' benefits, certain; provided, amends N.J.S.11A:5-1 et al., Ch.64.

COLLEGES AND UNIVERSITIES

- County college board of trustees, notice of certain layoffs; required, C.18A:64A-13.2, Ch.253.
- County colleges, awarding of college credits to firefighter for completion of courses, certain; required, C.18A:64A-79 et seq., Ch.217.

COLLEGES AND UNIVERSITIES (Continued)

- New Jersey World Trade Center Scholarship Fund, voluntary contributions by taxpayers on gross income tax form; permitted, C.54A:9-25.23, Ch.298.
- NJ STARS II Program; established, C.18A:71B-86.1 et seq., Ch.359.
- NJ STARS scholarship, criteria for continued receipt; changed, amends C.18A:71B-85, Ch.168.
- Nonresident tuition fees, imposition on members of NJ National Guard, certain survivors of members killed in line of duty; prohibited, C.18A:62-24.1 et al., Ch.317.
- Smoking in dormitories; prohibited, amends C.26:3D-17, Ch.203.
- "Social Services Student Loan Redemption Program Act," C.18A:71B-87 et al., Ch.157.
- Student social security numbers, display; prohibited, C.18A:3-28, Ch.28.
- Students called to active duty, certain, reenrollment, refund; provided, C.18A:62-4.3, Ch.33.
- Tuition grant eligibility for children of military personnel at N.J. installations, certain; provided, C.18A:71B-20.1, Ch.60.
- University police officer applicants, background investigations; authorized, C.18A:6-4.3a, Ch.322.

COMMERCE AND INDUSTRY

- "BPU Business Ombudsman Act," C.48-2-92 et seq., Ch.215.
- Foundation for Technology Advancement; established, C.52:27C-96 et seq., Ch.373.
- New Jersey Commission on Science and Technology, royalties from intellectual property, certain, receipt; permitted, amends C.52:9X-9 et al., Ch.272.
- Tourism, law; revised, C.34:1A-53.1, amends C.34:1A-46 et al., Ch.378.

COMMISSIONS

- Inmate Education and Vocational Training Study Commission; established, Ch.312.
- Juvenile Justice Master Plans, county youth services plans, submittal by Juvenile Justice Commission every three years; required, amends C.52:17B-170 et al., Ch.164.
- New Jersey Commission on Science and Technology, royalties from intellectual property, certain, receipt; permitted, amends C.52:9X-9 et al., Ch.272.
- New Jersey Death Penalty Study Commission, moratorium; established, Ch.321.

COMMISSIONS (Continued)

"New Jersey Disease Management Study Commission"; established, Ch.200.

"New Jersey Health Care Access Study Commission"; established, Ch.305.

Police Training Commission, membership; increased, amends C.52:17B-70, Ch.268.

"School Construction Review Commission"; established, Ch.117.

Special Education Review Commission; established, Ch.339.

"Waterfront Commission Act," jurisdiction over licensing, registration procedures, certain; expanded, amends C.32:23-6 et al., Ch.313.

COMMUNICATIONS

Commercial nonagricultural activities, wireless service facilities, certain, establishment on preserved farmland, certain circumstances; permitted, C.4:1C-32.1 et seq., Ch.314.

New Jersey Public Broadcasting Authority, broadcast of emergency information to law enforcement agencies, emergency personnel; permitted, amends C.48:23-2 et al., Ch.35.

Provider of electronic communication, remote computing services, required information disclosure to authorized law enforcement agencies; expanded, amends C.2A:156A-29, Ch.270.

Radio transmissions, certain, licensure; required, interference with licensed public, commercial radio stations, fourth degree crime, C.2C:33-23.1 et seq., Ch.293.

Telemarketers, use of technology to misrepresent their identity; prohibited, amends C.56:8-128, Ch.289.

Unsolicited advertisements, certain, transmission by telephone facsimile; prohibited, C.56:8-157 et seq., Ch.114.

COMMUNITY AFFAIRS

Main Street New Jersey Advisory Board, membership; increased, amends C.52:27D-456, Ch.284.

CONSTITUTION, STATE

Corporation business tax revenues, certain, dedicated for air pollution control, administration of underground storage tank program, amends Article VIII, Section II, paragraph 6; adopted.

Office of Lieutenant Governor, established; gubernatorial succession, revised, amends Articles II, IV, V and XI; adopted.

CONSUMER AFFAIRS

Bottled water, standards, labeling; conformed to FDA, amends C.24:12-9, Ch.325.

Construction permits, cost for construction, reconstruction of residential premises, disclosure; required, C.56:12-2.1, Ch.291.

Debt adjusters, licensed, additional requirements; established, penalties for violations; increased, C.17:16G-9, amends C.17:16G-5 et al., Ch.287.

Gift certificates, cards, expiration dates, dormancy fees; regulated, amends C.56:8-110, Ch.254.

"Identity Theft Prevention Act," C.56:11-44 et al., amends C.56:11-30, Ch.226.

Mercury thermometers, certain, sales; prohibited, C.13:1E-99.91 et seq., Ch.80.

Telemarketers, use of technology to misrepresent their identity; prohibited, amends C.56:8-128, Ch.289.

Unsolicited advertisements, certain, transmission by telephone facsimile; prohibited, C.56:8-157 et seq., Ch.114.

CORPORATIONS

Ophthalmic dispensers, technicians, incorporation; permitted, amends C.14A:17-3, Ch.27.

CORRECTIONS

Inmate Education and Vocational Training Study Commission; established, Ch.312.

Investigators in Department of Corrections, attendance at Police Training Commission course; required, amends C.52:17B-68.1, Ch.263.

"Sex Offender Monitoring Pilot Project Act," C.30:4-123.80 et seq., Ch.189.

State Parole Board hearing officers, civil service protection; provided, amends C.30:4-123.48, Ch.344.

COUNTIES

Bonds, local, issuance for refurbishment of public safety vehicles, certain; permitted, amends N.J.S.40A:2-22, Ch.174.

Coordination of hazardous materials emergency response programs; provided, C.26:3A2-36 et seq., amends C.26:3A2-22, Ch.3.

County boards of taxation, membership; increased, amends R.S.54:3-2, Ch.44.

County clerk, acting as local registrar of vital statistics; authorized, amends R.S.26:8-11 et al., Ch.261.

COUNTIES (Continued)

- County pension funds, certain, enhancement for retirees, certain; permitted, C.43:10-2.1, Ch.36.
- Open space trust funds, depositing of funds from any source; permitted, agreements with nonprofit organizations, certain, for land, historic preservation matters, C.40:12-15.10, amends C.40:12-15.2 et al., Ch.108.
- PFRS, enrollment of county fire marshals, assistant marshals, certain; permitted, amends N.J.S.40A:14-1 et seq., Ch.366.
- Public contracts, limitation on award to political contributors by local units, certain circumstances; permitted, filing of annual disclosure statement, certain; required, C.40A:11-51 et al., Ch.271.
- Social security number, display on document intended for public recording; prohibited, C.47:1-16, Ch.99.

COURTS

- Alternative procedure for dispute resolution; appeals as of right in accordance with rules adopted by the New Jersey Supreme Court, amends C.2A:23A-19, Ch.338.
- Grievance arbitration under public employment agreement, presumption in favor by court, agency; required, amends C.34:13A-5.3, Ch.380.
- Juvenile central registry information, certain, access for law enforcement agencies; clarified, amends C.2A:4A-60, Ch.165.
- Juvenile, placement in detention, criteria; revised, amends C.2A:4A-34, Ch.361.
- New Jersey Death Penalty Study Commission, moratorium; established, Ch.321.

CRIMES AND OFFENSES

- Assault, committed against employees of public utilities, cable television, telecommunication services, certain; penalties upgraded, amends N.J.S.2C:12-1, Ch.2.
- "Christopher's Law," unlicensed driver, involvement in motor vehicle accident, certain; criminalized, amends C.2C:40-22, Ch.230.
- Criminal mischief, offense upgraded, certain circumstances, new offense; created, amends N.J.S.2C:17-3, Ch.316.
- Criminal trespass, certain, offense; upgraded, amends N.J.S.2C:18-3, Ch.100.
- Cruelty to animals, definition; broadened, amends R.S.4:22-17 et al., Ch.105.

CRIMES AND OFFENSES (Continued)

- Domestic violence order issued in another jurisdiction, violation considered contempt of a domestic violence order in New Jersey; provided, amends N.J.S.2C:29-9, Ch.333.
- Drug offenders, certain, suspension of driver's license, hardship exception, certain circumstances; authorized, amends N.J.S.2C:35-16, Ch.343.
- Ephedrine, pseudoephedrine, sales; restricted, anhydrous ammonia, possession, certain circumstances; criminalized, C.2C:35-25 et al., amends N.J.S.2C:20-2, Ch.207.
- Eviction proceedings, actions, certain; prohibited, penalties; established, C.2C:33-11.1 et al., amends N.J.S.2A:39-1 et al., Ch.319.
- False birth certificates, offenses involving included in identity theft, amends C.2C:21-2.1 et al., Ch.224.
- Human trafficking, offense; created, victims compensation, services, added, C.2C:13-8, amends N.J.S.2C:34-1 et al., Ch.77.
- "Identity Theft Prevention Act," C.56:11-44 et al., amends C.56:11-30, Ch.226.
- Luring, enticing another, certain circumstances, third degree crime, C.2C:13-7, Ch.1.
- Prescription legend drugs, unlawful possession, distribution, offense; upgraded, amends N.J.S.2C:35-2 et al., Ch.205.
- Radio transmissions, certain, licensure; required, interference with licensed public, commercial radio stations, fourth degree crime, C.2C:33-23.1 et seq., Ch.293.
- Scanning devices, reencoders, unlawful possession, use; criminalized, C.2C:21-6.1, Ch.225.
- Sex offenses, penalties; increased, "Sex Crime Victim Treatment Fund" to provide counseling, treatment to sex crime victims; created, C.2C:14-10 et al., amends N.J.S.2C:46-1 et al., Ch.73.
- Traffic control signals, devices which interfere with, use, possession, certain; prohibited, C.2C:40-24, amends N.J.S.2C:33-24, Ch.96.
- Voting, voter penalties; increased, crimes, certain; upgraded, amends C.18A:12-2.2 et al., Ch.154.

DOMESTIC RELATIONS

- Adoptees born in foreign countries, other states, procedures, recognition, C.9:3-43.1 et seq., amends R.S.26:8-40.1, Ch.81.
- Child protective services, laws; revised, amends C.9:6-8.21 et al., Ch.169.
- Child support, continuation in cases of mental, physical incapacity, certain; required, amends N.J.S.2A:34-23 et al., Ch.171.

DOMESTIC RELATIONS (Continued)

Domestic violence order issued in another jurisdiction, violation considered contempt of a domestic violence order in New Jersey; provided, amends N.J.S.2C:29-9, Ch.333.

Domestic violence public awareness campaign; established, C.52:27D-43.35 et seq., Ch.204.

"Kinship Legal Guardianship Notification Act," C.30:4C-89 et seq., Ch.95.

Local public entities, provision of health benefits to domestic partners of certain employees; permitted, C.26:8A-13, amends C.18A:16-12 et al., Ch.334.

Safe Haven Awareness Promotion Task Force; established, Ch.294.

Surviving domestic partner, intestacy rights, authority to make funeral arrangements; provided, amends N.J.S.3B:1-1 et al., Ch.331.

"The Domestic Violence and Workforce Development Initiative Act," C.34:1A-1.7 et al., amends C.30:14-4, Ch.309.

DRUGS

Ephedrine, pseudoephedrine, sales; restricted, anhydrous ammonia, possession, certain circumstances; criminalized, C.2C:35-25 et al., amends N.J.S.2C:20-2, Ch.207.

Pharmaceutical wholesale distribution, license requirements, standards; established, C.24:6B-14 et seq., amends C.24:6B-1 et al., Ch.206.

Physician assistants, prescription of controlled dangerous substances, certain circumstances; permitted, amends C.45:9-27.19, Ch.48.

Prescription legend drugs, unlawful possession, distribution, offense; upgraded, amends N.J.S.2C:35-2 et al., Ch.205.

ELECTIONS

Absentee voting, laws concerning; amended, amends C.19:57-2 et al., Ch.138.

Campaign contributions by business entities, certain, prohibited, C.19:44A-20.13 et seq., amends C.19:44A-20.7 et seq., repeals C.19:44A-20.2, supersedes Executive Order No. 134 (2004), Ch.51.

Emergency, provisional ballots, county boards of election to prepare reports concerning use; required, C.19:53B-21 et al., Ch.152.

Municipalities, certain, conduct of election by mail; permitted, C.19:62-1 et seq., Ch.148.

Polling place accessibility, improvement; required, C.19:8-3.8, amends R.S.19:8-2 et al., Ch.146.

Presidential primary, separate; established, amends R.S.19:1-1 et al., Ch.136.

ELECTIONS (Continued)

- Recounts, application for, 15 days following election; permitted, amends R.S.19:28-1, Ch.150.
- Statewide voter registration system; created, C.19:31-31 et seq., amends C.19:4-11 et al., repeals C.19:31-14.5, Ch.145.
- Voter information notice (bill of rights), posting; required, C.19:12-7.1, amends R.S.19:12-7, Ch.149.
- Voter instructions, district board member, training, display of information, certain; required, C.19:8-5.1 et al., amends R.S.19:50-1 et seq., Ch.151.
- Voter registration forms, declaration of political party affiliation; permitted, C.19:31-13.2, amends R.S.19:23-45 et al., Ch.153.
- Voter registration, polling records, voter lists, provisional ballots, laws concerning; amended, C.19:14-21.1 et al., amends R.S.19:12-7 et al., Ch.139.
- Voting machines, production of voter-verified paper record; required, C.19:53A-3.1, amends R.S.19:48-1 et al., Ch.137.
- Voting, voter penalties; increased, crimes, certain; upgraded, amends C.18A:12-2.2 et al., Ch.154.

ENVIRONMENT

- Air toxics surcharge; repealed, repeals C.13:1D-59 et seq., Ch.141.
- Brownfields Redevelopment Task Force, inventory, annual progress reports; required, C.58:10B-23.1 et seq., Ch.365.
- "Chingwe Brook"; designated, C.13:8-44.1 et seq., Ch.327.
- Cleanup liability, hazardous substance discharge, exemption at certain sites; provided, C.58:10-23.11g12, amends C.58:10-23.11g, Ch.43.
- Cleanup, removal costs, protection from contribution claims, certain circumstances; provided, C.58:10-23.11e2, amends C.58:10-23.11f, Ch.348.
- Condemned property, replacement of person responsible for remediation with condemnor, certain circumstances; permitted, C.58:10B-3.1, Ch.355.
- Contaminated property, liability protection, certain circumstances; provided, C.58:10-23.11f22, amends C.58:10B-17.1 et al., Ch.4.
- Contaminated site remediation, laws concerning financing; revised, C.58:10B-25.1 et seq., amends C.58:10B-1 et al., Ch.223.
- Coordination of hazardous materials emergency response programs; provided, C.26:3A2-36 et seq., amends C.26:3A2-22, Ch.3.
- Discharge of hazardous substances, civil action for damages brought by State, statute of limitations; extended, amends C.58:10B-17.1, Ch.245.
- Energy efficiency standards, products, certain; established, C.48:3-99 et seq., Ch.42.

ENVIRONMENT (Continued)

- Fine particle diesel emissions from vehicles, equipment, certain, requirements for reduction; established, C.26:2C-8.26 et seq., amends C.26:2C-8.4 et al., Ch.219.
- Garden State Preservation Trust Funds, investment options; increased, amends C.13:8C-3 et al., Ch.281.
- Loan Origination Fee Fund in the New Jersey Environmental Infrastructure Trust; established, aggregate indebtedness; increased, C.58:11B-10.2, amends C.58:11B-6, Ch.202.
- "Mercury Switch Removal Act of 2005," scrap vehicles, C.13:1E-99.82 et seq., Ch.54.
- Mercury thermometers, certain, sales; prohibited, C.13:1E-99.91 et seq., Ch.80.
- Methyl Tertiary Butyl Ether, sale of gasoline containing; prohibited, C.26:2C-8.22 et seq., Ch.192.
- Pinelands Development Credit Bank, expiration date extended to December 31, 2015, amends C.13:18A-47, Ch.241.
- Remediation costs for current projects, redevelopment agreements for reimbursement, certain; authorized, C.58:10B-27.2, amends C.58:10B-31, Ch.360.
- "Safe Dam Act," assessment of penalties for violations, charging of owners for repairs; authorized, amends R.S.58:4-5 et al., Ch.228.
- Underground storage tanks, discharge of repayment obligation, certain circumstances; provided, amends C.58:10A-37.10 et al., Ch.315.
- Vessels, discharge of hazardous substance, liability limitation for owners, operators; increased, amends C.58:10-23.11g, Ch.238.
- Violations, certain, committed on DEP, Palisades Interstate Park Commission lands, penalties; increased, amends C.13:1L-23 et al., Ch.330.

ESTATES

- Guardian for incapacitated person, appointment, laws concerning; revised, C.3B:12-24.1 et al., amends N.J.S.3B:12-1 et al., Ch.304.
- Registered professional guardians; regulated, C.52:27G-32 et al., amends N.J.S.3B:12-25 et al., Ch.370.
- Surviving domestic partner, intestacy rights, authority to make funeral arrangements; provided, amends N.J.S.3B:1-1 et al., Ch.331.
- Will registry system, optional; established, C.3B:3-2.1 et seq., Ch.97.
- Wills, estates, laws concerning; corrected, C.3B:1-8.1, amends N.J.S.3B:1-2 et al., Ch.160.

ETHICS

State Ethics Commission, renaming of Executive Commission on Ethical Standards, membership; revised, laws concerning; amended, C.52:13D-21.1 et al., amends C.52:13D-21 et al., repeals C.52:14-7.1, Ch.382.

EXECUTIVE ORDERS

Advisory Committee to the Gang Land Security Task Force; established, No.56; membership increased, No.73.

Army National Guard Specialist Alain Kamolvathin; death commemorated, No.17.

Assemblyman Donald K. Tucker; death commemorated, No.62.

Atlantic City Police Officer Thomas John McMeekin, Jr.; death commemorated, No.25.

Authorities, personnel, training, reporting, certain; required, No.41.

Benefits Review Task Force; established, No.39.

Brigadier General Steven L. Bell; death commemorated, No.47.

Chief Justice William H. Rehnquist; death commemorated, No.54.

Cleaning products, procurement, use by State entities, minimizing health and environmental risks, No.76.

Congressman Peter W. Rodino, Jr.; death commemorated, No.34.

"Crossroads of the American Revolution," New Jersey; declared, Heritage Area; designated, No.48.

Executive Order No. 24 (2002) relative to the composition of the board of directors of the Schools Construction Corporation, amended, No.32.

Executive Order No. 134 (2004), provisions, certain, inapplicable to certain Department of Transportation federally funded contracts, No.18.

Ferries, certain, security; enhancement; powers extended, No.44.

Governor's Cabinet for Children, reconstitution, strengthening, expansion; recommended, No.79.

Governor's Council on Mental Health Stigma; established, No.58.

Governor's Task Force on Mental Health, recommendations, certain; implemented, No.40.

Governor's Task Force on Steroid Use and Prevention; established, No.46.

Home buyers' website containing information on registered builders, housing codes, inspection information, warranty rights, creation by DCA; required, No.33.

Hurricane Katrina, assistance to affected areas under EMAC; provided, No.53.

Hurricane Katrina, commercial motor carriers involved in disaster relief; waiver of regulatory requirements, certain, No.52.

Hurricane Katrina; victims commemorated, No.55

EXECUTIVE ORDERS (Continued)

- James Michael Ratcliffe, former Chief, current Safety Officer, Metuchen Fire Department; death commemorated, No.35.
- Mental health system, financing practices, review by DHS; required, No.78.
- National Incident Management System; established, No.50.
- New Jersey CBRNE Training and Research Center at UMDNJ; established, No.20.
- New Jersey Fair and Clean Elections Pilot Project, qualifying period for participating candidates; extended, No.51.
- New Jersey Family Advocate Management Corporation, transfer of funds for September 11th Memorial to Department of the Treasury; authorized, No.74.
- N.J. National Guard Sergeant William D. Blahut, Jr.; death commemorated, No.27.
- Office of Counter-Terrorism, assignment of ten Division of State Police employees; directed, additional hires, support; authorized, No.57.
- Operational Incentives Pilot Program for Division of Mental Health Services contracts, development; required, No.77.
- Pilot global budget long-term care program, development, implementation by DHSS; required, No.31.
- Placental, umbilical cord blood donation; development of educational materials for health care professionals on value of donations, No.61.
- Pope John Paul II; death commemorated, No.29.
- Rosa Parks; death commemorated, No.63.
- Senator Joseph Suliga, Jr.; death commemorated, No.23.
- Senior Corrections Officer Wayne Clark; death commemorated, No.75.
- Smart Growth, P.L.2004, c.89, moratorium on implementation, certain provisions, No.45.
- State agency records retention schedules, practices; review, No.49.
- State employees, November 25, 2005; granted as a day off, No.64.
- State, local governments, purchase of goods, services, efforts to assist employment of special needs individuals, No.67.
- State of Emergency relative to weather conditions; declared, No.15, terminated, No.16, declared, No.28, terminated, No.30; declared, No.59, terminated, No.60.
- State university, college, county college, officers, relatives, conducting of business, certain; prohibited, No.65; time period in which to terminate business relationship or resign; extended, No.68.
- Steroids, random testing for high school athletes, certain, program; required, No.72.
- Trains, certain, security; enhancement; powers extended, No.43.

EXECUTIVE ORDERS (Continued)

Uniform Ethics Code, promulgation by Executive Commission on Ethical Standards, No.36.

U.S. Army Captain Charles D. Robinson; death commemorated, No.42.

U.S. Army Captain James M. Gurbisz; death commemorated, No.66.

U.S. Army Captain Sean Grimes; death commemorated, No.26.

U.S. Army First Lieutenant Dennis W. Zilinski II; death commemorated, No.69.

U.S. Army Private First Class Min Soo Choi; death commemorated, No.24.

U.S. Army Sergeant Clarence L. Floyd, Jr.; death commemorated, No.71.

U.S. Army Sergeant Stephen Sherman; death commemorated, No.22.

U.S. Army Staff Sergeant Edward Karolasz; death commemorated, No.70.

U.S. Marine Corps Corporal Sean P. Kelly; death commemorated, No.19.

U.S. Marine Corps Lance Corporal Harry Swain IV; death commemorated, No.21.

U.S. Marine Corps Major John Charles Spahr; death commemorated, No.38.

U.S. Marine Corps Staff Sgt. Anthony L. Goodwin; death commemorated, No.37.

EXPLOSIVES

Fireworks, pyrotechnics, use in buildings, certain; prohibited, amends R.S.21:2-7, Ch.115.

FIRE SAFETY

County colleges, awarding of college credits to firefighter for completion of courses, certain; required, C.18A:64A-79 et seq., Ch.217.

Fireworks, pyrotechnics, use in buildings, certain; prohibited, amends R.S.21:2-7, Ch.115.

Hiring preference, children of firefighters, law enforcement officers killed in line of duty; established, amends C.40A:14-10.1a et al., Ch.290.

New Jersey State Firemen's Association, statutes, certain; revised, amends R.S.43:17-2 et al., repeals R.S.43:17-32, Ch.39.

Residences, certain, portable fire extinguisher; required, amends C.52:27D-198.1 et seq., Ch.71.

Smoking in dormitories; prohibited, amends C.26:3D-17, Ch.203.

FIRST AID AND RESCUE SQUADS

Emergency medical services, independent study; provided, J.R.9.

FISH AND WILDLIFE

Striped bass, catch, possession limits; changed, amends C.23:5-45.1, Ch.340.
Wildlife, wildlife habitat, State matching federal funds for grants to benefit; required, C.23:2A-15, Ch.211.

FOOD AND BEVERAGES

Bottled water, standards, labeling; conformed to FDA, amends C.24:12-9, Ch.325.
Nut, food allergies, public information campaign; required, C.26:3E-14 et seq., Ch.26.

GAMES AND GAMBLING

Casino Reinvestment Development Authority, programs, certain, eligibility; revised, amends C.5:12-173.22a et al., Ch.30.
Casinos, license terms, certain; extended, procedure for testing, approving slot machines; revised, amends C.5:12-88 et al., Ch.31.
Electronic devices, certain, use in conducting bingo; authorized, prize amounts; increased, amends C.5:8-25 et al., Ch.140.
Internet gambling public awareness campaign; established, C.5:12-76.1, Ch.357.
Slot machine annuity jackpots, regulated, offset for child support arrearages; provided, C.5:12-2.1a et al., amends C.5:12-2.2, Ch.46.

HANDICAPPED PERSONS

Affordable housing units, certain, adaptability for use by elderly, disabled persons; required, C.52:27D-311a et al., amends C.52:27D-304 et al., Ch.350.
Corporation business, gross income tax credits for businesses providing employment for certain handicapped persons; allowed, C.54:10A-5.38 et al., Ch.318.
Disabled students, certain circumstances, participation in interscholastic athletic programs; permitted, C.18A:46-13.1, Ch.260.
Interference with guide or service dog assisting handicapped, blind, deaf person; fines, amends C.10:5-29.5, Ch.258.
Medicaid, federal, waivers for persons with developmental disabilities, application, reports certain; required, C.30:6D-42.1 et seq., Ch.252.

HEALTH

Alternative to Discipline Program for impaired nurses; established, C.45:11-24.10 et seq., Ch.82.

HEALTH (Continued)

- Behavioral health care service carriers, disclosures to insureds, certain; required, C.26:2S-15.1, amends C.26:2S-2 et al., Ch.172.
- "Breast Cancer Awareness Month," October; designated, C.36:2-86, J.R.7.
- Coordination of hazardous materials emergency response programs; provided, C.26:3A2-36 et seq., amends C.26:3A2-22, Ch.3.
- County clerk, acting as local registrar of vital statistics; authorized, amends R.S.26:8-11 et al., Ch.261.
- "Cystic Fibrosis Awareness Day," March 6; designated, C.36:2-85, J.R.4.
- Defibrillators, health clubs required to have on site, employees trained in use; required, immunity, certain, C.2A:62A-30 et seq., Ch.346.
- Dentists, exemption from requirement for needles, sharp devices to have safety features, certain; provided, amends C.26:2H-5.12, Ch.278.
- Dependents, health coverage until age 30, certain circumstances; required, C.17:48-6.19 et al., Ch.375.
- Emergency contraception for sexual assault victims; provided, C.26:2H-12.6b et seq., amends C.52:4B-44, Ch.50.
- "Emergency Health Powers Act," C.26:13-1 et seq., amends R.S.26:4-2 et al., Ch.222.
- "Family Health Care Coverage Act," C.30:4J-8 et al., amends C.18A:40-34 et al., repeals C.30:4I-1 et al., Ch.156.
- Federally qualified health centers, allocation from assessment on hospital operating revenues; provided, amends C.26:2H-18.58 et al., Ch.237.
- Fine particle diesel emissions from vehicles, equipment, certain, requirements for reduction; established, C.26:2C-8.26 et seq., amends C.26:2C-8.4 et al., Ch.219.
- "Health Care Professional Responsibility and Reporting Enhancement Act," C.45:1-33 et al., amends C.26:2H-12.2a et al., repeals C.26:2H-12.2 et al., Ch.83.
- "Health Claims Authorization, Processing and Payment Act," C.17B:30-48 et seq., amends C.26:2S-11 et al., Ch.352.
- Health maintenance organizations, risk based capital requirements; changed, C.26:2J-18.2 et seq., amends C.26:2J-26 et al., Ch.65.
- High deductible health plans, laws concerning coverage, treatment; amended, C.17:48E-35.27 et al., amends C.17:48E-35.10 et al., Ch.248.
- Kidney disease, testing by clinical laboratories for diagnostic purposes; required, C.45:9-42.34a, Ch.236.
- Managed care carriers, provision of fee schedules to health care providers, certain; required, C.26:2S-9.2 et seq., Ch.286.
- Medicaid-eligible persons, HIV, AIDS infected, certain, admission to long-term care facilities, criteria; provided, C.30:4D-6j, Ch.111.

HEALTH (Continued)

- Mercury thermometers, certain, sales; prohibited, C.13:1E-99.91 et seq., Ch.80.
- Minors, certain, consent to medical care, treatment for HIV infection or AIDS; permitted, amends C.9:17A-4, Ch.342.
- Needle electromyography, performance restricted to physicians, C.45:9-5.2, Ch.303.
- Neonatal jaundice, severe, report; required, amends C.26:8-40.20 et al., Ch.176.
- "New Jersey Advance Directives for Mental Health Care Act," C.26:2H-102 et al., Ch.233.
- "New Jersey Disease Management Study Commission"; established, Ch.200.
- New Jersey Elderly Person Suicide Prevention Advisory Council; established, C.26:2MM-1 et seq., Ch.274.
- "New Jersey Health Care Access Study Commission"; established, Ch.305.
- "New Jersey Smoke-Free Air Act," C.26:3D-55 et seq., repeals C.26:3D-1 et al., Ch.383.
- Nut, food allergies, public information campaign; required, C.26:3E-14 et seq., Ch.26.
- Patients in psychiatric facilities, laws governing financial liability; revised, C.30:4-80.6a et al., amends C.30:4-27.2 et al., Ch.55.
- Physicians, cultural competency training for licensure; required, C.45:9-7.2 et seq., Ch.53.
- "Polysomnography Practice Act," C.45:14G-1 et seq., amends C.45:1-2.1 et al., Ch.244.
- Post-polio sequelae public awareness campaign; established, C.26:2-180 et seq., Ch.98.
- Prescription female contraceptives, coverage; provided, exceptions, C.17:48-6ee et al., Ch.251.
- Protective eyewear for children wearing eyeglasses, participation in sports activities, certain; required, C.5:18-1 et seq., Ch.306.
- Safe Return Program for victims of Alzheimer's Disease, utilization by, training of local law enforcement personnel and State Police; required, C.52:27B-77.7 et seq., Ch.72.
- Sex offenses, penalties; increased, "Sex Crime Victim Treatment Fund" to provide counseling, treatment to sex crime victims; created, C.2C:14-10 et al., amends N.J.S.2C:46-1 et al., Ch.73.
- Special interim assessment on HMOs, converted to annual assessment to support charity care, amends C.26:2J-25 et al., repeals C.26:2J-45 et seq., Ch.129.

HEALTH (Continued)

Sudden Infant Death Syndrome, participation of State Medical Examiner in research; authorized, C.52:17B-88.11, amends C.52:17B-88.10, Ch.227.

"Task Force on Cancer Prevention, Early Detection and Treatment in New Jersey"; established, C.26:2-182 et seq., Ch.280.

"Task Force on Health Care Professional Responsibility and Reporting"; established, Ch.279.

HIGHWAYS

Highway work payments to contractors, amounts retained by Department of Transportation; changed, amends R.S.27:7-34, Ch.356.

Toll monitoring system reports, photo-monitoring systems, dissemination of information, certain circumstances; permitted, amends C.27:23-34.3 et al., Ch.62.

HISTORICAL AFFAIRS

"Chingwe Brook"; designated, C.13:8-44.1 et seq., Ch.327.

New Jersey Black Cultural and Heritage Initiative Foundation; Secretary of State authorized to establish, C.52:16A-90 et seq., Ch.47.

"Trenton Battlefield Historic Heritage Area"; designated, J.R.1.

Victims, survivors, liberators of Nazi concentration camps; honored, 60th anniversary, J.R.6.

HOLIDAYS AND OBSERVANCES

"Black History Month," February; designated, C.36:2-83, J.R.2.

HOSPITALS

Emergency contraception for sexual assault victims; provided, C.26:2H-12.6b et seq., amends C.52:4B-44, Ch.50.

Funds from unemployment taxes, certain, redirected to Health Care Subsidy Fund, unemployment benefits; modified, amends R.S.43:21-7 et al., Ch.123.

Jersey Shore University Medical Center, Monmouth Medical Center, specialty acute care children's hospitals for Monmouth, Ocean counties; designated, C.26:2H-18g, amends C.26:2H-18c et seq., Ch.116.

Patients in psychiatric facilities, laws governing financial liability; revised, C.30:4-80.6a et al., amends C.30:4-27.2 et al., Ch.55.

Staffing information, certain, provision to public; required, C.26:2H-5f et seq., Ch.21.

HOUSING

- Affordable housing projects, certain, reduced sewer, water connection fees for MUAs, CUAs, Passaic Valley Sewerage District; required, C.40:14A-8.3 et al., amends C.40:14A-8 et al., Ch.29.
- Affordable housing units, certain, adaptability for use by elderly, disabled persons; required, C.52:27D-311a et al., amends C.52:27D-304 et al., Ch.350.
- Builder contributions to new home warranty security fund, certain circumstances, suspension; temporarily eliminated, Ch.131.
- Executive directors of housing authorities, redevelopment agencies, education requirement; changed, amends C.40A:12A-12 et al., Ch.79.
- Rental assistance grants, employment and training services required for receipt, certain circumstances, C.52:27D-287.4, Ch.66.
- Residences, certain, portable fire extinguisher; required, amends C.52:27D-198.1 et seq., Ch.71.
- Special Needs Housing Trust Fund in the New Jersey Housing and Mortgage Finance Agency; established, C.34:1B-21.25a et al., amends C.34:1B-21.24 et seq., Ch.163.

HUMAN SERVICES

- Behavioral health care service carriers, disclosures to insureds, certain; required, C.26:2S-15.1, amends C.26:2S-2 et al., Ch.172.
- Child protective services, laws; revised, amends C.9:6-8.21 et al., Ch.169.
- "Family Health Care Coverage Act," C.30:4J-8 et al., amends C.18A:40-34 et al., repeals C.30:4I-1 et al., Ch.156.
- "Kinship Legal Guardianship Notification Act," C.30:4C-89 et seq., Ch.95.
- Medicaid-eligible persons, HIV, AIDS infected, certain, admission to long-term care facilities, criteria; provided, C.30:4D-6j, Ch.111.
- Medicaid, federal, waivers for persons with developmental disabilities, application, reports certain; required, C.30:6D-42.1 et seq., Ch.252.
- "New Jersey Advance Directives for Mental Health Care Act," C.26:2H-102 et al., Ch.233.
- Patients in psychiatric facilities, laws governing financial liability; revised, C.30:4-80.6a et al., amends C.30:4-27.2 et al., Ch.55.
- Safe Haven Awareness Promotion Task Force; established, Ch.294.
- "Social Services Student Loan Redemption Program Act," C.18A:71B-87 et al., Ch.157.
- Special Needs Housing Trust Fund in the New Jersey Housing and Mortgage Finance Agency; established, C.34:1B-21.25a et al., amends C.34:1B-21.24 et seq., Ch.163.

INSURANCE

- Behavioral health care service carriers, disclosures to insureds, certain; required, C.26:2S-15.1, amends C.26:2S-2 et al., Ch.172.
- "Dental Plan Organization Act," provisions, certain; revised, amends C.17:48D-2 et al., repeals C.17:48D-22, Ch.38.
- Dependents, health coverage until age 30, certain circumstances; required, C.17:48-6.19 et al., Ch.375.
- Domestic insurers, investment limits, certain; increased, amends N.J.S.17B:20-1 et seq., repeals N.J.S.17B:28-13, Ch.193.
- Group life insurance, statutes concerning; revised, C.17B:27-68 et seq., repeals N.J.S.17B:27-1 et al., Ch.190.
- "Health Claims Authorization, Processing and Payment Act," C.17B:30-48 et seq., amends C.26:2S-11 et al., Ch.352.
- Health maintenance organizations, risk based capital requirements; changed, C.26:2J-18.2 et seq., amends C.26:2J-26 et al., Ch.65.
- High deductible health plans, laws concerning coverage, treatment; amended, C.17:48E-35.27 et al., amends C.17:48E-35.10 et al., Ch.248.
- "Indexed Standard Nonforfeiture Law for Individual Deferred Annuities," C.17B:25-21 et al., Ch.194.
- Managed care carriers, provision of fee schedules to health care providers, certain; required, C.26:2S-9.2 et seq., Ch.286.
- Prescription female contraceptives, coverage; provided, exceptions, C.17:48-6ee et al., Ch.251.
- "Senior Citizen Investment Protection Act," deferred annuities, certain, surrender charges; prohibited, amends C.17B:25-20, Ch.45.
- Small employer health benefits coverage, method of determining credit toward minimum participation rate; changed, amends C.17B:27A-24, Ch.166.
- "Viatical Settlement Act," C.17B:30B-1 et seq., amends C.49:3-49, repeals C.17B:30A-1 et seq., Ch.229.

INTERSTATE RELATIONS

- "SMART Research and Development Compact Act," C.52:9X-11 et seq., Ch.377.
- "Waterfront Commission Act," jurisdiction over licensing, registration procedures, certain; expanded, amends C.32:23-6 et al., Ch.313.

JOINT RESOLUTIONS

- "Black History Month," February; designated, C.36:2-83, J.R.2.
- "Breast Cancer Awareness Month," October; designated, C.36:2-86, J.R.7.
- "Cystic Fibrosis Awareness Day," March 6; designated, C.36:2-85, J.R.4.

JOINT RESOLUTIONS (Continued)

Emergency medical services, independent study; provided, J.R.9.
"Frank Oliver Pedestrian Bridge," in Ramapo Mountain State Forest; designated, J.R. 5.
New Jersey P.O.W. - M.I.A. Week of Remembrance, April 9 through April 15; designated, C.36:2-84, J.R.3.
"Smart Freight Railroad Study Commission"; established, J.R.8.
"Trenton Battlefield Historic Heritage Area"; designated, J.R.1.
Victims, survivors, liberators of Nazi concentration camps; honored, 60th anniversary, J.R.6.

LABOR

Child Labor Law Enforcement Trust Fund, advisory board; established, amends C.34:2-21.19, Ch.167.
Disclosure, refusal to participate in fraudulent employer practices, employee rights, remedies; increased, amends C.34:19-3 et al., Ch.329.
Minimum wage; increased, New Jersey Minimum Wage Advisory Commission; created, C.34:11-56a4.7 et seq., amends C.34:11-56a4, Ch.70.
Rental assistance grants, employment and training services required for receipt, certain circumstances, C.52:27D-287.4, Ch.66.
State building service contracts, prevailing wage standards for employees; established, C.34:11-56.58 et seq., Ch.379.
State workforce investment system; revised, Center for Occupational Employment Information; established, C.34:15C-7.1 et al., amends C.34:15B-35 et al., repeals N.J.S.18A:69-1 et al., Ch.354.
Temporary disability rights, employer notification to workers; required, amends C.43:21-49, Ch.106.
"The Domestic Violence and Workforce Development Initiative Act," C.34:1A-1.7 et al., amends C.30:14-4, Ch.309.
Union representative, selection, "card check" method; permitted, amends C.34:13A-5.1 et al., Ch.161.

LANDLORD AND TENANT

Eviction proceedings, actions, certain; prohibited, penalties; established, C.2C:33-11.1 et al., amends N.J.S.2A:39-1 et al., Ch.319.
Persons in military service for more than 90 days, cancellation of leases of personal property, without penalty; permitted, amends C.38:23C-14, Ch.320.
Residential lease, early termination by senior citizen tenants, certain circumstances; permitted, amends C.46:8-9.2, Ch.112.

MILITARY AND VETERANS

- College students called to active duty, certain, reenrollment, refund; provided, C.18A:62-4.3, Ch.33.
- Council on Armed Forces and Veterans' Affairs, membership, mission; expanded, amends C.38A:3-16 et al., Ch.40.
- Military facilities, land use, certain, adjacent, notification requirements; established, C.40:55D-12.4 et al., amends C.40:55D-5 et al., Ch.41.
- New Jersey P.O.W. - M.I.A. Week of Remembrance, April 9 through April 15; designated, C.36:2-84, J.R.3.
- Nonresident tuition fees, imposition on members of NJ National Guard, certain survivors of members killed in line of duty; prohibited, C.18A:62-24.1 et al., Ch.317.
- Persons in military service for more than 90 days, cancellation of leases of personal property, without penalty; permitted, amends C.38:23C-14, Ch.320.
- Tuition grant eligibility for children of military personnel at N.J. installations, certain; provided, C.18A:71B-20.1, Ch.60.
- U.S. Armed Forces, National Guard members, certain, housing, subsistence allowances, exemption from taxable gross income; provided, amends N.J.S.54A:6-7, Ch.63.
- Veterans' discharge certificate, exemption from open public records law, access by veteran, spouse; provided, amends C.47:1A-1.1, Ch.170.
- Veterans of operations Northern and Southern Watch, extension of veterans' benefits, certain; provided, amends N.J.S.11A:5-1 et al., Ch.64.
- World War II Veterans' Memorial Fund; created, C.38A:3-2.4 et seq., Ch.59.

MOTOR VEHICLES

- Ambulances, used, removal of markings before sales, certain; required, C.39:10-9.4, Ch.295.
- "Christopher's Law," unlicensed driver, involvement in motor vehicle accident, certain; criminalized, amends C.2C:40-22, Ch.230.
- Commercial motor vehicle registrations, validity for 12 months; provided, amends R.S.39:3-20, Ch.214.
- Commercial motor vehicles, statutes concerning; revised, C.39:4-128.11 et al., amends R.S.39:1-1 et al., Ch.147.
- Emergency management volunteers, certain, display of blue emergency warning lights on vehicles; permitted, C.39:3-54.22 et seq., amends C.39:3-54.7 et al., Ch.34.
- Emergency warning lights, vehicles of members of volunteer emergency services, certain; permitted, amends C.39:3-54.7 et al., Ch.218.

MOTOR VEHICLES (Continued)

- Farm vehicles, certain, expanded usage; permitted, amends R.S.39:3-25, Ch.76.
- Federal motor carrier registration, financial responsibilities requirements, enforcement; required, amends C.39:5B-32, Ch.109.
- Intermodal chassis, maintenance check program; established, C.39:3-79.10 et seq., Ch.234.
- Low-speed vehicles, certain, operation; regulated, C.39:4-31.1 et seq., amends R.S.39:1-1, Ch.273.
- Medical review, retesting of family member as driver, certain circumstances, receipt of confirmation by family members; required, C.39:3-10.33, Ch.255.
- "Mercury Switch Removal Act of 2005," scrap vehicles, C.13:1E-99.82 et seq., Ch.54.
- Motorized scooters, motorcycles, operation; regulated, C.39:4-14.12 et al., amends C.39:1-1, Ch.159.
- Motor vehicle registration fees, increase to cover emergency medical helicopter program, State Police trooper classes; provided, amends C.39:3-8.2, Ch.311.
- Off-site vehicle sales, certain; permitted, C.39:10-19.1 et seq., amends C.2C:33-26, Ch.351.
- Pedestrian safety, DOT actions to increase, C.39:4-36.3 et al., amends C.27:1B-25 et al., Ch.158.
- Pedestrians, failure of motorists to yield, penalties; increased, "Pedestrian Safety Enforcement and Education Fund"; created, C.39:4-36.2, amends R.S.39:4-36, Ch.86.
- Toll monitoring system reports, photo-monitoring systems, dissemination of information, certain circumstances; permitted, amends C.27:23-34.3 et al., Ch.62.
- Traffic calming measures, construction on roads near schools, certain; permitted, amends C.39:4-8.10, Ch.221.
- Traffic control signals, devices which interfere with, use, possession, certain; prohibited, C.2C:40-24, amends N.J.S.2C:33-24, Ch.96.
- Trucks, violation of ordinances on steep grades, certain, fines; increased, C.40:67-16.5a, Ch.213.

MUNICIPALITIES

- Abandoned property, laws concerning; amended, amends C.55:19-55 et al., Ch.118.
- Bonds, local, issuance for refurbishment of public safety vehicles, certain; permitted, amends N.J.S.40A:2-22, Ch.174.

MUNICIPALITIES (Continued)

- Curfew ordinances, certain, adoption relative to school hours for juveniles; permitted, amends C.40:48-2.52, Ch.23.
- Executive directors of housing authorities, redevelopment agencies, education requirement; changed, amends C.40A:12A-12 et al., Ch.79.
- Hiring preference, children of firefighters, law enforcement officers killed in line of duty; established, amends C.40A:14-10.1a et al., Ch.290.
- Main Street New Jersey Advisory Board, membership; increased, amends C.52:27D-456, Ch.284.
- Mayor, council members in certain municipalities, terms; increased, amends N.J.S.40A:62-2, Ch.93.
- Military facilities, land use, certain, adjacent, notification requirements; established, C.40:55D-12.4 et al., amends C.40:55D-5 et al., Ch.41.
- Municipal providers of light, heat, power, laws concerning, certain; revised, amends C.40A:11-5 et al., Ch.296.
- Municipal redevelopment agencies, certain, additional commissioners; permitted, C.40A:12A-11.1, Ch.275.
- Municipalities, certain, conduct of election by mail; permitted, C.19:62-1 et seq., Ch.148.
- Open space trust funds, depositing of funds from any source; permitted, agreements with nonprofit organizations, certain, for land, historic preservation matters, C.40:12-15.10, amends C.40:12-15.2 et al., Ch.108.
- Public contracts, limitation on award to political contributors by local units, certain circumstances; permitted, filing of annual disclosure statement, certain; required, C.40A:11-51 et al., Ch.271.
- Special police officers hired by municipalities, certain, reimbursement of former employer, certain circumstances; required, C.40A:14-178.1, Ch.75.
- "Tourism lodging," definition amended, amends C.40:54D-3, Ch.78.
- Trucks, violation of ordinances on steep grades, certain, fines; increased, C.40:67-16.5a, Ch.213.
- Violation, first, of municipal ordinance, maximum fine; increased, amends R.S.40:49-5 et al., Ch.269.
- Waiver of building restriction on sale of lands, certain; authorized, amends C.40:60-51.2 et al, Ch.52.

NURSING HOMES, ROOMING AND BOARDING HOUSES

- Staffing information, certain, provision to public; required, C.26:2H-5f et seq., Ch.21.

PARKS

State park ranger, title changed to State park police officer, amends N.J.S.2C:39-6 et al., Ch.216.

Violations, certain, committed on DEP, Palisades Interstate Park Commission lands, penalties; increased, amends C.13:1L-23 et al., Ch.330.

PENSIONS AND RETIREMENT

County pension funds, certain, enhancement for retirees, certain; permitted, C.43:10-2.1, Ch.36.

Employees' Retirement System of Jersey City, penalty for early retirement; reduced, amends C.43:13-22.54a, Ch.247.

PFRS, enrollment of county fire marshals, assistant marshals, certain; permitted, amends N.J.S.40A:14-1 et seq., Ch.366.

PFRS, mandatory retirement age, certain circumstances; raised, amends C.43:16A-5, Ch.381.

PFRS, volunteer firemen, certain, transfer from PERS; eligibility provided, C.43:16A-3.15, Ch.326.

School district employees' pension funds, board of trustees, certain counties, membership; changed, amends N.J.S.18A:66-97 et al., Ch.328.

SHBP, coverage for State law enforcement officers, certain; limited, amends C.52:14-17.23 et al., Ch.341.

Supplemental Annuity Collective Trust of New Jersey, maximum contribution by public employees; increased, amends C.52:18A-113 et al., Ch.256.

Veterans of operations Northern and Southern Watch, extension of veterans' benefits, certain; provided, amends N.J.S.11A:5-1 et al., Ch.64.

PLANNING AND ZONING

Planning and zoning board members, educational requirements; established, C.40:55D-23.3 et seq., amends C.40:55D-8, Ch.131.

POLICE

Criminal street gangs, sharing of information regarding; facilitated, C.53:1-15.1, amends C.52:17B-5.3, Ch.332.

Gang Land Security Task Force; established, Ch.107.

Hiring preference, children of firefighters, law enforcement officers killed in line of duty; established, amends C.40A:14-10.1a et al., Ch.290.

Juvenile central registry information, certain, access for law enforcement agencies; clarified, amends C.2A:4A-60, Ch.165.

Less-lethal ammunition, use, exemption from "deadly force" justification; provided, amends N.J.S.2C:3-11, Ch.250.

POLICE (Continued)

- Police Training Commission, membership; increased, amends C.52:17B-70, Ch.268.
- Provider of electronic communication, remote computing services, required information disclosure to authorized law enforcement agencies; expanded, amends C.2A:156A-29, Ch.270.
- Safe Return Program for victims of Alzheimer's Disease, utilization by, training of local law enforcement personnel and State Police; required, C.52:27B-77.7 et seq., Ch.72.
- Safe schools resource officers, liaisons to law enforcement, completion of training courses developed by Police Training Commission; required, C.52:17B:71.8 et al., Ch.276.
- Search and rescue dogs, penalty for injuring, killing; provided, amends C.2C:29-3.1, Ch.24.
- SHBP, coverage for State law enforcement officers, certain; limited, amends C.52:14-17.23 et al., Ch.341.
- Special police officers hired by municipalities, certain, reimbursement of former employer, certain circumstances; required, C.40A:14-178.1, Ch.75.
- State park ranger, title changed to State park police officer, amends N.J.S.2C:39-6 et al., Ch.216.

PROFESSIONS AND OCCUPATIONS

- Alternative to Discipline Program for impaired nurses; established, C.45:11-24.10 et seq., Ch.82.
- "Bounty Hunter Licensing Act," C.45:19-28 et seq., Ch.376.
- Certified public accountants, applicants for examination, educational requirements; changed, amends C.45:2B-49, Ch.104.
- Contact lenses, dispensing, licensure; required, C.2C:40-25, amends R.S.45:12-19 et al., Ch.262.
- Court reporters, certification; required, C.45:15B-13 et seq., amends C.45:15B-1 et al., repeals C.45:15B-11, Ch.308.
- Debt adjusters, licensed, additional requirements; established, penalties for violations; increased, C.17:16G-9, amends C.17:16G-5 et al., Ch.287.
- Dental hygienists, continuing education requirements; revised, amends C.45:6-56, Ch.5.
- Dentists, exemption from requirement for needles, sharp devices to have safety features, certain; provided, amends C.26:2H-5.12, Ch.278.
- "Health Care Professional Responsibility and Reporting Enhancement Act," C.45:1-33 et al., amends C.26:2H-12.2a et al., repeals C.26:2H-12.2 et al., Ch.83.

PROFESSIONS AND OCCUPATIONS (Continued)

- Home inspectors, regulations relative to licensure; changed, C.45:8-78 et al., amends C.45:8-62 et al., repeals C.45:8-69, Ch.201.
- Kidney disease, testing by clinical laboratories for diagnostic purposes; required, C.45:9-42.34a, Ch.236.
- Marriage and family therapists, licensure requirements; changed, amends C.45:8B-6 et al., Ch.49.
- Needle electromyography, performance restricted to physicians, C.45:9-5.2, Ch.303.
- Ophthalmic dispensers, technicians, incorporation; permitted, amends C.14A:17-3, Ch.27.
- Optometrists, continuing education requirements, registration fees, certain; increased, amends C.45:12-9.2, Ch.141.
- Physician assistants, prescription of controlled dangerous substances, certain circumstances; permitted, amends C.45:9-27.19, Ch.48.
- Physicians, cultural competency training for licensure; required, C.45:9-7.2 et seq., Ch.53.
- Physician, license revoked by another state, agency, authority, suspension by State Board of Medical Examiners; required, C.45:9-19.16a, Ch.257.
- Podiatric medicine, elimination of outdated terms in statutes; revised, amends R.S.45:5-1 et al., Ch.259.
- "Polysomnography Practice Act," C.45:14G-1 et seq., amends C.45:1-2.1 et al., Ch.244.
- "Task Force on Health Care Professional Responsibility and Reporting"; established, Ch.279.
- Well drillers, pump installers, licensed, continuing education; required, amends C.58:4A-10 et al., Ch.134.

PUBLIC CONTRACTS

- Bid advertisements, changes, additions, uniform period for issuance by contracting entities, certain; provided, amends N.J.S.18A:18A-21 et al., Ch.191.
- Contracts between local government, private inspection agency under Uniform Construction Code, compliance with "Local Public Contracts Law"; required, C.52:27D-124.3, amends C.52:27D-124 et al., Ch.212.
- Local Public Contracts Law, value engineering clause in specifications, certain; required, C.40A:11-16.6, Ch.67.
- Public contracts, limitation on award to political contributors by local units, certain circumstances; permitted, filing of annual disclosure statement, certain; required, C.40A:11-51 et al., Ch.271.

PUBLIC CONTRACTS (Continued)

- Pupil transportation services, competitive bidding by public entities, certain; required, C.18A:39-11.2 et seq., Ch.84.
- State building service contracts, prevailing wage standards for employees; established, C.34:11-56.58 et seq., Ch.379.
- "State College Contracts Law," public advertisement of bids, requirements; changed, amends N.J.S.18A:64-6 et al., repeals C.18A:64-71, Ch.369.
- State contracting process; changed, State officers and employees involved in contracting, disclosure requirements, certain; imposed, C.52:34-10.1 et seq., amends C.52:34-6.1 et al., Ch.336.
- State contracts for wood, paper products, preference for products from sustainably managed forests, procurement systems; provided, C.52:32-45 et seq., Ch.367.
- State contracts, subcontracts, all services performed within the U.S.; required, C.52:34-13.2, Ch.92.

PUBLIC EMPLOYEES

- Collective negotiations unit categories for Executive Branch employees, ten; designated, C.34:13A-5.10, Ch.142.
- Grievance arbitration under public employment agreement, presumption in favor by court, agency; required, amends C.34:13A-5.3, Ch.380.
- Local public entities, provision of health benefits to domestic partners of certain employees; permitted, C.26:8A-13, amends C.18A:16-12 et al., Ch.334.
- Long term care insurance plan for local public employees and retirees, offer; required, C.52:18-11.2 et al., Ch.198.
- State contracting process; changed, State officers and employees involved in contracting, disclosure requirements, certain; imposed, C.52:34-10.1 et seq., amends C.52:34-6.1 et al., Ch.336.
- Union officers, employees, certain, participation in SHBP; permitted, C.52:14-17.36a et seq., Ch.135.
- Unions, service with, paid, unpaid leaves of absence from State or local service; provided, C.40A:9-7.3 et al., amends N.J.S.11A:6-12, Ch.368.

PUBLIC RECORDS

- Social security number, display on document intended for public recording; prohibited, C.47:1-16, Ch.99.
- Veterans' discharge certificate, exemption from open public records law, access by veteran, spouse; provided, amends C.47:1A-1.1, Ch.170.

PUBLIC UTILITIES

"BPU Business Ombudsman Act," C.48-2-92 et seq., Ch.215.

Energy efficiency standards, products, certain; established, C.48:3-99 et seq., Ch.42.

Municipal providers of light, heat, power, laws concerning, certain; revised, amends C.40A:11-5 et al., Ch.296.

Underground facility operators, certain, liability, certain; changed, amends C.48:2-75 et al., Ch.22.

RAILROADS

"Smart Freight Railroad Study Commission"; established, J.R.8.

REAL PROPERTY

Abandoned property, laws concerning; amended, amends C.55:19-55 et al., Ch.118.

Builder contributions to new home warranty security fund, certain circumstances, suspension; temporarily eliminated, Ch.131.

Campground, not included in definition of "private residential leasehold community"; clarified, amends C.46:8C-10, Ch.68.

Transfers of certain residential property, fee structure; changed, C.46:15-7.3, amends C.46:15-7.2, Ch.19.

RECREATION

Bicycle, roller skate, skateboard helmets, wearing until age 17; required, amends C.39:4-10.1 et al., Ch.208.

Campground, not included in definition of "private residential leasehold community"; clarified, amends C.46:8C-10, Ch.68.

"Frank Oliver Pedestrian Bridge," in Ramapo Mountain State Forest; designated, J.R. 5.

High school student-athlete, loss of amateur status, contribution toward, penalty; established, C.18A:36-37, Ch.364.

"New Jersey Baseball Spectator Safety Act of 2006," C.2A:53A-43 et seq., Ch.362.

New Jersey Sports and Exposition Authority, development of professional football league training facilities, powers, certain; expanded, amends C.5:10-6 et al., Ch.302.

Protective eyewear for children wearing eyeglasses, participation in sports activities, certain; required, C.5:18-1 et seq., Ch.306.

"Tourism lodging," definition amended, amends C.40:54D-3, Ch.78.

REORGANIZATION PLANS

- Debt collection functions, transfer from various State agencies to the Department of the Treasury, No.004-2005.
- Licensing of private licensed facilities for persons with developmental disabilities, transfer, consolidation, reorganization into the Department of Human Services, No.006-2005.
- Licensing, regulation of residential health care facilities, transfer, consolidation, reorganization into the Department of Community Affairs, No.002-2005.
- Motorcycle Safety Education Program, transfer to the Motor Vehicle Commission, No.001-2005.
- Office of Licensing, transfer from various divisions in the Department of Human Services to the Office of Program Integrity and Accountability, transfer of the Institutional Abuse Investigations Unit, No.007-2005.
- Office of Managed Care, transfer, consolidation, reorganization into the Department of Banking and Insurance, No.005-2005.
- Public Health Council, transfer of functions, powers, duties, certain to the Department of Health and Senior Services, No.003-2005.

SCHOOLS

- Community service pilot program for high school juniors; established, Ch.220.
- County vocational school districts, certain, boards of education, appointment of additional members; authorized, C.18A:54-16.14, amends N.J.S.18A:54-16, Ch.299.
- Curfew ordinances, certain, adoption relative to school hours for juveniles; permitted, amends C.40:48-2.52, Ch.23.
- Disabled students, certain circumstances, participation in interscholastic athletic programs; permitted, C.18A:46-13.1, Ch.260.
- Drug testing for students, certain, adoption of policy by school board; permitted, C.18A:40A-22 et seq., Ch.209.
- Experiments involving animals, certain, refusal by students to participate; permitted, provision of alternative education project; required, C.18A:35-4.24 et seq., Ch.266.
- High school student-athlete, loss of amateur status, contribution toward, penalty; established, C.18A:36-37, Ch.364.
- Juvenile detention centers, courses of study taken by juveniles, credits applied by public school districts, C.18A:7C-12, Ch.265.
- New Jersey Quality Single Accountability Continuum (NJ QSAC) for monitoring public schools; established, C.18A:7A-15.2 et al., amends C.18A:7A-3 et al., repeals C.18A:7A-14.1 et al., Ch.235.

SCHOOLS (Continued)

- Pamphlet regarding pedophile crimes, distribution to students; required, C.52:17B-210, Ch.347.
- Pupil transportation services, competitive bidding by public entities, certain; required, C.18A:39-11.2 et seq., Ch.84.
- Safe schools resource officers, liaisons to law enforcement, completion of training courses developed by Police Training Commission; required, C.52:17B:71.8 et al., Ch.276.
- "School Construction Review Commission"; established, Ch.117.
- Special Education Review Commission; established, Ch.339.
- State aid, additional, districts, certain, bordered by Abbott districts; increased, C.18A:7F-10.1 et seq., Ch.122.
- State Board of Examiners, issuance of credentials to substitute teachers, school nurses, certain; permitted, amends N.J.S.18A:6-38, Ch.110.
- Suicide prevention, instruction for public school teaching staff members; required, C.18A:6-111 et seq., Ch.310.
- Teachers employed by approved private schools for the disabled, wrongful cessation of performance of duties, suspension of certification; permitted, amends N.J.S.18A:26-10, Ch.74.
- Teaching staff members, novice, employment date, benefits, established, C.18A:26-2a et al., Ch.144.

SENIOR CITIZENS

- Affordable housing units, certain, adaptability for use by elderly, disabled persons; required, C.52:27D-311a et al., amends C.52:27D-304 et al., Ch.350.
- New Jersey Elderly Person Suicide Prevention Advisory Council; established, C.26:2MM-1 et seq., Ch.274.
- Registered professional guardians; regulated, C.52:27G-32 et al., amends N.J.S.3B:12-25 et al., Ch.370.
- Residential lease, early termination by senior citizen tenants, certain circumstances; permitted, amends C.46:8-9.2, Ch.112.
- "Senior Citizen Investment Protection Act," deferred annuities, certain, surrender charges; prohibited, amends C.17B:25-20, Ch.45.

SEWERAGE

- Sewer, water connection fees, credit by municipal, county sewerage, utilities authorities for certain units damaged by catastrophic events; required, C.40:14A-8.4 et al., amends C.40:14A-8 et al., Ch.173.

STATE GOVERNMENT

- "Acting Governor" service, certain, title of Governor for official, historical purposes; provided, amends R.S.52:15-5, Ch.282.
- Asian American Study Foundation; established, C.52:9WW-1 et seq., Ch.371.
- Campaign contributions by business entities, certain, prohibited, C.19:44A-20.13 et seq., amends C.19:44A-20.7 et seq., repeals C.19:44A-20.2, supersedes Executive Order No. 134 (2004), Ch.51.
- Debt collection by State departments, agencies, enhanced collection; provided, C.2A:16-11.1 et al., amends N.J.S.2A:17-50 et al., Ch.124.
- "Emergency Health Powers Act," C.26:13-1 et seq., amends R.S.26:4-2 et al., Ch.222.
- Gang Land Security Task Force; established, Ch.107.
- New Jersey Black Cultural and Heritage Initiative Foundation; Secretary of State authorized to establish, C.52:16A-90 et seq., Ch.47.
- "New Jersey Hall of Fame Act," C.5:10-6.4 et seq., amends C.5:10-6.1, Ch.232.
- Office of the Inspector General; established, C.52:15B-1 et seq., Ch.119.
- "Public Advocate Restoration Act of 2005," C.52:27EE-1 et seq., amends C.52:27G-3 et al., repeals C.30:1A-2 et al., Ch.155.
- Public funds, certain, investment in foreign companies doing business in the Sudan; prohibited, C.52:18A-89.9 et seq., Ch.162.
- Sale of surplus land, Township of Ewing, certain; authorized, Ch.113.
- Sale, to clear title of real property, certain, located in Sea Isle City, Cape May County; authorized, Ch.246.
- State Athletic Control Board, chairmanship, part-time position; provided, amends C.5:2A-3 et al., Ch.240.
- State Commission of Investigation, law concerning; changed, C.52:9M-1.2 et seq., amends C.52:9M-1 et al., Ch.58.
- State contracts, subcontracts, all services performed within the U.S.; required, C.52:34-13.2, Ch.92.
- State Ethics Commission, renaming of Executive Commission on Ethical Standards, membership; revised, laws concerning; amended, C.52:13D-21.1 et al., amends C.52:13D-21 et al., repeals C.52:14-7.1, Ch.382.
- State property, certain, transfer for roadway improvement in Somerset County; authorized, use restrictions, certain; removed, P.L.1988, c.135, s.2 amended, Ch.335.

TAXATION

- "Cigarette Sales Act," C.54:40A-46 et seq. Ch.85.

TAXATION (Continued)

- Corporation business, gross income tax credits for businesses providing employment for certain handicapped persons; allowed, C.54:10A-5.38 et al., Ch.318.
- Corporation business, gross income tax credits for film production expenses, transfer of credits to other taxpayers; allowed, C.54:10A-5.39 et al., Ch.345.
- County boards of taxation, membership; increased, amends R.S.54:3-2, Ch.44.
- Earned income tax credit, notification of availability, certain persons; required, C.43:21-4.2 et al., amends N.J.S.54A:7-2, Ch.210.
- Estimated gross income tax, sales of real property by nonresidents, minimum payment of 2% of consideration, amends C.54A:8-9, Ch.20.
- Health service corporations, tax treatment of insurance premiums; changed, amends C.54:18A-6 et al., Ch.128.
- High income taxpayers, certain, gross income tax retirement income exclusions; eliminated, amends N.J.S.54A:6-10 et al., Ch.130.
- Multistate personal income tax refund setoff; program; authorized, C.54A:9-8.4, Ch.125.
- New Jersey gross income tax, filing, payment deadlines, extension; conformed to federal practice, amends N.J.S.54A:8-1, Ch.297.
- New Jersey World Trade Center Scholarship Fund, voluntary contributions by taxpayers on gross income tax form; permitted, C.54A:9-25.23, Ch.298.
- Pass-through entities, owners to credit certain payments against estimated taxes, amends C.54:10A-15.11 et al., Ch.288.
- Production activities income, certain, deductions under corporation business tax, gross income tax; disallowance, C.54A:5-15, amends C.54:10A-4, Ch.127.
- Sales and use tax, conformity to Streamlined Sales and Use Tax Agreement; provided, C.54:32B-8.56 et al., amends C.54:32B-2 et al., repeals C.54:32B-8.40, Ch.126.
- Sales and use tax exemption, certain, urban enterprise zones, counties, certain; extended, amends C.52:27H-87.1, Ch.374.
- Unemployment tax avoidance, transfers, acquisitions of businesses, minimizes, amends R.S.43:21-7 et al., Ch.239.
- Unemployment taxes, redirection to Health Care Subsidy Fund, provisions; changed, extended unemployment benefits, time period; changed, amends R.S.43:21-7 et al., Ch.249.

TAXATION (Continued)

U.S. Armed Forces, National Guard members, certain, housing, subsistence allowances, exemption from taxable gross income; provided, amends N.J.S.54A:6-7, Ch.63.

TOBACCO

"Cigarette Sales Act," C.54:40A-46 et seq. Ch.85.

"New Jersey Smoke-Free Air Act," C.26:3D-55 et seq., repeals C.26:3D-1 et al., Ch.383.

Tobacco products, sale, purchase, minimum age; raised, amends C.2A:170-51.4 et al., Ch.384.

TRANSPORTATION

"Hackensack Meadowlands Transportation Planning District Act," C.13:17-95 et seq., Ch.102.

NJ Transit, acquisition, operation of passenger ferries, facilities; permitted, amends C.27:25-3, Ch.91.

UNEMPLOYMENT COMPENSATION

Funds from unemployment taxes, certain, redirected to Health Care Subsidy Fund, unemployment benefits; modified, amends R.S.43:21-7 et al., Ch.123.

"Locked-out" workers, unemployment benefits; permitted, amends R.S.43:21-5, Ch.103.

Temporary disability benefits, current recipients of benefits, certain, provision of reduced benefits; authorized, amends C.43:21-30, Ch.337.

Unemployment tax avoidance, transfers, acquisitions of businesses, minimizes, amends R.S.43:21-7 et al., Ch.239.

Unemployment taxes, redirection to Health Care Subsidy Fund, provisions; changed, extended unemployment benefits, time period; changed, amends R.S.43:21-7 et al., Ch.249.

VALIDATING ACTS

School district bond proceedings, Ch.353.

WATER SUPPLY

County, municipally owned facilities, certain, exemption from BPU rate regulation; provided, amends N.J.S.40A:31-23, Ch.267.

Methyl Tertiary Butyl Ether, sale of gasoline containing; prohibited, C.26:2C-8.22 et seq., Ch.192.

WATER SUPPLY (Continued)

New Jersey Statewide Water Supply Plan, revisions; provided, C.58:1A-13.3, amends C.58:1A-13, Ch.285.

"Safe Dam Act," assessment of penalties for violations, charging of owners for repairs; authorized, amends R.S.58:4-5 et al., Ch.228.

Water Supply Advisory Council, membership; expanded, amends C.13:1B-49.2, Ch.307.

WOMEN

Domestic violence public awareness campaign; established, C.52:27D-43.35 et seq., Ch.204.

Emergency contraception for sexual assault victims; provided, C.26:2H-12.6b et seq., amends C.52:4B-44, Ch.50.

WORKERS' COMPENSATION

Administrative law judges, judges of compensation, retired, recall, certain circumstances; permitted, amends C.52:14F-4 et al., Ch. 6.