

CHAPTER 155

AN ACT restoring the Department of the Public Advocate as a principal department in the Executive Branch of State government, supplementing Title 52 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:

ARTICLE 1. GENERAL PROVISIONS

C.52:27EE-1 Short title.

1. Short title.

This act shall be known and may be cited as the "Public Advocate Restoration Act of 2005."

C.52:27EE-2 Findings, declarations relative to restoring the Department of the Public Advocate.

2. Legislative findings and declarations.

The Legislature finds and declares that:

a. There is a great need for consumer protection and advocacy on behalf of the indigent, the elderly, children, and other persons unable to protect themselves as individuals or a class.

b. Consolidating the diffuse functions of ombudspersons, ratepayer advocate, and other functions within a single Department of the Public Advocate will produce cost savings and more effective protection of the public interest and empower the Public Advocate to coordinate an efficient and timely process for evaluation and resolution of problems and disputes that affect consumers and other interested parties.

c. The abolition of the Public Advocate and the transfer of some of its functions to various departments has resulted in diffuse, ineffective representation of the rights of those unable to effectively advocate for themselves.

d. It is essential that the State of New Jersey marshal existing resources scattered throughout State government and create economies of scale that will aid in the effective delivery of public services and the appropriate allocation of public resources.

e. The Legislature must protect the public and restore confidence in government through effective advocacy, provided by the Department of the Public Advocate.

f. Litigation is a costly and oftentimes ineffective means of resolving disputes, and State government must provide leadership and foster an environment for alternative dispute resolution. The public will benefit greatly from a Public Advocate devoted to a cost-effective means to avoid expensive litigation and an amicable way to resolve disputes.

g. Children have special advocacy needs that require familiarity and expertise regarding the issues that affect them and the Office of the Child Advocate allocated within the Department of the Public Advocate can effectively fulfill those needs.

h. The elderly represent an ever-increasing portion of the population that requires special attention, and a Division of Elder Advocacy can effectively meet those needs.

i. There must be a transfer of funding to fund the operations of the Department of the Public Advocate and the salary of its appointed commissioner known as the "Public Advocate".

C.52:27EE-3 Department established.

3. Department established.

There is hereby established in the Executive Branch of the State Government a principal department which shall be known as the Department of the Public Advocate.

C.52:27EE-4 Commissioner; appointment; term; salary.

4. Commissioner; appointment; term; salary.

The administrator and chief executive officer of the Department of the Public Advocate shall be a commissioner, who shall be known as the Public Advocate and who shall be an attorney-at-law of this State and a person qualified by training and experience to perform the duties of the office. The Public Advocate shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the Governor's term of office and until the appointment and qualification of the Public Advocate's successor.

The Governor shall have the power to remove the Public Advocate for cause.

The Public Advocate shall receive such salary as shall be provided by law.

The Public Advocate may, in the discretion of the Governor, concurrently hold another position established in or allocated to the Department of the Public Advocate, notwithstanding any requirement of law that the Public Advocate devote his or her entire time to the duties of one position or the other. In such case, the Public Advocate shall receive only the salary provided for the Public Advocate, and not the salary for such other position.

C.52:27EE-5 Powers and duties of Public Advocate.

5. Powers and duties of Public Advocate.

The Public Advocate as administrator and chief executive officer of the department shall:

- a. administer the work of the department;
- b. appoint and remove such officers, investigators, stenographic and clerical assistants and other personnel as may be required for the conduct of the department, subject to the provisions of Title 11A of the New Jersey Statutes, Civil Service, and other applicable statutes, except as provided otherwise herein;
- c. adopt, issue and promulgate, in the name of the department, such rules and regulations as may be necessary, consistent with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);
- d. formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees;
- e. institute or cause to be instituted such legal proceedings or processes consistent with the rules governing the courts of New Jersey and the practice of law therein as may be necessary to properly enforce and give effect to any of his or her powers or duties;
- f. have the authority to issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers and other documents, and administer oaths to witnesses in any matter under the investigation of the office. If any person to whom such subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers or other documents required, the public advocate may apply to the Superior Court, which may order the person to appear and give testimony or produce the books, papers or other documents, as applicable;
- g. prepare schedules of rates to be paid for services rendered other than by the staff, taking into account the nature of the services, the time involved, the skill and experience required and other pertinent factors;
- h. make such reports of the department's operation as the Governor or the Legislature shall from time to time request, or as may be required by law. In addition, the Public Advocate shall report to the Governor and the Legislature annually with respect to such matters relating to the work of the Public Advocate and at such times as he or she may deem in the public interest. This report shall describe the matters and activities involving the Department of the Public Advocate, its divisions and offices, including the status and description of significant cases that have been litigated, mediated, or otherwise administered by the Public Advocate. This report shall include an analysis on the costs and benefits of the litigation brought by the Public Advocate, and include any recommendations for administrative or legislative action that he or she deems necessary or appropriate;
- i. perform, exercise and discharge the functions, powers and duties of the department through such divisions or offices as may be established by this act or otherwise by law;
- j. organize and coordinate the work of the department in such divisions or offices, not inconsistent with the provisions of this act, and in such other organizational units as he or she may determine to be necessary for efficient and effective operation;
- k. integrate within the department, so far as practicable, all staff services of the department and of the several divisions and other offices therein;
- l. maintain suitable headquarters for the department and such other quarters as he or she shall deem necessary to the proper functioning of the department;
- m. except as otherwise provided by law, appoint division directors, office directors, and ombudspersons who are qualified by training and experience to direct, under the supervision of the Public Advocate, the several divisions and offices established pursuant to this act. Such division directors, office directors, and ombudspersons shall serve at the pleasure of the Public

Advocate who shall fix their compensation within the limits of available appropriations;

n. adopt policies and procedures to manage any litigation so that the Public Advocate may reasonably ensure that all litigation matters are effectively managed by the relevant division overseeing such actions;

o. solicit and accept grants of funds from the federal government and from private foundations, and allocate or restrict the use of such funds as may be required by the grantor;

p. be the request officer for the department within the meaning of such term as defined in P.L.1944, c.112 (C.52:27B-1 et seq.);

q. hire independent counsel on a case-by-case basis to provide competent representation in light of the nature of the case, the services to be performed, the experience of the particular attorney and other relevant factors, notwithstanding the provisions of section 11 of P.L.1944, c.20 (C.52:17A-11) to the contrary;

r. consult with the child advocate prior to the exercise of the Public Advocate's duties, or those of a division, office or ombudsperson, by commencing an investigation, legal proceeding or other matter, or taking an action, that may be co-extensive with the duties of the child advocate. The purpose of the consultation shall be to provide the child advocate with an opportunity to assist or collaborate with the Public Advocate on such investigation, legal proceeding, matter or action if the extent of the assistance or collaboration is within the powers and duties of the child advocate as those powers and duties are provided in this act. This requirement to consult the child advocate or the failure to do so in a timely manner shall not preclude or serve to restrict the Public Advocate in the performance of his duties, or those of a division, office or ombudsperson, at the Public Advocate's discretion; and

s. perform such other functions as may be prescribed in this act or by any other law.

C.52:27EE-6 Appointment of Assistant Public Advocate.

6. Appointment of Assistant Public Advocate.

The Public Advocate may appoint an Assistant Public Advocate to serve at the pleasure of the Public Advocate. Such appointment shall be in writing and filed with the Secretary of State. The Assistant Public Advocate shall have and shall exercise the powers and perform the functions and duties of the Public Advocate during the absence or disability of the Public Advocate. The Assistant Public Advocate shall also have and exercise such of the powers and perform such of the functions and duties of the Public Advocate as he or she shall be authorized and directed by the Public Advocate. Any such authorization and direction shall be in writing, signed by the Public Advocate and filed with the Secretary of State, and shall include a designation of the period during which it shall be and remain in force. No such authorization and direction shall be deemed to preclude the Public Advocate from himself or herself exercising the powers and the performance of the duties included in the authorization and direction. In the event that the Public Advocate shall die, resign or be removed from office, or become disqualified to execute the duties of the office, or a vacancy shall occur in the office of the Public Advocate for any cause whatsoever, the person then holding the office of Assistant Public Advocate shall continue to hold such office and shall have and shall exercise the powers and perform the functions and duties of the Public Advocate until the successor of the Public Advocate shall be appointed and shall qualify.

The Assistant Public Advocate shall receive such salary as shall be provided by law.

C.52:27EE-7 Deputy public advocates and other assistants.

7. Deputy public advocates and other assistants.

The Public Advocate shall appoint deputy public advocates and other expert assistants in such number as he or she shall require to assist him or her in the performance of the duties of the office. Deputies shall be attorneys-at-law of this State. Deputies and other expert assistants shall serve at the pleasure of the Public Advocate and shall receive such salaries as the Public Advocate shall from time to time designate.

C.52:27EE-8 Professional responsibilities.

8. Professional responsibilities.

The primary duty of all staff members and of others engaged by the department on a

temporary or case basis shall be to the individual client, with like effect and to the same purpose as though privately engaged by the client and without regard to the use of public funds to provide the service. This responsibility shall not preclude the designation or assignment of different individuals to perform various parts of the service from time to time, the duty in such cases to be the same as would exist in the case of a privately engaged law firm.

C.52:27EE-9 Attorney-client and work product privileges.

9. Attorney-client and work product privileges.

a. All communications between the individual client and any attorney in or engaged by the Department of the Public Advocate shall be fully protected by the attorney-client privilege to the same extent and degree as though counsel has been engaged privately, and the work product of such attorneys shall be fully protected by the work product privilege to the same extent and degree as though counsel has been engaged privately. These privileges shall in no way preclude the use by the department of material in its files, otherwise privileged, for the preparation and disclosure of statistical, case study and other sociological data, provided always that in any such use there shall be no disclosure of the identity or the means for discovering the identity of particular clients.

b. Any record held by the department which includes information about the identity, care or treatment of any person seeking or receiving services from the department, or the identity of any person seeking services from the department on behalf of another person, shall not be a government record as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1) and shall not be available for public inspection, copying, or the purchase of copies.

c. Any person acting reasonably and in good faith who seeks assistance from the department on behalf of another person shall be immune from civil or criminal liability that might otherwise be incurred or imposed and shall have the same immunity with respect to testimony given in any judicial proceeding resulting from that request for assistance.

C.52:27EE-10 Standard of performance.

10. Standard of performance.

In providing legal services to clients pursuant to this act, every attorney, whether a member of the staff or engaged by the department on a temporary or case basis, shall adhere to the standards of performance established from time to time by the Supreme Court of New Jersey in the execution of its duty to supervise the practice of law.

C.52:27EE-11 Organization of department.

11. Organization of department.

a. There are hereby established seven divisions and one office within the Department of the Public Advocate.

The divisions within the department shall be the: Division of Administration; Division of Citizen Relations; Division of Mental Health Advocacy; Division of Advocacy for the Developmentally Disabled; Division of Rate Counsel; Division of Public Interest Advocacy; and Division of Elder Advocacy.

The office within the department shall be the Office of Public Advocate.

b. The Office of the Child Advocate shall be an office allocated within the Department of the Public Advocate, but shall be independent of supervision and control by the department and its officers and divisions, as provided in this act.

C.52:27EE-12 Definitions relative to restoring the Department of the Public Advocate.

12. Definitions.

As used in this act:

"administrative action" means and includes any action, omission, decision, recommendation, practice or procedure of an agency, but does not include the preparation, presentation or introduction of legislation;

"agency" means and includes the State of New Jersey and its principal departments, and any division, bureau, board, commission, agency, office, authority, or institution of the Executive Branch of the State government, or any other agency, including bi-state agencies, or any

instrumentality created by the State, including counties, municipalities, or political subdivisions thereof, or any officer, employee, or member thereof acting or purporting to act in the exercise of his or her official duties, except the Governor and the Governor's personal staff and any portion of the Legislative Branch or Judicial Branch of State government;

“compensatory damages” means damages intended to make good the loss of an injured party, and no more. The term includes general and special damages, and does not include nominal, exemplary, or punitive damages;

“consumer insurance rate increases” means prior approval rate increases for: personal lines property casualty coverages; Medicare supplemental coverages; or a rating system change pursuant to section 14 of P.L.1997, c.151 (C.17:29A-46.1 et seq.);

“correctional facility” means a jail, prison, lockup, penitentiary, reformatory, training school, or other similar facility within the State of New Jersey;

"department" means the Department of the Public Advocate established herein, unless the context clearly indicates otherwise;

"elderly" means a person age 60 years or older;

"facility" whenever referred to in sections 61 through 65 of this act, means any facility or institution, whether public or private, offering health or health related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential health care facilities, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers;

“funded entity” means any party to and beneficiary of contracts with the State or its political subdivisions, including any business, corporation, association, partnership, sole proprietorship, firm, trust, organization, unincorporated organization, individual, enterprise, or other legal entity receiving public funds;

“indigent mental hospital admittee” means a person who has been admitted to and is a patient in a mental hospital, an institution for the care and treatment of the mentally ill, or a similar facility, whether public or private, State, county or local, or who is the subject of an action for admission as provided by P.L.1987, c.116 (C.30:4-27.1 et seq.) and who does not have the financial ability to secure competent representation and to provide all other necessary expenses of representation;

"institutionalized elderly" means any person 60 years of age or older, who is a patient, resident or client of any facility, as described herein;

“nominal damages” means damages that are designed to compensate a plaintiff and are less than \$500;

“public employee” means an employee of a public entity, and includes a person participating, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey;

“public entity” means and includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State;

“public interest” means an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens;

“punitive damages” means and includes exemplary damages and means damages awarded against a party in a civil action because of aggravating circumstances in order to penalize and to provide additional deterrence against a defendant to discourage similar conduct in the future. Punitive damages do not include compensatory damages or nominal damages.

ARTICLE 2. OFFICE OF PUBLIC ADVOCATE

C.52:27EE-13 Office of Public Advocate; established.

13. Office of Public Advocate; established.

The Public Advocate may establish an Office of Public Advocate and appoint to such office those persons necessary to the supervision and efficient operations of the department.

ARTICLE 3. DIVISION OF ADMINISTRATION

C.52:27EE-14 Division of Administration; established.

14. Division of Administration; established.

There is hereby established in the Department of the Public Advocate the Division of Administration to be under the supervision of the Director of the Division of Administration.

C.52:27EE-15 Division of Administration; duties.

15. Division of Administration; duties.

It shall be the duty of the Division of Administration, at the direction of the Public Advocate, to prepare a budget for the department, fulfill personnel requirements, provide public information concerning department activities, and conduct such research as the Public Advocate determines to be relevant and necessary to the department's functions.

ARTICLE 4. DIVISION OF CITIZEN RELATIONS

C.52:27EE-16 Division of Citizen Relations; established.

16. Division of Citizen Relations; established.

There is hereby established in the Department of the Public Advocate the Division of Citizen Relations to be under the supervision of the Director of the Division of Citizen Relations.

C.52:27EE-17 Division of Citizen Relations; powers and duties.

17. Division of Citizen Relations; powers and duties.

The Division of Citizen Relations shall, under the direction and supervision of the Director of the Division of Citizen Relations, in addition to other powers and duties vested in it by this act, or any other law:

a. receive and forward to appropriate agencies of the State for determination complaints from any citizen relating to the administrative action or inaction of agencies;

b. investigate any complaint from any citizen relating to the administrative action or inaction of any agency, whether or not such action or inaction is final, where the complaint indicates that the action or inaction may have been:

(1) unreasonable, unfair, oppressive, or potentially discriminatory, although in accordance with law;

(2) unaccompanied by an adequate explanation; or

(3) performed in an inefficient manner; and

c. maintain records indicating the final disposition of any complaint forwarded by the division to an agency.

C.52:27EE-18 Division of Citizen Relations; notice to complainant and agency.

18. Division of Citizen Relations; notice to complainant and agency.

The Division of Citizen Relations shall determine whether a complaint is or is not an appropriate subject for investigation under this act, and shall inform the complainant of that decision, stating its reasons therefor. If the division decides to investigate a complaint, it shall also notify the affected agency of its decision.

C.52:27EE-19 Division of Citizen Relations; procedure after investigation.

19. Division of Citizen Relations; procedure after investigation.

If, after investigation, the Division of Citizen Relations finds that:

a. a matter should be further considered by the agency,

b. an administrative action or inaction should be modified or canceled,

c. a statute or regulation on which an administrative action or inaction is based should be altered,

d. reasons or more complete reasons should be given for an administrative action or inaction, or

e. any other action should be taken by the agency, it shall report its findings and recommendations to the Public Advocate who may request the agency to notify him or her,

within a specified time, of the action taken on such recommendations. The division is also authorized to conduct public hearings on such an issue if it determines that such hearings are necessary. The Public Advocate may refer the findings and recommendations of the Division of Citizen Relations to the Division of Public Interest Advocacy or, if appropriate, to the Division of Rate Counsel.

C.52:27EE-20 Division of Citizen Relations; notice to the complainant.

20. Division of Citizen Relations; notice to the complainant.

After a reasonable time has elapsed, the Division of Citizen Relations shall notify the complainant of the action taken by the Division of Citizen Relations and by the agency which was the subject of the complaint.

C.52:27EE-21 Division of Citizen Relations; Dispute Settlement Office; established.

21. Division of Citizen Relations; Dispute Settlement Office; established.

There is hereby established in the Division of Citizen Relations the Dispute Settlement Office.

C.52:27EE-22 Dispute Settlement Office; services.

22. Dispute Settlement Office; services.

a. The Dispute Settlement Office may provide, in the discretion of the Public Advocate, mediation and other third party neutral services in the resolution of disputes which involve the public interest and may enter into agreements or contracts to carry out any of the purposes or functions of this section. The office may assist public or private parties in resolving disputes. The office is authorized to:

(1) facilitate the resolution of disputes through the provision of mediation and other neutral dispute resolution services;

(2) establish standards for the selection, assignment, and conduct of persons acting on behalf of the office in the resolution of disputes;

(3) conduct educational programs and provide other services designed to reduce the occurrence, magnitude, or cost of disputes;

(4) design, develop, or operate dispute resolution programs, or assist in improving or extending existing dispute resolution programs;

(5) work with the business ombudsman or advocate in the New Jersey Commerce and Economic Growth Commission and take such other action as will promote and facilitate dispute resolution in the State; and

(6) coordinate and cooperate with the Office of Administrative Law so as to avoid duplication of effort and to facilitate alternate resolution of disputes that would otherwise require administrative hearings.

b. The Public Advocate may establish reasonable fees to be charged to public or private parties for the provision of the educational, consultation, dispute resolution, or other services authorized herein and may apply for and accept on behalf of the State any federal, local, or private grants, bequests, gifts, or contributions to aid in the financing of any of the programs or activities of the office. The Public Advocate in the name of the State shall do all that is necessary and proper to receive or to collect all moneys due to the State, including such fees, grants, bequests, gifts, or contributions, by or reimbursement for services rendered pursuant to this section.

C.52:27EE-23 Dispute Settlement Office; transfer of functions.

23. Dispute Settlement Office; transfer of functions.

All functions, powers and duties which had been vested in the Office of Dispute Settlement in the Division of Citizen Complaints and Dispute Settlement in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the Office of the Public Defender, and are now vested in the Office of the Public Defender, are hereby transferred to and assumed by the Dispute Settlement Office of the Division of Citizen Relations in the Department of the Public Advocate.

Whenever any law, rule, regulation, order, reorganization plan, contract, document, judicial

or administrative proceeding or otherwise, reference is made to the Office of Dispute Settlement in the Office of the Public Defender concerning functions, powers and duties which had been vested in the Office of Dispute Settlement in the Division of Citizen Complaints and Dispute Settlement in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and are now vested in the Dispute Settlement Office of the Division of Citizen Relations in the Department of the Public Advocate, the same shall mean and refer to the Dispute Settlement Office in the Division of Citizens Relations in the Department of the Public Advocate.

C.52:27EE-24 Corrections Ombudsperson; established.

24. Corrections Ombudsperson; established.

There is hereby established in the Division of Citizen Relations in the Department of the Public Advocate a Corrections Ombudsperson.

C.52:27EE-25 Corrections Ombudsperson; appointment.

25. Corrections Ombudsperson; appointment.

The Corrections Ombudsperson shall be appointed by the Public Advocate and shall serve at the pleasure of the Public Advocate during the Public Advocate's term of office.

C.52:27EE-26 Corrections Ombudsperson; transfer of functions.

26. Corrections Ombudsperson; transfer of functions.

a. All functions, powers, and duties now vested in the Ombudsman in the Department of Corrections, as referenced in N.J.A.C.10A:1-1.1 et seq., are hereby transferred to and assumed by the Corrections Ombudsperson in the Division of Citizen Relations in the Department of the Public Advocate.

b. Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Ombudsman in the Department of Corrections concerning functions, powers, and duties which had been vested in the Ombudsman, the same shall mean and refer to the Corrections Ombudsperson in the Division of Citizen Relations in the Department of the Public Advocate.

C.52:27EE-27 Corrections Ombudsperson; jurisdiction.

27. Corrections Ombudsperson; jurisdiction.

Any person, over the age of 18 years, who is convicted of a crime under the laws of the State of New Jersey and sentenced to a correctional facility for more than 364 days is a "State-sentenced" inmate and considered to be among the individuals who may properly seek redress from the Corrections Ombudsperson concerning the conditions of their confinement.

C.52:27EE-28 Corrections Ombudsperson; duties.

28. Corrections Ombudsperson; duties.

The Corrections Ombudsperson shall establish and implement procedures for eliciting, receiving, processing, responding, and resolving complaints from inmates, their families, other interested citizens, public officials, and government agencies concerning conditions in the correctional facilities noted in section 27 of this act.

ARTICLE 5. DIVISION OF MENTAL HEALTH ADVOCACY

C.52:27EE-29 Division of Mental Health Advocacy; established.

29. Division of Mental Health Advocacy; established.

a. There is hereby established in the Department of the Public Advocate a Division of Mental Health Advocacy to be under the supervision of the Director of the Division of Mental Health Advocacy.

b. The division is hereby designated as the State's mental health protection and advocacy agency. The intent of this article is that the division shall have all the powers necessary to carry out its responsibilities as required to qualify for federal funding as the State protection and advocacy agency. Until such designation is effectuated, the division may take such action as it

deems appropriate for the purpose of coordinating with the private entity designated as the State's mental health protection and advocacy agency on the date of enactment of this act.

C.52:27EE-30 Division of Mental Health Advocacy; objective; duties.

30. Division of Mental Health Advocacy; objective; duties.

a. The Division of Mental Health Advocacy shall promote, advocate, and ensure the adequacy of the care received, and the quality of life experienced, by persons with mental illness, including patients, residents, and clients within the mental health facilities and programs operated, funded, or licensed by the State. In determining what elements are essential to ensure adequate care and quality of life, the division shall consider the unique medical, social, and economic needs and problems of persons with mental illness as patients, residents, and clients of facilities and as citizens and community members.

b. The director shall establish and implement procedures to elicit, receive, process, respond, and resolve complaints from patients, their families, other interested citizens, public officials, and government agencies concerning conditions in the State's mental health facilities.

C.52:27EE-31 Division of Mental Health Advocacy; class actions.

31. Division of Mental Health Advocacy; class actions.

The Director of the Division of Mental Health Advocacy may represent, with the approval of the Public Advocate, the interests of indigent mental hospital admittees in such disputes and litigation as will, in the discretion of the Public Advocate, best advance the interests of indigent mental hospital admittees as a class on an issue of general application to them, and may act as representative of indigent mental hospital admittees with any principal department or other instrumentality of State, county or local government.

C.52:27EE-32 Division of Mental Health Advocacy; legal representation; medical consultation.

32. Division of Mental Health Advocacy; legal representation; medical consultation.

The Division of Mental Health Advocacy may provide such legal representation and medical consultation as the director deems appropriate for any indigent mental hospital admittee in any proceeding concerning the admittee's admission to, and retention in, or release from confinement in such a hospital, institution or facility.

C.52:27EE-33 Division of Mental Health Advocacy; eligibility for services.

33. Division of Mental Health Advocacy; eligibility for services.

Eligibility for mental health advocacy services shall be determined on the basis of the need of the client. Need shall be measured according to the financial ability of the client to engage and compensate competent private counsel and to provide all other necessary expenses of representation. Such ability shall be recognized to be a variable depending on the nature, extent and liquidity of assets and on the disposable net income of the client as compared with the nature of the case, the effort and skill required to gather pertinent information, render advice, conduct trial or render other legal services, and probable expenses to be incurred. In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the division shall undertake the same provisionally, and if it is determined subsequently that the client is ineligible, the division shall so inform the client, and the client shall thereupon, with the approval of the court, be obliged to engage his or her own counsel and to reimburse the division for the cost of the services rendered to that time.

C.52:27EE-34 Division of Mental Health Advocacy; financial status of client; investigation.

34. Division of Mental Health Advocacy; financial status of client; investigation.

The Division of Mental Health Advocacy shall make such investigation of the financial status of each mental health client as the circumstances warrant. The division, pursuant to rules and regulations promulgated by the department for this purpose, may obtain information from any public record, office of the State or of any subdivision or agency thereof on request and without payment of the fees ordinarily required by law.

C.52:27EE-35 Division of Mental Health Advocacy; staff.

35. Division of Mental Health Advocacy; staff.

a. The Director of the Division of Mental Health Advocacy may employ, with the approval of the Public Advocate, such assistants on a full-time basis as are necessary to protect the rights of persons with mental illness. When exceptional circumstances arise, the director may retain, with the approval of the Public Advocate, on a temporary basis such other expert assistants as are necessary pursuant to a reasonable fee schedule established in advance by the Public Advocate.

b. Cases shall be assigned to staff attorneys or attorneys hired by case on a basis calculated to provide competent representation in light of the nature of the case, the services to be performed, the experience of the particular attorney and other relevant factors.

C.52:27EE-36 Division of Mental Health Advocacy; status of staff.

36. Division of Mental Health Advocacy; status of staff.

Independent contractors or other individuals, agencies, or entities not established in or employed by the Department of the Public Advocate retained to provide protection and advocacy services to indigent mental hospital admittees, or designated to provide mental health protection and advocacy services, are not public entities or public employees for purposes of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

C.52:27EE-37 Division of Mental Health Advocacy; transfer of functions.

37. Division of Mental Health Advocacy; transfer of functions.

All functions, powers, and duties which had been vested in the Division of Mental Health Advocacy in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and which are exercised by the private entity New Jersey Protection and Advocacy, Inc. or its successor, pursuant to designation by the Governor as the State's mental health protection and advocacy agency, or which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the Office of the Public Defender, and are now exercised by or vested in, as the case may be, the private entity or the Office of the Public Defender, including those related to any indigent mental hospital admittee's admission to, retention in, or release from confinement in a hospital, institution or facility, are hereby transferred to and assumed by the Division of Mental Health Advocacy in the Department of the Public Advocate, except that the private entity shall exercise the functions, powers and duties as the State's mental health protection and advocacy agency until the designation of the division as the State's mental health protection and advocacy agency is effectuated.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the private entity New Jersey Protection and Advocacy, Inc. or its successor, designated by the Governor as the State's mental health protection and advocacy agency, or the Office of the Public Defender, concerning functions, powers, and duties which had been vested in the Division of Mental Health Advocacy in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and are now vested in the private entity or the Office of the Public Defender, the same shall mean and refer to the Division of Mental Health Advocacy in the Department of the Public Advocate, except that with regard to the private entity the reference shall be effective when the designation of the division as the State's mental health protection and advocacy agency is effectuated.

ARTICLE 6. DIVISION OF ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

C.52:27EE-38 Division of Advocacy for the Developmentally Disabled; established; appointment.

38. Division of Advocacy for the Developmentally Disabled; established; appointment.

a. There is hereby established in the Department of the Public Advocate the Division of Advocacy for the Developmentally Disabled to be under the supervision of the Director of the Division of Advocacy for the Developmentally Disabled, appointed by the Public Advocate.

b. The division is hereby designated as the State's protection and advocacy agency for

persons with developmental disabilities. The intent of this article is that the division shall have all the powers necessary to carry out its responsibilities as required to qualify for federal funding as the State protection and advocacy agency. Until such designation is effectuated, the division may take such action as it deems appropriate for the purpose of coordinating with the private entity designated the State's protection and advocacy agency for persons with developmental disabilities on the date of enactment of this act.

C.52:27EE-39 Division of Advocacy for the Developmentally Disabled; objective; duties.

39. Division of Advocacy for the Developmentally Disabled; objective; duties.

a. The Division of Advocacy for the Developmentally Disabled shall promote, advocate, and ensure the adequacy of the care received, and the quality of life experienced, by persons with developmental disabilities, including patients, residents, and clients within the developmental disabilities facilities and programs operated, funded, or licensed by the State. In determining what elements are essential to ensure adequate care and quality of life, the division shall consider the unique medical, social, and economic needs and problems of persons with developmental disabilities as patients, residents, and clients of facilities and as citizens and community members.

b. The director shall establish and implement procedures to elicit, receive, process, respond, and resolve complaints from patients, their families, other interested citizens, public officials, and government agencies concerning conditions in the State's developmental disabilities facilities.

C.52:27EE-40 Division of Advocacy for the Developmentally Disabled; services.

40. Division of Advocacy for the Developmentally Disabled; services.

The Division of Advocacy for the Developmentally Disabled may receive and investigate complaints and provide such legal representation and other advocacy services on an individual or class basis as the Public Advocate deems appropriate to protect and advocate the rights of developmentally disabled persons. The division may also, within the limits of available funding, provide services to other handicapped persons or classes of persons found by the Public Advocate to have needs similar to developmentally disabled people.

C.52:27EE-41 Division of Advocacy for the Developmentally Disabled; eligibility for services.

41. Division of Advocacy for the Developmentally Disabled; eligibility for services.

Eligibility for services for the developmentally disabled shall be determined on the basis of the need of the client and in a manner consistent with the conditions of any grant obtained by the Public Advocate to assist in implementing this act.

C.52:27EE-42 Division of Advocacy for the Developmentally Disabled; staff.

42. Division of Advocacy for the Developmentally Disabled; staff.

The Director of the Division of Advocacy for the Developmentally Disabled may employ, with the approval of the Public Advocate, such assistants on a full-time basis as are necessary to protect the rights of developmentally disabled persons. When exceptional circumstances arise, the director may retain, with the approval of the Public Advocate, on a temporary basis such other expert assistants as are necessary pursuant to a reasonable fee schedule established in advance by the Public Advocate.

Cases shall be assigned to staff attorneys or attorneys hired by case on a basis calculated to provide competent representation in light of the nature of the case, the services to be performed, the experience of the particular attorney and other relevant factors.

C.52:27EE-43 Division of Advocacy for the Developmentally Disabled; status of staff.

43. Division of Advocacy for the Developmentally Disabled; status of staff.

Independent contractors or other individuals, agencies, or entities not established in or employed by the Department of the Public Advocate retained or designated to provide protection and advocacy services to persons with a developmental disability as the term is defined in section 3 of the "Developmentally Disabled Rights Act," P.L.1977, c.82 (C.30:6D-3), are not public entities or public employees for purposes of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq.

C.52:27EE-44 Division of Advocacy for the Developmentally Disabled; definition.

44. Division of Advocacy for the Developmentally Disabled; definition.

For purposes of this act, a developmentally disabled person is a person with a developmental disability as that term is defined in section 3 of the "Developmentally Disabled Rights Act," P.L.1977, c.82 (C.30:6D-3).

C.52:27EE-45 Division of Advocacy for the Developmentally Disabled; transfer of functions.

45. Division of Advocacy for the Developmentally Disabled; transfer of functions.

All functions, powers, and duties which had been vested in the Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and which are exercised by the private entity New Jersey Protection and Advocacy, Inc. or its successor, pursuant to designation by the Governor as the State's protection and advocacy agency for persons with developmental disabilities, or which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the Office of the Public Defender, and are now exercised by or vested in, as the case may be, the private entity or the Office of the Public Defender, are hereby transferred to and assumed by the Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate, except that the private entity shall continue to exercise the functions, powers and duties as the State's protection and advocacy agency for persons with developmental disabilities until the designation of the division as the State's protection and advocacy agency for persons with developmental disabilities is effectuated.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the private entity New Jersey Protection and Advocacy, Inc. or its successor, designated by the Governor as the State's protection and advocacy agency for persons with developmental disabilities, or the Office of the Public Defender, concerning functions, powers, and duties which had been vested in the Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and are now vested in the private entity or the Office of the Public Defender, the same shall mean and refer to the Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate, except that with regard to the private entity the reference shall be effective when the designation of the division as the State's protection and advocacy agency for persons with developmental disabilities is effectuated.

ARTICLE 7. DIVISION OF RATE COUNSEL

C.52:27EE-46 Division of Rate Counsel; established.

46. Division of Rate Counsel; established.

There is hereby established in the Department of the Public Advocate the Division of Rate Counsel to be under the supervision of the Director of the Division of Rate Counsel.

C.52:27EE-47 Director of the Division of Rate Counsel; staff.

47. Director of the Division of Rate Counsel; staff.

a. The Director of the Division of Rate Counsel shall be an attorney-at-law of this State, appointed by the Public Advocate.

b. When exceptional circumstances arise, the Director of the Division of Rate Counsel, with the approval of the Public Advocate, may on a temporary basis retain such expert assistants as are necessary to protect the public interest, pursuant to a reasonable fee schedule established in advance by the Public Advocate.

c. Cases shall be assigned to staff attorneys or to attorneys hired on a case by case basis calculated to provide competent representation in the light of the nature of the case, the services to be performed, the experience of the particular attorney, and other relevant factors.

C.52:27EE-48 Division of Rate Counsel; jurisdiction.

48. Division of Rate Counsel; jurisdiction.

The Division of the Rate Counsel shall have the authority to conduct investigations, initiate

studies, conduct research, present comments and testimony before governmental bodies, issue reports, and produce and disseminate consumer guides on any matters that fall within the Rate Counsel's jurisdiction. The Rate Counsel shall also have the authority to represent the public interest as set forth below.

a. Utilities. The Division of Rate Counsel may represent and protect the public interest as defined in section 12 of this act in proceedings before and appeals from any State department, commission, authority, council, agency, or board charged with the regulation or control of any business, industry, or utility regarding a requirement that the business, industry, or utility provide a service or regarding the fixing of a rate, toll, fare, or charge for a product or service. The Division of Rate Counsel may initiate any such proceedings when the director determines that a discontinuance or change in a required service or a rate, toll, fare, or charge for a product or service is in the public interest.

b. Insurance; limited jurisdiction. The Department of the Public Advocate shall represent and protect the public interest with respect to insurance matters through the Division of Rate Counsel, which may represent and protect the public interest as defined in section 12 of this act in significant proceedings that pertain solely to prior approval rate increases for personal lines property casualty coverages or Medicare supplemental coverages. The Division of Rate Counsel shall have no jurisdiction or authority to participate or intervene in (1) expedited prior approval rate filings made by an insurer or affiliated group of insurers pursuant to section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409 (C.17:36-5.35), or (2) prior approval rate filings of seven percent or less, or (3) rule or form filings for any other form of insurance.

In determining, in his or her discretion, whether a proceeding is significant, the Director of the Division of Rate Counsel shall consider the following factors:

(1) the overall dollar impact of the requested increase, considering the filer's market share and the magnitude of the requested rate change;

(2) whether the increase, if granted, will increase the filer's rates significantly above market norms;

(3) whether the filer is advancing a significantly different alternate ratemaking methodology to the standard methodology established pursuant to section 8 of P.L.1988, c.119 (C.17:29A-36.2);

(4) whether the insurer is experiencing financial difficulties at its present rate level, as evidenced by the filing of rehabilitation proceedings, recent downgrading by insurance rating services, or significant losses reported on the filer's public financial statement.

Upon the effective date of this act, the Director of the Division of Rate Counsel in the Department of the Public Advocate shall, in addition to the powers set forth in this act, have the express authority to intervene in public hearings pursuant to section 66 of P.L.1998, c.21 (C.17:29A-46.8).

C.52:27EE-49 Division of Rate Counsel; intent.

49. Division of Rate Counsel; intent.

It is the intent of the Legislature that the resources of the Division of Rate Counsel be devoted to the maximum extent possible to ensuring adequate representation of the interests of those consumers whose interests would otherwise be inadequately represented in matters within the jurisdiction of the Division of Rate Counsel.

When the interests of consumers differ, the Director of the Division of Rate Counsel shall give priority to representing the interests of consumers whose interests the Director of the Division of Rate Counsel finds to be inadequately represented.

This section does not require the Division of Rate Counsel to represent the interests of a consumer or group of consumers if the Director of the Division of Rate Counsel determines that such representation is adverse to the overall interests of the using and consuming public.

C.52:27EE-50 Division of Rate Counsel; required notices to the division.

50. Division of Rate Counsel; required notices to the division.

The Division of Rate Counsel shall receive a copy from the filer of any prior approval rate filing seeking consumer insurance rate increases, including any amendments or supplements thereto. A copy of such rate filing shall be received by the Division of Rate Counsel concurrent

with any rate filing with the Commissioner of Banking and Insurance; except, however, the filer is not required to provide a copy of such rate filing with the Division of Rate Counsel if: (a) the filing is an expedited prior approval rate filing made pursuant to either section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409 (C.17:36-5.35); or (b) the filing is made pursuant to any statutory change in coverage provided under a policy of private passenger automobile insurance; or (c) the filing is a prior approval rate filing of seven percent or less.

C.52:27EE-51 Division of Rate Counsel; public notices of certain consumer insurance rate increases.

51. Division of Rate Counsel; public notices of certain consumer insurance rate increases.

The Division of Rate Counsel and the Department of Banking and Insurance may publish on their respective official websites, to the extent practicable, as the case may be: (a) notice of all filings for consumer insurance rate increases; (b) all requests for hearing dates for such increases; and (c) the date or dates a hearing is to be held. The Division of Rate Counsel and the Department of Banking and Insurance, pursuant to regulations established by the Division of Rate Counsel, shall establish operational links such that each respective website may be accessed from the other. Publication on the applicable website shall take place within three business days of the applicable notice of filing, request for hearing, and date or dates of hearings.

If an insurer or rating organization files for a personal lines prior approval rate increase, excluding rating system changes made pursuant to P.L.1997, c.151 (C.17:29A-46.1 et seq.), the insurer or ratings organization shall, in conjunction with such filing, notify the public of the proposed rate change; except, however, the filer is not required to notify the public of the proposed rate change if the rate increase pertains to: (a) an expedited prior approval rate filing made pursuant to either section 34 of P.L.1997, c.151 (C.17:29A-46.6) or section 3 of P.L.2001, c.409 (C.17:36-5.35); or (b) a rate filing made pursuant to any statutory change in coverage provided under a policy of private passenger automobile insurance; or (c) a prior approval rate filing of seven percent or less.

Such notice shall be communicated through regular or electronic mail to the named policy holders who use the products and services subject to the rate increase, within seven business days of the applicable filing and shall conform to a form prescribed by the Department of Banking and Insurance pursuant to regulations established in conjunction with the Rate Counsel.

C.52:27EE-52 Division of Rate Counsel; payment of expenses of division; annual utility assessment.

52. Division of Rate Counsel; payment of expenses of division; annual utility assessment.

a. Annual utility assessment. The Division of Rate Counsel shall annually make an assessment against each public utility consistent with, but separate from, the Board of Public Utilities' assessments under the provisions of P.L.1968, c.173 (C.48:2-59 et seq.). All assessments due and owing to the Division of Rate Counsel as of the effective date of this act shall be deemed due and owing to the Division of Rate Counsel in the Department of the Public Advocate as of the effective date of this act.

b. Calculation of annual utility assessment. The annual assessment shall be equal to a percentage of the gross operating revenue of the public utilities under the jurisdiction of the Board of Public Utilities derived from intrastate operations during the preceding calendar year at a rate determined annually by the Director of the Division of Rate Counsel in the manner set forth in section 2 of P.L.1968, c.173 (C.48:2-60), except that the total amount assessed to any public utility shall not exceed $\frac{1}{4}$ of 1 percent of the gross operating revenue subject to assessment hereunder. The minimum annual assessment under this section shall not be less than \$500.

c. Levy and payment of annual assessment. The annual assessment set forth in subsections a. and b. above shall be levied by the Division of the Rate Counsel no later than August 15, and shall be paid within 30 days of mailing notice thereof and a statement of the amount by first class mail to any public utility, except that for Fiscal Year 2006 this assessment shall be levied no later than August 1, 2005.

C.52:27EE-53 Division of Rate Counsel; payment of expenses of division; annual insurance

assessment.

53. Division of Rate Counsel; payment of expenses of division; annual insurance assessment.

a. Annual insurance assessment. 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 of Banking and Insurance by category the total amount of expenses incurred by the State in connection with the administration of the special functions of the Division of Rate Counsel in the Department of the Public Advocate relative to the expenses of the Division of Rate Counsel in connection with the administration of insurance rate cases during the preceding fiscal year. The Department of Banking and Insurance shall make a separate special assessment on lines of insurance subject to the jurisdiction of the Rate Counsel pursuant to subsection b. of section 48 of this act, on an annual basis, in accordance with the formula set forth in P.L.1995 c.156 (C.17:1C-19 et seq.).

b. Calculation of annual insurance assessment. The annual assessment shall be no more than a specified aggregate amount adjusted annually for inflation, which shall be calculated and applied separately from the maximum total assessment set forth in section 13 of P.L.1995, c.156 (C.17:1C-31). The amount collected for expenses pursuant subsection a. of this section, shall not exceed the amount appropriated by the Legislature for those expenses.

C.52:27EE-54 Division of Rate Counsel; transfer of powers and duties.

54. Division of Rate Counsel; transfer of powers and duties.

All functions, powers, and duties which had been vested in the Division of Rate Counsel in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the Department of Insurance and to the Division of the Ratepayer Advocate established by Reorganization Plan 94-001, are hereby transferred to and assumed by the Division of Rate Counsel in the Department of the Public Advocate.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Department of Banking and Insurance, or to the Division of the Ratepayer Advocate concerning functions, powers and duties which had been vested in the Division of Rate Counsel in the Department of the Public Advocate prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the same shall mean and refer to the Division of Rate Counsel in the Department of the Public Advocate.

C.52:27EE-55 Division of Rate Counsel; right to intervene in federal proceedings.

55. Division of Rate Counsel; right to intervene in federal proceedings.

The Division of Rate Counsel shall have the right to represent the public interest in any federal proceeding, including but not limited to proceedings before the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Federal Trade Commission.

ARTICLE 8. DIVISION OF PUBLIC INTEREST ADVOCACY

C.52:27EE-56 Division of Public Interest Advocacy; established.

56. Division of Public Interest Advocacy; established.

There is hereby established in the Department of the Public Advocate the Division of Public Interest Advocacy to be under the supervision of the Director of the Division of Public Interest Advocacy, who shall be an attorney-at-law of this State, appointed by the Public Advocate.

C.52:27EE-57 Division of Public Interest Advocacy; jurisdiction.

57. Division of Public Interest Advocacy; jurisdiction.

The Division of Public Interest Advocacy may represent the public interest in such administrative and court proceedings, other than those under the jurisdiction of the Division of Rate Counsel pursuant to this act, as the Public Advocate deems shall best serve the public interest.

C.52:27EE-58 Division of Public Interest Advocacy; decision to represent particular public interest.

58. Division of Public Interest Advocacy; decision to represent particular public interest.

The Public Advocate shall have sole discretion to represent or refrain from representing the public interest in any proceeding. The Public Advocate shall consider in exercising his or her discretion the importance and the extent of the public interest involved and whether that interest would be adequately represented without the action of the department. If the Public Advocate determines that there are inconsistent public interests involved in a particular matter, the Public Advocate may choose to represent one such interest based on the considerations in this section, to represent no interest in that matter, or to represent one such interest through the Division of Public Interest Advocacy and another or others through other divisions of the department or through outside counsel engaged on a case by case basis. The Public Advocate has the authority to use his or her discretion to refer potential litigation or other matters to the Dispute Settlement Office in the Division of Citizen Relations for mediation and resolution.

C.52:27EE-59 Division of Public Interest Advocacy; power.

59. Division of Public Interest Advocacy; power.

The Division of Public Interest Advocacy may represent and protect the public interest by:

a. intervening in or instituting proceedings before any department, commission, agency, or board leading to an administrative adjudication or administrative rule as defined in section 2 of P.L.1968, c.410 (C.52:14B-2), or intervening in any matter involving the grant or denial of a permit issued by an agency; and

b. instituting litigation on behalf of a broad public interest when authorized to do so by the Public Advocate. Such litigation or representation may include, but is not limited to, litigation on behalf of, or representation of, consumers, the indigent, the elderly, senior citizens, people with disabilities, persons with mental illness and developmental disabilities, or any other group or interest deemed appropriate by the Public Advocate.

C.52:27EE-60 Division of Public Interest Advocacy; additional powers.

60. Division of Public Interest Advocacy; additional powers.

a. The Division of Public Interest Advocacy may receive and investigate complaints and provide such legal representation and other advocacy services as the Public Advocate deems appropriate to protect and advocate the rights of any group or interest deemed appropriate by the Public Advocate, except, however, the provisions of this act shall not be construed to authorize the Division of Public Interest Advocacy, or any other division within the Department of the Public Advocate, to represent any individual in any matters involving incarceration, except as expressly set forth as the duties of the Corrections Ombudsperson in the Division of Citizen Relations.

b. The Division of Public Interest Advocacy may, in its discretion, commence negotiation, mediation, or alternative dispute resolution prior to, or in lieu of, the initiation of any litigation.

ARTICLE 9. DIVISION OF ELDER ADVOCACY

C.52:27EE-61 Division of Elder Advocacy; established.

61. Division of Elder Advocacy; established.

There is hereby established in the Department of the Public Advocate the Division of Elder Advocacy to be under the supervision of the Director of the Division of Elder Advocacy, appointed by the Public Advocate.

C.52:27EE-62 Division of Elder Advocacy; jurisdiction.

62. Division of Elder Advocacy; jurisdiction.

The Division of Elder Advocacy may represent the public interest in such administrative and court proceedings as the Public Advocate deems shall best serve the interests of elderly adults.

C.52:27EE-63 Division of Elder Advocacy; powers and duties.

63. Division of Elder Advocacy; powers and duties.

The Division of Elder Advocacy may protect the interests of the elderly by:

a. intervening in or instituting proceedings involving the interests of the elderly before any

department, commission, agency, or board of the State leading to an administrative adjudication or administrative rule as defined in section 2 of P.L.1968, c.410 (C.52:14B-2);

b. instituting litigation on behalf of the elderly when authorized to do so by the Public Advocate; and

c. commencing negotiation, mediation, or alternative dispute resolution prior to, or in lieu of, the initiation of any litigation.

C.52:27EE-64 Division of Elder Advocacy; additional powers and duties.

64. Division of Elder Advocacy; additional powers and duties.

a. The Division of Elder Advocacy shall report to the Governor and the Legislature on recommendations that will further the State's ability to secure, preserve, and promote the health, safety, and welfare of New Jersey's elderly.

b. The Division of Elder Advocacy shall have the authority to hold a public hearing on the subject of any investigation or study. The division shall hear testimony from agency and program representatives, the public in general, and such others as may be deemed appropriate.

c. The Division of Elder Advocacy shall have access to the records and facilities of every agency, funded entity, or other recipient of public funds to the extent that any such records and facilities are related to the expenditure of public funds, provided that the division complies with all privacy and confidentiality protections applicable to those records and facilities, notwithstanding any contrary provision of law. Notwithstanding the foregoing, the Division of Elder Advocacy shall have access to any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly which is subject to regulation, visitation, inspection or supervision by any government agency, provided such access is permitted by State or federal law. All agencies shall cooperate with the Division of Elder Advocacy and, when requested, shall provide specific information in the form requested.

C.52:27EE-65 Ombudsperson for the Institutionalized Elderly; transfer to Department of the Public Advocate.

65. Ombudsperson for the Institutionalized Elderly; transfer to Department of the Public Advocate.

a. There is hereby established in the Division of Elder Advocacy in the Department of the Public Advocate an Ombudsperson for the Institutionalized Elderly.

b. The Ombudsperson for the Institutionalized Elderly shall be appointed by the Public Advocate.

c. All functions, powers, and duties now vested in the Office of the Ombudsman for the Institutionalized Elderly pursuant to P.L.1977, c.239 (C.52:27G-1 et seq.) are hereby transferred to and assumed by the Ombudsperson for the Institutionalized Elderly in the Department of the Public Advocate.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Office of the Ombudsman for the Institutionalized Elderly in, but not of, the Department of Community Affairs, or the Office of the Ombudsman for the Institutionalized Elderly in, but not of, the Department of Health and Senior Services, or Nursing Home Ombudsman in Department of Community Affairs, the same shall mean and refer to the Ombudsperson for the Institutionalized Elderly in the Department of the Public Advocate.

ARTICLE 10. OFFICE OF THE CHILD ADVOCATE

C.52:27EE-66 Office of the Child Advocate; established.

66. Office of the Child Advocate; established.

There is established the Office of the Child Advocate in the Executive Branch of the State Government. For purposes of complying with Article V, Section IV, paragraph 1 of the New Jersey Constitution, the office is allocated within the Department of the Public Advocate, but notwithstanding the allocation, the office shall be independent of any supervision or control by the department, or a division, office or officer thereof, in the performance of its duties.

C.52:27EE-67 Office of the Child Advocate; qualifications; appointment; term.

67. Office of the Child Advocate; qualifications; appointment; term.

a. The administrator and chief executive officer of the office shall be the Child Advocate, who shall be an attorney admitted to practice law in New Jersey and be qualified by training and experience to perform the duties of the office.

b. The child advocate shall be appointed by the Governor and shall serve for a term of five years and until the appointment and qualification of his successor. The Governor shall have the power to remove the child advocate for cause. The child advocate shall devote his or her entire professional time to the duties of this position and receive such salary as shall be provided by law. A vacancy occurring in the position of child advocate shall be filled in the same manner as the original appointment, except that if the child advocate dies, resigns, becomes ineligible to serve for any reason or is removed from office, the Governor shall appoint an acting child advocate who shall serve until the appointment and qualification of the child advocate's successor.

C.52:27EE-68 Office of Child Advocate; purpose; consultation.

68. Office of Child Advocate; purpose; consultation.

a. The child advocate shall seek to ensure the provision of effective, appropriate and timely services for children at risk of abuse and neglect in the State, and that children under State supervision due to abuse or neglect are served adequately and appropriately by the State.

b. The Office of the Child Advocate shall be deemed a child protective agency for the purposes of section 1 of P.L.1977, c.102 (C.9:6-8.10a).

c. The child advocate shall consult with the Public Advocate prior to exercising his duties by commencing an investigation, legal proceeding, inspection, evaluation or other matter that may be co-extensive with the duties of the Public Advocate or of a division of the Department of the Public Advocate. The purpose of the consultation shall be to provide the Public Advocate with an opportunity to assist or collaborate with the child advocate on such investigation, legal proceeding, inspection, evaluation or other matter if the extent of the assistance or collaboration is within the powers and duties of the Public Advocate or of a division as those powers and duties are provided in this act. This requirement to consult the Public Advocate or the failure to do so in a timely manner shall not preclude or serve to restrict the child advocate in the performance of his duties at his discretion.

C.52:27EE-69 Office of the Child Advocate; duties.

69. Office of the Child Advocate; duties.

a. The child advocate shall:

(1) administer the work of the Office of the Child Advocate;

(2) appoint and remove such officers, investigators, stenographic and clerical assistants and other personnel, in the career or unclassified service, as may be required for the conduct of the office, subject to the provisions of Title 11A of the New Jersey Statutes (Civil Service), and other applicable statutes, except as provided otherwise herein;

(3) formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the office, its officers and employees, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); and

(4) institute or cause to be instituted such legal proceedings or processes consistent with the Rules Governing the Courts of New Jersey as may be necessary to properly enforce and give effect to any of the child advocate's powers or duties.

b. Consistent with the provisions of federal and State law,

(1) the child advocate shall have access to, and the right to inspect and copy, any records, including pupil records in accordance with the provisions of N.J.S.18A:36-19, necessary to carry out the responsibilities under this act; and

(2) the child advocate shall have reasonable access to, and the right to copy any records from, the Division of Youth and Family Services' Service Information System, or its successor, necessary to carry out its responsibilities under this act, and only with regard to individuals who are or may be the subject of an investigation by the child advocate, or to assess the status of an individual complaint or inquiry to determine whether further action by the child

advocate is appropriate; except that, access provided to the successor system, including the Statewide Automated Child Welfare Information System, shall be limited to information available through the Service Information System, unless otherwise agreed to by the child advocate and the Department of Human Services.

c. The child advocate may issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers and other documents, and administer oaths to witnesses in any matter under the investigation of the office.

If any person to whom such subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers or other documents required, the child advocate may apply to the Superior Court, which may order the person to appear and give testimony or produce the books, papers or other documents, as applicable.

d. The child advocate shall disseminate information to the public on the objectives of the office, the services the office provides and the methods by which the office may be contacted.

e. The child advocate shall aid the Governor in proposing methods of achieving increased coordination and collaboration among State agencies to ensure maximum effectiveness and efficiency in the provision of services to children.

C.52:27EE-70 Office of the Child Advocate; powers.

70. Office of the Child Advocate; powers.

The child advocate may:

a. investigate, review, monitor or evaluate any State agency response to, or disposition of, an allegation of child abuse or neglect in this State;

b. inspect and review the operations, policies and procedures of:

(1) juvenile detention centers operated by the counties and all juvenile justice facilities operated by or under contract with the Juvenile Justice Commission, including, but not limited to, secure correctional facilities and residential and day treatment programs;

(2) resource family homes, group homes, residential treatment facilities, shelters for the care of abused or neglected children, shelters for the care of juveniles considered as juvenile-family crisis cases, shelters for the care of homeless youth, or independent living arrangements operated, licensed, or approved for payment, by the Department of Human Services, Department of Community Affairs or Department of Health and Senior Services; and

(3) any other public or private setting in which a child has been placed by a State or county agency or department;

c. review, evaluate, report on and make recommendations concerning the procedures established by any State agency providing services to children who are at risk of abuse or neglect, children in State or institutional custody, or children who receive child protective or permanency services;

d. review, monitor and report on the performance of State-funded private entities charged with the care and supervision of children due to abuse or neglect by conducting research audits or other studies of case records, policies, procedures and protocols, as deemed necessary by the child advocate to assess the performance of the entities;

e. receive, investigate and make referrals to other agencies or take other appropriate actions with respect to a complaint received by the office regarding the actions of a State, county or municipal agency or a State-funded private entity providing services to children who are at risk of abuse or neglect;

f. hold a public hearing on the subject of an investigation or study underway by the office, and receive testimony from agency and program representatives, the public and other interested parties, as the child advocate deems appropriate;

g. establish and maintain a 24-hour toll-free telephone hotline to receive and respond to calls from citizens referring problems to the child advocate, both individual and systemic, in how the State, through its agencies or contract services, protects children;

h. in exercising the authority provided in subsection a. of this section, the child advocate may conduct unannounced site visits to any institution or facility to which children are committed, placed or otherwise disposed if the child advocate, prior to conducting an unannounced site visit, has initiated a project or investigation into the response or disposition of an allegation of abuse or neglect and there is a reasonable basis to believe that an

unannounced site visit is necessary to carry out the child advocate's responsibilities under this act, provided, however, that any unannounced site visit shall be conducted at a reasonable time and in a reasonable manner;

i. in exercising the authority provided under subsections a. through e. of this section, the child advocate shall consult with any appropriate State, county or municipal agency or a State-funded private entity providing services to children, and may request from any such entity, and the entity is hereby authorized and directed to provide, such cooperation and assistance as will enable the child advocate to properly perform its responsibilities under this act; and

j. notwithstanding the provisions of section 11 of P.L.1944, c.20 (C.52:17A-11) to the contrary, hire independent counsel on a case-by-case basis to provide competent representation in light of the nature of the case, the services to be performed, the experience of the particular attorney and other relevant factors.

C.52:27EE-71 Office of the Child Advocate; findings; recommendations.

71. Office of the Child Advocate; findings; recommendations.

a. If the child advocate identifies a systemic problem in how the State, through its agencies or contract services, protects children, the child advocate shall meet with the State agency or agencies with jurisdiction to provide a reasonable opportunity to discuss the problem and identify possible responses the agency may consider. Taking into account any information provided during the meeting and discussion, the child advocate shall provide its findings and recommendations to the agency affected by the findings and recommendations, and, except as provided in subsections b. and c. of section 76 of this act, make those findings and recommendations available to the public.

b. Within 30 days from the receipt of the child advocate's findings and recommendations, the agency shall develop a corrective action response that addresses the findings and recommendations of the child advocate and specifies what actions, if any, the agency will take in response to the systemic problem identified by the child advocate, which response may be developed in conjunction with the child advocate.

c. The agency shall submit its corrective action response to the head of the relevant department or departments with jurisdiction over the agency and simultaneously provide a copy to the child advocate.

d. The child advocate shall monitor an agency's implementation of its corrective action response. An agency implementing a corrective action response shall provide the child advocate with periodic reports on the status of the actions taken by the agency pursuant to its corrective action response. The child advocate shall monitor the agency's implementation of its corrective action response for a period of one year, during which time the agency shall provide the child advocate with periodic reports, except that the child advocate may determine that the monitoring and periodic reports are required for a period of less than one year. The agency's obligation to provide periodic reports on the implementation of its corrective action response may exceed a period of one year if the child advocate and the agency jointly agree that an extended reporting period is appropriate.

e. If an agency fails to promptly and adequately implement a corrective action response, the child advocate shall take such action as the child advocate deems necessary.

f. An agency shall make public the corrective action responses and periodic status reports required by this section, except that the agency may provide to the child advocate an additional response or report containing confidential information.

C.52:27EE-72 Office of the Child Advocate; additional powers.

72. Office of the Child Advocate; additional powers.

a. In addition to the powers granted in section 70 of this act, the child advocate may:

(1) intervene in or institute litigation, including appearing in the capacity of an amicus curiae, as appropriate, or

(2) intervene in or institute administrative proceedings before any department, commission, agency or State board, to assert the broad public interest of the State in the welfare of children and to protect and promote the rights of children.

In taking such actions, the child advocate shall consider whether a child or family may be in

need of assistance from the child advocate or whether there is a systemic issue in the State's provision of services to children that should be addressed. The child advocate shall make a good faith effort to resolve issues or problems, and shall have the authority to commence negotiations, mediation or alternative dispute resolution in its advocacy efforts prior to, or in lieu of, the initiation of any action brought pursuant to this section.

b. The child advocate shall have discretion to decide whether to intervene in any particular matter or to represent or refrain from representing the public interest in a proceeding. The child advocate shall consider, in exercising his discretion, the resources available, the importance and extent of the public interest involved, and whether that interest would be adequately represented without the action of the office.

C.52:27EE-73 Office of the Child Advocate; communication.

73. Office of the Child Advocate; communication.

a. The child advocate shall seek the approval of a parent, guardian or law guardian, as applicable, or obtain the approval of a court of competent jurisdiction so as to communicate directly with a child who is the subject of a complaint or allegation of child abuse or neglect, if necessary to conduct an investigation authorized under the provisions of this act. The communications with the child shall be conducted under such terms and conditions that protect the best interests of the child.

b. If court approval is sought, the court, in reviewing an application for approval, shall consider: (1) the best interests of the child, so as to minimize any detrimental effects on the child that may occur as a result of the communication; and (2) the investigative needs of the child advocate and law enforcement authorities, when applicable. Upon consideration of the factors in this subsection, the court may order any alternative methods for obtaining the required information.

C.52:27EE-74 Office of the Child Advocate; protection; resource.

74. Office of the Child Advocate; protection; resource.

The child advocate shall seek to ensure the protection of children who are in an institution or resource family care by reviewing, evaluating and monitoring the operation and activities of the Institutional Abuse Investigation Unit in the Department of Human Services.

a. In order to enable the child advocate to carry out the child advocate's responsibilities under this section, the Institutional Abuse Investigation Unit shall:

(1) promptly notify the child advocate of any allegations of abuse or neglect made against an institution or resource family home serving children in this State;

(2) promptly provide the child advocate with a copy of the unit's response to the complaint and the actions taken by the unit to address the complaint;

(3) provide the child advocate with monthly updates of the status of actions proposed by the unit regarding an existing complaint that has not been resolved; and

(4) provide the child advocate with such other information as the child advocate may deem necessary to carry out the child advocate's responsibilities to review, evaluate and monitor the operation and activities of the unit.

b. As used in this section, "institution" means a public or private facility, in this State or out-of-State, that provides children with out-of-home care, supervision or maintenance. Institution includes, but is not limited to: a correctional facility, detention facility, treatment facility, child care center, group home, public and nonpublic elementary or secondary school and school bus or other similar vehicle used to transport students to and from school, residential school, shelter, psychiatric hospital and developmental center.

C.52:27EE-75 Office of the Child Advocate; reports.

75. Office of the Child Advocate; reports.

The child advocate shall report annually to the Governor, the Public Advocate, the Commissioner of Human Services, and the Legislature on: the activities of the office; priorities for children's services that have been identified by the child advocate; and recommendations for improvement or needed changes concerning the provision of services to children who are at risk of abuse or neglect, and are in State or institutional custody or receive child protective or

permanency services by State agencies and State-funded private entities.

The annual report shall be made available to the public.

C.52:27EE-76 Office of the Child Advocate; disclosure; confidentiality.

76. Office of the Child Advocate; disclosure; confidentiality.

a. The child advocate shall make public its findings of investigation reports or other studies undertaken by the office, including its investigatory findings to complaints received pursuant to section 70 of this act, and shall forward any publicly reported findings to the Governor, the Legislature, the Public Advocate, the Commissioner of Human Services, the affected public agencies and the Governor's Cabinet for Children.

b. The child advocate shall not disclose:

(1) any information that would likely endanger the life, safety, or physical or emotional well-being of a child or the life or safety of a person who filed a complaint or which may compromise the integrity of a State or county department or agency investigation, civil or criminal investigation or judicial or administrative proceeding; and

(2) the name of or any other information identifying the person who filed a complaint with, or otherwise provided information to, the office without the written consent of that person.

The information subject to the provisions of this subsection shall not be considered a public record pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

c. The child advocate shall not disclose any information that may be deemed confidential by federal or State law, except when necessary to allow the Department of the Public Advocate, Department of Human Services, Attorney General, Juvenile Justice Commission and other State or county department or agency to perform its duties and obligations under the law.

C.52:27EE-77 Office of the Child Advocate; transfer of functions.

77. Office of the Child Advocate; transfer of functions.

All functions, powers, and duties now vested in the Office of the Child Advocate pursuant to P.L.2003, c.187 (C.52:17D-1 et seq.) are transferred to and assumed by the Office of the Child Advocate allocated in, but not of, the Department of the Public Advocate.

Whenever, in any law, rule, regulation, order, plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Office of the Child Advocate in, but not of, the Department of Law and Public Safety, the same shall mean and refer to the Office of the Child Advocate allocated in, but not of, the Department of the Public Advocate.

ARTICLE 11. ACTIONS, TRANSFERS, REPEALS

C.52:27EE-78 Actions; name of party; prior communication to public entity.

78. Actions; name of party; prior communication to public entity.

a. Any action brought by the Public Advocate or any persons authorized herein to institute or participate in actions before the courts or agencies of this State shall be brought in the name of the person serving as the Public Advocate or in the name of an affected individual or group, but shall not be brought in the name of the State or the people thereof.

b. Prior to initiating litigation, the Public Advocate shall communicate, in writing, with a public entity against which the Public Advocate anticipates filing adversarial action. The Public Advocate shall state unequivocally in its written transmittal to the public entity that the Public Advocate anticipates filing litigation to resolve the matter in controversy. The purpose of this requirement is to clearly provide the potential litigants with a final opportunity to resolve the matters in controversy outside the court system.

C.52:27EE-79 Suits or causes of action against Legislature or officers thereof.

79. Suits or causes of action against Legislature or officers thereof.

The provisions of this act in and of themselves shall not be construed so as to create any new causes of action, or to authorize any suit against the Legislature or either House or the officers thereof.

C.52:27EE-80 No award of punitive or exemplary damages against public entities or employees.

80. No award of punitive or exemplary damages against public entities or employees.

No punitive or exemplary damages shall be awarded against a public entity or public employee in any action brought by the Public Advocate.

C.52:27EE-81 Applicability of State Agency Transfer Act.

81. Applicability of State Agency Transfer Act.

This act shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

C.52:27EE-82 Preservation of rights and terms.

82. Preservation of rights and terms.

This act shall not:

a. affect the tenure, compensation, and pension rights, if any, of the lawful holder thereof, in any position not specifically abolished herein, upon the effective date of this act; or

b. alter the term of any member of any board, commission, or public body, not specifically abolished or repealed herein, lawfully in office on the effective date of this act, or require the reappointment thereof.

C.52:27EE-83 Supersedure and repeal of inconsistent acts.

83. Supersedure and repeal of inconsistent acts.

All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, superseded and repealed.

C.52:27EE-84 Assertion of claim against spill compensation fund for class by Public Advocate.

84. Assertion of claim against spill compensation fund for class by Public Advocate.

The Department of the Public Advocate may act to assert claims as alleged against the Spill Compensation Fund established pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.).

C.52:27EE-85 Severability.

85. Severability.

If any section, subsection, paragraph, sentence, or other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence, or other part of this act directly involved in the controversy in which the judgment shall have been rendered.

86. Section 3 of P.L.1977, c.239 (C.52:27G-3) is amended to read as follows:

C.52:27G-3 Ombudsperson for the Institutionalized Elderly.

3. There is established in the Department of the Public Advocate the Ombudsperson for the Institutionalized Elderly.

87. Section 4 of P.L.1977, c.239 (C.52:27G-4) is amended to read as follows:

C.52:27G-4 Ombudsperson, qualifications.

4. The administrator and chief executive officer of the office shall be the Ombudsperson, who shall be a person qualified by training and experience to perform the duties of the office.

88. Section 1 of P.L.1986, c.205 (C.30:1A-4) is amended to read as follows:

C.30:1A-4 New Jersey Boarding Home Advisory Council.

1. a. There is established in, but not of, the Department of Human Services the New Jersey Boarding Home Advisory Council. The council shall consist of 14 members, to be appointed by the Commissioner of Human Services in consultation with the Commissioners of Community

Affairs and Health and Senior Services, the Public Advocate, and the Public Guardian for Elderly Adults, as follows: two persons who own or operate a boarding house as defined in P.L.1979, c.496 (C.55:13B-1 et al.); two persons who own or operate a residential health care facility as defined in section 1 of P.L.1953, c.212 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); two persons who currently reside in a boarding house or a residential health care facility; one person who is a member of the organization which represents operators of boarding houses or residential health care facilities, or both; one person who represents the health care professions; one person who represents a county office on aging; one person who represents a municipal building code department; one person who represents an organization or agency which advocates for mentally ill persons in this State; one person who represents an organization or agency which advocates for physically disabled persons in this State; and two other members who shall be chosen from among persons whose work, knowledge or interest relates to boarding houses or residential health care facilities and the residents thereof, including but not limited to municipal and county elected officials, county prosecutors, social workers, and persons knowledgeable about fire prevention standards and measures needed to assure safety from structural, mechanical, plumbing and electrical deficiencies in boarding houses and residential health care facilities. In addition, the Chairman of the General Assembly Standing Reference Committee on Health and Human Services and the Chairman of the Senate Standing Reference Committee on Health, Human Services and Senior Citizens or their designees shall serve as ex officio members of the council.

b. The terms of office of each appointed member shall be three years, but of the members first appointed, two shall be appointed for a term of one year, five for terms of two years, and seven for terms of three years. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the council.

89. Section 3 of P.L.1976, c.120 (C.30:13-3) is amended to read as follows:

C.30:13-3 Responsibilities of nursing homes.

3. Every nursing home shall have the responsibility for:

a. Maintaining a complete record of all funds, personal property and possessions of a nursing home resident from any source whatsoever, which have been deposited for safekeeping with the nursing home for use by the resident. This record shall contain a listing of all deposits and withdrawals transacted, and these shall be substantiated by receipts given to the resident or his guardian. A nursing home shall provide to each resident or his guardian a quarterly statement which shall account for all of such resident's property on deposit at the beginning of the accounting period, all deposits and withdrawals transacted during the period, and the property on deposit at the end of the period. The resident or his guardian shall be allowed daily access to his property on deposit during specific periods established by the nursing home for such transactions at a reasonable hour. A nursing home may, at its own discretion, place a limitation as to dollar value and size of any personal property accepted for safekeeping.

b. Providing for the spiritual needs and wants of residents by notifying, at a resident's request, a clergyman of the resident's choice and allowing unlimited visits by such clergyman. Arrangements shall be made, at the resident's expense, for attendance at religious services of his choice when requested. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident.

c. Admitting only that number of residents for which it reasonably believes it can safely and adequately provide nursing care. Any applicant for admission to a nursing home who is denied such admission shall be given the reason for such denial in writing.

d. Ensuring that an applicant for admission or a resident is treated without discrimination as to age, race, religion, sex or national origin. However, the participation of a resident in recreational activities, meals or other social functions may be restricted or prohibited if recommended by a resident's attending physician in writing and consented to by the resident.

e. Ensuring that no resident shall be subjected to physical restraints except upon written orders of an attending physician for a specific period of time when necessary to protect such

resident from injury to himself or others. Restraints shall not be employed for purposes of punishment or the convenience of any nursing home staff personnel. The confinement of a resident in a locked room shall be prohibited.

f. Ensuring that drugs and other medications shall not be employed for purposes of punishment, for convenience of any nursing home staff personnel or in such quantities so as to interfere with a resident's rehabilitation or his normal living activities.

g. Permitting citizens, with the consent of the resident being visited, legal services programs, employees of the Department of the Public Advocate, and employees of the private entity, if any, designated by the Governor as the State's mental health protection and advocacy agency, whose purposes include rendering assistance without charge to nursing home residents, full and free access to the nursing home in order to visit with and make personal, social and legal services available to all residents and to assist and advise residents in the assertion of their rights with respect to the nursing home, involved governmental agencies and the judicial system.

(1) Such access shall be permitted by the nursing home at a reasonable hour.

(2) Such access shall not substantially disrupt the provision of nursing and other care to residents in the nursing home.

(3) All persons entering a nursing home pursuant to this section shall promptly notify the person in charge of their presence. They shall, upon request, produce identification to substantiate their identity. No such person shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. A resident shall have the right to terminate a visit by a person having access to his living area pursuant to this section at any time. Any communication whatsoever between a resident and such person shall be confidential in nature, unless the resident authorizes the release of such communication in writing.

h. Ensuring compliance with all applicable State and federal statutes and rules and regulations.

i. Ensuring that every resident, prior to or at the time of admission and during his stay, shall receive a written statement of the services provided by the nursing home, including those required to be offered by the nursing home on an as-needed basis, and of related charges, including any charges for services not covered under Title XVIII and Title XIX of the Social Security Act, as amended, or not covered by the nursing home's basic per diem rate. This statement shall further include the payment, fee, deposit and refund policy of the nursing home.

j. Ensuring that a prospective resident or the resident's family or guardian receives a copy of the contract or agreement between the nursing home and the resident prior to or upon the resident's admission.

90. Section 4 of P.L.1992. c.111 (C.30:4C-69) is amended to read as follows:

C.30:4C-69 Development of interdepartmental plan.

4. The Commissioner of Human Services shall develop an interdepartmental plan for the implementation of an individualized, appropriate child and family driven care system for children with special emotional needs and for the reduction of inappropriate use of out-of-home placements of these children. The plan shall first address children ready to be returned from institutions such as the Arthur Brisbane Child Treatment Center and other in-State and out-of-State residential facilities, and those at imminent risk of extended out-of-home placement. The commissioner shall consult with appropriate representatives from the State departments of Education, Corrections, Health and Senior Services, Community Affairs and the Public Advocate, the Child Advocate, the private entity, if any, designated by the Governor as the State's mental health protection and advocacy agency, the Statewide Children's Coordinating Council in the Department of Human Services, the Administrative Office of the Courts, and Statewide family advocacy groups, in the development of the plan.

91. Section 14 of P.L.1944, c.27 (C.17:29A-14) is amended to read as follows:

C.17:29A-14 Filing of rate changes; hearing.

14. a. With regard to all property and casualty lines, a filer may, from time to time, alter,

supplement, or amend its rates, rating systems, or any part thereof, by filing with the commissioner copies of such alterations, supplements, or amendments, together with a statement of the reason or reasons for such alteration, supplement, or amendment, in a manner and with such information as may be required by the commissioner. If such alteration, supplement, or amendment shall have the effect of increasing or decreasing rates, the commissioner shall determine whether the rates as altered thereby are reasonable, adequate, and not unfairly discriminatory. If the commissioner shall determine that the rates as so altered are not unreasonably high, or inadequate, or unfairly discriminatory, he shall make an order approving them. If he shall find that the rates as altered are unreasonable, inadequate, or unfairly discriminatory, he shall issue an order disapproving such alteration, supplement or amendment.

b. (Deleted by amendment, P.L.1984, c.1.)

c. If an insurer or rating organization files a proposed alteration, supplement or amendment to its private passenger automobile insurance rating system, or any part thereof, the commissioner shall transmit the filing to the appropriate office in the Division of Insurance, which office shall issue a preliminary determination within 90 days of receipt of a rate filing, except that the commissioner may, for good cause, extend the time for a preliminary determination by not more than 30 days. The preliminary determination shall set forth the basis for accepting, rejecting or modifying the rates as filed. A copy of the preliminary determination shall be provided to the filer and other interested parties. Unless the filer or other interested party, including the Public Advocate, requests a hearing, the commissioner may adopt the preliminary determination as final within 30 days of the preliminary determination. If a hearing is requested, it shall proceed on an expedited basis in accordance with the provisions of this section. If a preliminary determination is not made within the time provided, a filing shall be transmitted to the Office of Administrative Law for a hearing and the commissioner shall adopt the determination of the administrative law judge as a final decision on the filing.

For filings other than private passenger automobile, if an insurer or rating organization files a proposed alteration, supplement or amendment to its rating system, or any part thereof, which would result in a change in rates, the commissioner may, or upon the request of the filer or the appropriate office in the Division of Insurance shall, certify the matter for a hearing. The hearing shall, at the commissioner's discretion, be conducted by himself, by a person appointed by the commissioner pursuant to section 26 of P.L.1944, c.27 (C.17:29A-26), or by the Office of Administrative Law, created by P.L.1978, c.67 (C.52:14F-1 et seq.), as a contested case. The following requirements shall apply to the hearing:

(1) The hearing shall commence within 30 days of the date of the request or decision that a hearing is to be held. The hearing shall be held on consecutive working days, except that the commissioner may, for good cause, waive the consecutive working day requirement. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit his findings and recommendations to the commissioner within 30 days of the close of the hearing. The commissioner may, for good cause, extend the time within which the administrative law judge shall submit his findings and recommendations by not more than 30 days. A decision shall be rendered by the commissioner not later than 60 days, or, if he has granted a 30-day extension, not later than 90 days, from the close of the hearing. A filing shall be deemed to be approved unless rejected or modified by the commissioner within the time period provided herein.

(2) The commissioner, or the Director of the Office of Administrative Law, as appropriate, shall notify all interested parties, including the Public Advocate on behalf of insurance consumers, of the date set for commencement of the hearing, on the date of the filing of the request for a hearing, or within 10 days of the decision that a hearing is to be held.

(3) The insurer or rating organization making a filing on which a hearing is held shall bear the costs of the hearing.

(4) The commissioner may promulgate rules and regulations (a) to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating system of filers, which may include forms to be submitted by each filer; and (b) making such other provisions as he deems necessary for effective implementation of this act.

d. (Deleted by amendment, P.L.1984, c.1.)

e. (Deleted by amendment, P.L.2003, c.89.)

f. The notice provisions set forth in section 51 of the Public Advocate Restoration Act of

2005, P.L.2005, c.155 (C.52:27EE-51), shall apply to this section.

92. Section 66 of P.L.1998, c.21 (C.17:29A-46.8) is amended to read as follows:

C.17:29A-46.8 Definitions; standards for interventions in rate filings; offenses.

66. a. For the purposes of this section:

"Qualified person" means a person qualified by the Commissioner of Banking and Insurance to intervene in public hearings pursuant to this section, who shall be deemed a "public servant" within the meaning of N.J.S.2C:30-2;

"Rate filing" means a filing for a rate increase by an automobile insurer writing private passenger automobile insurance in this State, other than an expedited prior approval rate filing made pursuant to section 34 of P.L.1997, c.151 (C.17:29A-46.6) and other than a rate filing made pursuant to any statutory change in coverage provided under a policy of private passenger automobile insurance.

b. The Commissioner of Banking and Insurance shall establish standards for qualifying persons to intervene in rate filings pursuant to this section. The standards shall include, but shall not necessarily be limited to, requiring that any person intervening in a rate filing demonstrate: (1) expertise in the insurance laws of this State; (2) an understanding of the actuarial principles employed in establishing rates and rating systems; (3) sufficient access to a qualified actuary and sufficient expertise to conduct a technical examination of a rate filing; (4) sufficient resources to intervene in the rate filing process as provided herein; and (5) that the person represents the interest of consumers and accepts a duty of fidelity to do so.

c. The commissioner shall require such documentation as he determines is necessary to qualify a person to intervene in a rate filing, and may charge a fee for registration with the department as an intervenor, which fee shall be payable annually.

d. The commissioner may remove the registration of an intervenor if he determines that (1) the intervenor no longer meets the qualifications, or (2) if the intervenor is convicted of a crime or loses a professional license for misconduct.

e. If an insurer or rating organization files for a rate increase for private passenger automobile insurance, the commissioner shall notify the public of the proposed rate change in a newspaper or newspapers of general circulation throughout the State. A qualified person may request, and shall receive, a copy of the rate filing and any amendments and supplements thereto and shall pay the expenses in connection therewith. The qualified person may request that the commissioner certify the rate filing for a hearing pursuant to section 14 of P.L.1944, c.27 (C.17:29A-14).

f. The commissioner shall establish by regulation the terms and conditions under which the proceedings under this section shall be conducted, including, but not limited to the supporting material which shall accompany the intervention.

g. Upon determining that the intervenor has demonstrated that the qualified person has made a substantial contribution to the adoption of any order or decision by the commissioner or a court in connection with a rate filing made pursuant to this section, the commissioner shall award reasonable advocacy and witness fees and expenses.

h. A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefits as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject pursuant to this section. In addition to any disposition authorized by law, the Commissioner of Banking and Insurance shall forever bar from registration as an intervenor any person convicted under this subsection.

i. A person commits a crime of the third degree if he confers, or offers or agrees to confer, any benefit the acceptance of which would be criminal under this section. In addition to any disposition authorized by law, the Commissioner of Banking and Insurance shall deny the rate filing of any person convicted under this subsection and the person shall be barred from filing for any rate increase for a period of one year.

j. Nothing herein shall be construed to preclude a prosecution or conviction for a violation of any other law.

k. This section shall expire 180 days after the effective date of the Public Advocate Restoration Act of 2005, P.L.2005, c.155 (C.52:27EE-1 et al.).

93. Section 1 of P.L.1974, c.55 (C.52:14-15.107) is amended to read as follows:

C.52:14-15.107 Department officers; annual salaries.

1. Notwithstanding the provisions of the annual appropriations act and section 7 of P.L.1974, c.55 (C.52:14-15.110), the Governor shall fix and establish the annual salary, not to exceed \$133,330 in calendar year 2000, \$137,165 in calendar year 2001 and \$141,000 in calendar year 2002 and thereafter, for each of the following officers:

Title

- Agriculture Department
 - Secretary of Agriculture
- Community Affairs Department
 - Commissioner of Community Affairs
- Corrections Department
 - Commissioner of Corrections
- Education Department
 - Commissioner of Education
- Environmental Protection Department
 - Commissioner of Environmental Protection
- Health and Senior Services Department
 - Commissioner of Health and Senior Services
- Human Services Department
 - Commissioner of Human Services
- Banking and Insurance Department
 - Commissioner of Banking and Insurance
- Labor and Workforce Development Department
 - Commissioner of Labor and Workforce Development
- Law and Public Safety Department
 - Attorney General
- Military and Veterans' Affairs Department
 - Adjutant General
- Personnel Department
 - Commissioner of Personnel
- State Department
 - Secretary of State
- Transportation Department
 - Commissioner of Transportation
- Treasury Department
 - State Treasurer
- Members, Board of Public Utilities
- Public Advocate Department
 - Public Advocate

Notwithstanding the provisions of this section to the contrary, the Chief Executive Officer and Secretary of the New Jersey Commerce and Economic Growth Commission shall receive such salary as shall be fixed by the Governor pursuant to subsection b. of section 8 of P.L.1998, c.44 (C.52:27C-68).

94. Section 1 of P.L.1991, J.R.2 (C.52:9DD-1) is amended to read as follows:

C.52:9DD-1 Commission on Racism, Racial Violence and Religious Violence.

1. There is created a 21-member Commission on Racism, Racial Violence and Religious Violence to be appointed as follows: two shall be members of the Senate appointed by the President thereof, who shall not be of the same political party; two shall be members of the General Assembly appointed by the Speaker thereof, who shall not be of the same political party; the Attorney General or his designee; the Public Advocate or his designee; and 15 public

members to be appointed by the Governor. The public members shall be representative of the ethnic, racial and religious diversity of the State's population and shall include representatives from the following groups: the National Association for the Advancement of Colored People, the Puerto Rican Congress, the Anti-Defamation League of B'nai B'rith, the New Jersey Black Issues Convention, the New Jersey Chapter of the National Rainbow Coalition, and the American Civil Liberties Union.

95. Section 2 of P.L.1985, c.363 (C.52:9Y-2) is amended to read as follows:

C.52:9Y-2 "New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care."

2. There is created a permanent commission to be known as the "New Jersey Commission on Legal and Ethical Problems in the Delivery of Health Care." The commission shall consist of 29 members to be appointed as follows: the Commissioner of the Department of Community Affairs, the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Human Services, the Public Advocate, the Public Defender, the Ombudsperson for the Institutionalized Elderly or their designees; a representative of the private entity, if any, designated by the Governor as the State's mental health protection and advocacy agency; two members of the Senate, to be appointed by the President of the Senate, not more than one of whom shall be of the same political party; two members of the General Assembly, to be appointed by the Speaker of the General Assembly, not more than one of whom shall be of the same political party; nine public members, two to be appointed by the President of the Senate, two to be appointed by the Speaker of the General Assembly and five to be appointed by the Governor, who are distinguished in one or more of the fields of medicine, health care and health administration, law, ethics, theology, the natural sciences, the social sciences, the humanities, and public affairs.

In addition to the nine public members described above, there shall be on the commission five other public members who shall not be from health-related disciplines nor from the immediate families of persons in health-related disciplines. Of these five members, three shall be appointed by the Governor, one by the President of the Senate, and one by the Speaker of the General Assembly. In appointing these members an effort shall be made to insure that diverse viewpoints are represented on the commission.

Also on the commission shall be a representative of the New Jersey Hospital Association, a representative of the New Jersey State Nurses' Association, a representative of the New Jersey Association of Health Care Facilities and a representative of the New Jersey Association of Nonprofit Homes for the Aging, Inc. These representatives shall be selected by their organizations.

Members of the commission shall serve for three-year terms or until a successor is appointed. However, the term of every member initially appointed shall expire on December 31, 1988.

Vacancies in the membership of the commission shall be filled in the same manner as original appointments were made, and the term of any person reappointed or appointed to fill a vacancy shall only run for the balance of the three-year term that had commenced when the reappointment was made or the vacancy occurred. Members shall serve without compensation but shall be reimbursed for the reasonable travel and other out-of-pocket expenses incurred in the performance of their duties.

96. Section 12 of P.L.1980, c.125 (C.56:12-12) is amended to read as follows:

C.56:12-12 Injunctions; attorney fees and court costs.

12. The Office of the Attorney General, the Division of Consumer Affairs, the Department of the Public Advocate, the Commissioner of Banking and Insurance, in regard to contracts of insurance provided for in subsection c. of section 1 of this act (C.56:12-1), or any interested person may seek injunctive relief. The court may authorize reasonable attorney's fees, not to exceed \$2,500.00, and court costs in such a proceeding.

97. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read as follows:

C.58:11-59 Failure to comply by small water, sewer companies.

1. a. Whenever a small water company or a small sewer company, or both, are found to have failed to comply with any unstayed order of the Department of Environmental Protection concerning the availability of water, the potability of water, or the provision of water at adequate volume and pressure, or any unstayed order finding a small water company or a small sewer company or both a significant noncomplier or requiring the abatement of a serious violation, as those terms are defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3), which the department is authorized to enforce pursuant to Title 58 of the Revised Statutes, the department and the Board of Public Utilities, and the Department of the Public Advocate, may, after 30 days' notice to capable proximate public or private water or sewer companies, municipal utilities authorities established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other suitable public or private entities wherein the small water company, small sewer company, or both, provide service, conduct a joint public hearing to announce: the actions that may be taken and the expenditures that may be required, including acquisition costs, to make all improvements necessary to assure the availability of water, the potability of water and the provision thereof at adequate volume and pressure, and the compliance with all applicable federal and State water pollution control requirements for a small sewer company, including, but not necessarily limited to, the acquisition of the small water company or small sewer company, or both, by the most suitable public or private entity.

At the hearing the department and the board shall state the costs that are expected to be borne by the current users of the small water company, small sewer company, or both. The department shall propose an administrative consent order setting forth an agreed upon time schedule by which the acquiring entity would be required to make improvements required to resolve existing violations of federal and State safe drinking water and water pollution control statutes and regulations. The administrative consent order shall stipulate that the acquiring entity shall not be liable for any fines or penalties for continuing violations arising from the deficiencies, obsolescence or disrepair of the facilities at the time of the acquisition, provided that:

(1) the stipulation shall be conditioned upon compliance by the acquiring entity with the time frames established for improving the facilities and eliminating the existing violations; and

(2) the stipulation shall not include any violation to the extent caused by operational error, lack of preventive maintenance or careless or improper operation by the acquiring entity.

Under no circumstances shall the acquiring entity be liable for violations occurring prior to the acquisition.

At the conclusion of a hearing conducted pursuant to this section the record of the hearing shall be kept open for 30 days to allow for the submission of additional comments.

b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59 through 58:11-62):

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

"Small sewer company" means any company, business, or entity, other than a governmental agency, which is a public utility as defined pursuant to R.S.48:2-13, that collects, stores, conveys, or treats primarily domestic wastewater, and that regularly serves less than 1,000 customer connections.

98. Section 5 of P.L.1985, c.37 (C.58:26-5) is amended to read as follows:

C.58:26-5 Notice of intention.

5. A contracting unit which intends to enter into a contract with a private vendor for the provision of water supply services pursuant to the provisions of this act shall notify, at least 60 days prior to issuing a request for qualifications from interested vendors pursuant to section 6 of this act, the division, the department and the Board of Public Utilities and the Department of the Public Advocate of its intention, and shall publish notice of its intention in at least one newspaper of general circulation in the jurisdiction which would be served under the terms of the proposed contract.

99. Section 11 of P.L.1985, c.37 (C.58:26-11) is amended to read as follows:

C.58:26-11 Proposed contract with vendors.

11. Upon designating the selected vendor or vendors pursuant to section 10 of this act, a contracting unit shall negotiate with the selected vendor or vendors a proposed contract, which shall include the accepted proposal and the provisions required pursuant to section 15 of this act. Upon negotiating a proposed contract, the contracting unit shall make the proposed contract available to the public at its main offices, and shall transmit a copy of the proposed contract to the division, the department, the Board of Public Utilities and the Department of the Public Advocate.

100. Section 12 of P.L.1985, c.37 (C.58:26-12) is amended to read as follows:

C.58:26-12 Public hearing.

12. a. A contracting unit shall conduct a public hearing or hearings on the charges, rates, or fees, or the formula for determining these charges, rates, or fees, and the other provisions contained in a proposed contract negotiated pursuant to section 11 of this act. The contracting unit shall provide at least 90 days' public notice of this public hearing to the Department of the Public Advocate, prospective consumers and other interested parties. This notice shall be published in at least one newspaper of general circulation in the jurisdiction to be served under the terms of the proposed contract. Within 45 days after giving notice of the public hearing, the contracting unit shall hold a meeting with prospective consumers and other interested parties to explain the terms and conditions of the proposed contract, and to receive written questions which will be part of the record of the public hearing. At the public hearing, the selected vendor or vendors shall be present, and the contracting unit shall have the burden to answer the questions received at the meeting, and to show that the proposed contract complies with the provisions of section 15 of this act, and that it constitutes the best means of securing the required water supply services among available alternatives. The contracting unit shall provide that a verbatim record be kept of the public hearing, and that a written transcript of this record be printed and made available to the public within 30 days of the close of the public hearing. After the public hearing the contracting unit and the vendor may agree to make changes to the proposed contract, and shall transmit the proposed contract, a copy of the printed transcript of the public hearing, and a statement summarizing the major issues raised at the public hearing and the response of the contracting unit to these issues, to the division, the department, the Board of Public Utilities, and the Department of the Public Advocate, and to all persons who attended the public hearing.

b. If the Division of Rate Counsel in the Department of the Public Advocate represents the public interest at a public hearing or hearings conducted pursuant to this section, the Division of Rate Counsel shall be entitled to assess the vendor for costs incurred in this representation in the manner provided in section 20 of P.L.1974, c.27 (C.52:27E-19). The basis of the assessment shall be the prospective first year's revenue realized by the vendor from the provision of the water supply services pursuant to the terms of the proposed contract.

c. If a contract awarded pursuant to the provisions of this act is renegotiated, the contracting unit shall conduct a public hearing on the renegotiated contract pursuant to the provisions of this section.

101. Section 5 of P.L.1985, c.72 (C.58:27-5) is amended to read as follows:

C.58:27-5 Notice of intent.

5. A contracting unit which intends to enter into a contract with a private vendor for the provision of wastewater treatment services pursuant to the provisions of this act shall notify, at least 60 days prior to issuing a request for qualifications from interested vendors pursuant to section 6 of this act, the division, the department and the Department of the Public Advocate of its intention, and shall publish notice of its intention in at least one newspaper of general circulation in the jurisdiction which would be served under the terms of the proposed contract.

102. Section 11 of P.L.1985, c.72 (C.58:27-11) is amended to read as follows:

C.58:27-11 Negotiation of proposed contract.

11. Upon designating the selected vendor or vendors pursuant to section 10 of this act, a contracting unit shall negotiate with the selected vendor or vendors a proposed contract, which shall include the accepted proposal and the provisions required pursuant to section 15 of this act. Upon negotiating a proposed contract, the contracting unit shall make the proposed contract available to the public at its main offices, and shall transmit a copy of the proposed contract to the division, the department and the Department of the Public Advocate.

103. Section 12 of P.L.1985, c.72 (C.58:27-12) is amended to read as follows:

C.58:27-12 Public hearing.

12. a. A contracting unit shall conduct a public hearing or hearings on the charges, rates, or fees, or the formula for determining these charges, rates, or fees, and the other provisions contained in a proposed contract negotiated pursuant to section 11 of this act. The contracting unit shall provide at least 90 days' public notice of this public hearing to the Department of the Public Advocate, prospective consumers and other interested parties. This notice shall be published in at least one newspaper of general circulation in the jurisdiction to be served under the terms of the proposed contract. Within 45 days after giving notice of the public hearing, the contracting unit shall hold a meeting with prospective consumers and other interested parties to explain the terms and conditions of the proposed contract, and to receive written questions which will be part of the record of the public hearing. At the public hearing, the selected vendor or vendors shall be present, and the contracting unit shall have the burden to answer the questions received at the meeting, and to show that the proposed contract complies with the provisions of section 15 of this act, and that it constitutes the best means of securing the required wastewater treatment services among available alternatives. The contracting unit shall provide that a verbatim record be kept of the public hearing, and that a written transcript of this record be printed and made available to the public within 45 days of the close of the public hearing. Written testimony received no more than 15 days after the public hearing shall be included in the written transcript. After the public hearing the contracting unit and the vendor may agree to make changes to the proposed contract, and the contracting unit shall transmit the proposed contract, a copy of the printed transcript of the public hearing, and a statement summarizing the major issues raised at the public hearing and the response of the contracting unit to these issues, to the division, the department, and the Department of the Public Advocate, and shall make copies available to any other person upon request.

b. If the Division of Rate Counsel in the Department of the Public Advocate represents the public interest at a public hearing or hearings conducted pursuant to this section, the Division of Rate Counsel shall be entitled to assess the vendor for costs incurred in this representation in the manner provided in section 20 of P.L.1974, c.27 (C.52:27E-19). The basis of the assessment shall be the prospective first year's revenue realized by the vendor from the provision of the wastewater treatment services pursuant to the terms of the proposed contract.

c. If a contract awarded pursuant to the provisions of this act is renegotiated, the contracting unit shall conduct a public hearing on the renegotiated contract pursuant to the provisions of this section.

104. N.J.S.59:1-3 is amended to read as follows:

Definitions.

59:1-3. Definitions. As used in this subtitle:

"Employee" includes an officer, employee, or servant, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor.

"Employment" includes office; position; employment; or service, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey, as an emergency management volunteer or as a volunteer

doing 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.

"Enactment" includes a constitutional provision, statute, executive order, ordinance, resolution or regulation.

"Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that would be actionable if inflicted by a private person.

"Law" includes enactments and also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States.

"Public employee" means an employee of a public entity, and includes: a person participating, under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey.

"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.

"State" shall mean the State and any office, department, division, bureau, board, commission or agency of the State, but shall not include any such entity which is statutorily authorized to sue and be sued. "State" also means the Palisades Interstate Park Commission, but only with respect to employees, property and activities within the State of New Jersey.

"Statute" means an act adopted by the Legislature of this State or by the Congress of the United States.

105. Section 70 of P.L.2000, c.72 (C.18A:7G-43) is amended to read as follows:

C.18A:7G-43 Office of Fiscal Integrity in School Construction.

70. There is established in the Office of the Attorney General the Office of Fiscal Integrity in School Construction. The Attorney General or his representative may investigate, examine, and inspect the activities of the authority and districts related to the financing and construction of school facilities and the implementation of the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.). The Attorney General may require the submission of duly verified reports from the authority and districts, which include such information in such form as the Attorney General may require. The Attorney General or his representative may also consult with the authority on issues and procedures related to the exercise of its duties and responsibilities under P.L.2000, c.72 (C.18A:7G-1 et al.). The Legislature shall annually appropriate such funds as may be necessary to finance the operations of the office.

106. Section 1 of P.L.1982, c.79 (C.2A:4A-60) is amended to read as follows:

C.2A:4A-60 Disclosure of juvenile information; penalties for disclosure.

1. Disclosure of juvenile information; penalties for disclosure.

a. Social, medical, psychological, legal and other records of the court and probation division, and records of law enforcement agencies, pertaining to juveniles charged as a delinquent or found to be part of a juvenile-family crisis, shall be strictly safeguarded from public inspection. Such records shall be made available only to:

(1) Any court or probation division;

(2) The Attorney General or county prosecutor;

(3) The parents or guardian and to the attorney of the juvenile;

(4) The Department of Human Services, if providing care or custody of the juvenile;

(5) Any institution or facility to which the juvenile is currently committed or in which the juvenile is placed;

(6) Any person or agency interested in a case or in the work of the agency keeping the records, by order of the court for good cause shown, except that information concerning adjudications of delinquency, records of custodial confinement, payments owed on assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution ordered following conviction of a crime or adjudication of delinquency, and the juvenile's financial resources, shall be made available upon request to the Victims of Crime Compensation Board established pursuant to section 3 of P.L.1971, c.317 (C.52:4B-3), which shall keep such information and

records confidential;

(7) The Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170);

(8) Law enforcement agencies for the purpose of reviewing applications for a permit to purchase a handgun or firearms purchaser identification card;

(9) Any potential party in a subsequent civil action for damages related to an act of delinquency committed by a juvenile, including the victim or a member of the victim's immediate family, regardless of whether the action has been filed against the juvenile; provided, however, that records available under this paragraph shall be limited to official court documents, such as complaints, pleadings and orders, and that such records may be disclosed by the recipient only in connection with asserting legal claims or obtaining indemnification on behalf of the victim or the victim's family and otherwise shall be safeguarded from disclosure to other members of the public. Any potential party in a civil action related to the juvenile offense may file a motion with the civil trial judge seeking to have the juvenile's social, medical or psychological records admitted into evidence in a civil proceeding for damages;

(10) Any potential party in a subsequent civil action for damages related to an act of delinquency committed by a juvenile, including the victim or a member of the victim's immediate family, regardless of whether the action has been filed against the juvenile; provided, however, that records available under this paragraph shall be limited to police or investigation reports concerning acts of delinquency, which shall be disclosed by a law enforcement agency only with the approval of the County Prosecutor's Office or the Division of Criminal Justice. Prior to disclosure, all personal information regarding all individuals, other than the requesting party and the arresting or investigating officer, shall be redacted. Such records may be disclosed by the recipient only in connection with asserting legal claims or obtaining indemnification on behalf of the victim or the victim's family, and otherwise shall be safeguarded from disclosure to other members of the public; and

(11) The Office of the Child Advocate established pursuant to P.L.2005, c.155 (C.52:27EE-1 et al.). Disclosure of juvenile information received by the child advocate pursuant to this paragraph shall be in accordance with the provisions of section 76 of P.L.2005, c.155 (C.52:27EE-76).

b. Records of law enforcement agencies may be disclosed for law enforcement purposes, or for the purpose of reviewing applications for a permit to purchase a handgun or a firearms purchaser identification card to any law enforcement agency of this State, another state or the United States, and the identity of a juvenile under warrant for arrest for commission of an act that would constitute a crime if committed by an adult may be disclosed to the public when necessary to execution of the warrant.

c. At the time of charge, adjudication or disposition, information as to the identity of a juvenile charged with an offense, the offense charged, the adjudication and disposition shall, upon request, be disclosed to:

(1) The victim or a member of the victim's immediate family;

(2) Any law enforcement agency which investigated the offense, the person or agency which filed the complaint, and any law enforcement agency in the municipality where the juvenile resides; and

(3) On a confidential basis, the principal of the school where the juvenile is enrolled for use by the principal and such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or to planning programs relevant to the juvenile's educational and social development, provided that no record of such information shall be maintained except as authorized by regulation of the Department of Education; or

(4) A party in a subsequent legal proceeding involving the juvenile, upon approval by the court.

d. A law enforcement or prosecuting agency shall, at the time of a charge, adjudication or disposition, advise the principal of the school where the juvenile is enrolled of the identity of the juvenile charged, the offense charged, the adjudication and the disposition if:

(1) The offense occurred on school property or a school bus, occurred at a school-sponsored function or was committed against an employee or official of the school; or

(2) The juvenile was taken into custody as a result of information or evidence provided by school officials; or

(3) The offense, if committed by an adult, would constitute a crime, and the offense:

(a) resulted in death or serious bodily injury or involved an attempt or conspiracy to cause death or serious bodily injury; or

(b) involved the unlawful use or possession of a firearm or other weapon; or

(c) involved the unlawful manufacture, distribution or possession with intent to distribute a controlled dangerous substance or controlled substance analog; or

(d) was committed by a juvenile who acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, sexual orientation or ethnicity; or

(e) would be a crime of the first or second degree.

Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to a juvenile's educational and social development, and no record of such information shall be maintained except as authorized by regulation of the Department of Education.

e. Nothing in this section prohibits a law enforcement or prosecuting agency from providing the principal of a school with information identifying one or more juveniles who are under investigation or have been taken into custody for commission of any act that would constitute an offense if committed by an adult when the law enforcement or prosecuting agency determines that the information may be useful to the principal in maintaining order, safety or discipline in the school or in planning programs relevant to the juvenile's educational and social development. Information provided to the principal pursuant to this subsection shall be treated as confidential but may be made available to such members of the staff and faculty of the school as the principal deems appropriate for maintaining order, safety or discipline in the school or for planning programs relevant to the juvenile's educational and social development. No information provided pursuant to this section shall be maintained.

f. Information as to the identity of a juvenile adjudicated delinquent, the offense, the adjudication and the disposition shall be disclosed to the public where the offense for which the juvenile has been adjudicated delinquent if committed by an adult, would constitute a crime of the first, second or third degree, or aggravated assault, destruction or damage to property to an extent of more than \$500.00, unless upon application at the time of disposition the juvenile demonstrates a substantial likelihood that specific and extraordinary harm would result from such disclosure in the specific case. Where the court finds that disclosure would be harmful to the juvenile, the reasons therefor shall be stated on the record.

g. (1) Nothing in this section shall prohibit the establishment and maintaining of a central registry of the records of law enforcement agencies relating to juveniles for the purpose of exchange between State and local law enforcement agencies and prosecutors of this State, another state, or the United States. These records of law enforcement agencies shall be available on a 24-hour basis.

(2) Certain information and records relating to juveniles in the central registry maintained by the courts shall be available to State and local law enforcement agencies and prosecutors on a 24-hour basis.

h. Whoever, except as provided by law, knowingly discloses, publishes, receives, or makes use of or knowingly permits the unauthorized use of information concerning a particular juvenile derived from records listed in subsection a. or acquired in the course of court proceedings, probation, or police duties, shall, upon conviction thereof, be guilty of a disorderly persons offense.

i. Juvenile delinquency proceedings.

(1) Except as provided in paragraph (2) of this subsection, the court may, upon application by the juvenile or his parent or guardian, the prosecutor or any other interested party, including the victim or complainant or members of the news media, permit public attendance during any court proceeding at a delinquency case, where it determines that a substantial likelihood that specific harm to the juvenile would not result. The court shall have the authority to limit and control attendance in any manner and to the extent it deems appropriate;

(2) The court or, in cases where the county prosecutor has entered an appearance, the county prosecutor shall notify the victim or a member of the victim's immediate family of any court proceeding involving the juvenile and the court shall permit the attendance of the victim or family member at the proceeding except when, prior to completing testimony as a witness, the victim or family member is properly sequestered in accordance with the law or the Rules Governing the Courts of the State of New Jersey or when the juvenile or the juvenile's family member shows, by clear and convincing evidence, that such attendance would result in a substantial likelihood that specific harm to the juvenile would result from the attendance of the victim or a family member at a proceeding or any portion of a proceeding and that such harm substantially outweighs the interest of the victim or family member to attend that portion of the proceeding;

(3) The court shall permit a victim, or a family member of a victim to make a statement prior to ordering a disposition in any delinquency proceeding involving an offense that would constitute a crime if committed by an adult.

j. The Department of Education, in consultation with the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the creation, maintenance and disclosure of pupil records including information acquired pursuant to this section.

107. Section 3 of P.L.1994, c.119 (C.9:6-8.76) is amended to read as follows:

C.9:6-8.76 Task force membership.

3. The task force shall consist of 25 members as follows: the Commissioners of Human Services, Education, Community Affairs, Corrections, and Health and Senior Services, the Attorney General, the Chief Justice of the Supreme Court, the Public Defender, the Child Advocate and the Superintendent of State Police, or their designees, as ex officio members; two members of the Senate and the General Assembly, respectively, no more than one of whom in each case shall be of the same political party; and the remaining public members to be appointed by the Governor.

The task force membership shall comply with the multidisciplinary requirements set forth in the "Child Abuse Prevention and Treatment Act," Pub.L.93-247 (42 U.S.C. s.5101 et seq.).

The task force shall be co-chaired, one co-chair shall be the Commissioner of Human Services and the other shall be appointed by the Governor with the advice and consent of the Senate. The second co-chair shall be selected from among the public members and shall serve at the pleasure of the Governor for a term not to exceed three years. The second co-chair shall be allowed to serve two three-year terms.

108. Section 7 of P.L.1997, c.175 (C.9:6-8.89) is amended to read as follows:

C.9:6-8.89 Membership, terms of board members.

7. a. The board shall consist of 14 members as follows: the Commissioner of Human Services, the Commissioner of Health and Senior Services, the Director of the Division of Youth and Family Services in the Department of Human Services, the Attorney General, the Child Advocate and the Superintendent of State Police, or their designees, the State Medical Examiner, and the Chairperson or Executive Director of the New Jersey Task Force on Child Abuse and Neglect, who shall serve ex officio; and six public members appointed by the Governor, one of whom shall be a representative of the New Jersey Prosecutors' Association, one of whom shall be a Law Guardian, one of whom shall be a pediatrician with expertise in child abuse and neglect, one of whom shall be a psychologist with expertise in child abuse and neglect, one of whom shall be a social work educator with experience and expertise in the area of child abuse or a related field and one of whom shall have expertise in substance abuse.

b. The public members of the board shall serve for three-year terms. Of the public members first appointed, three shall serve for a period of two years, and three shall serve for a term of three years. They shall serve without compensation but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties and within the limits of funds appropriated for this purpose. Vacancies in the membership of the board shall

be filled in the same manner as the original appointments were made.

c. The Governor shall appoint a public member to serve as chairperson of the board who shall be responsible for the coordination of all activities of the board and who shall provide the technical assistance needed to execute the duties of the board.

d. The board is entitled to call to its assistance and avail itself of the services of employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available for the purposes of reviewing a case pursuant to the provisions of P.L.1997, c.175 (C.9:6-8.83 et al.). The board may also seek the advice of experts, such as persons specializing in the fields of pediatric, radiological, neurological, psychiatric, orthopedic and forensic medicine; nursing; psychology; social work; education; law enforcement; family law; substance abuse; child advocacy or other related fields, if the facts of a case warrant additional expertise.

109. Section 2 of P.L.2001, c.252 (C.30:4C-3.2) is amended to read as follows:

C.30:4C-3.2 Membership of review panel.

2. The Review Panel shall consist of 20 members as follows:

- a. The Commissioner of Human Services, or a designee, shall serve ex-officio.
- b. The Commissioner of Personnel, or a designee, shall serve ex-officio.
- c. The State Treasurer, or a designee, shall serve ex-officio.
- d. The Attorney General, or a designee, shall serve ex-officio.
- e. The Public Defender, or a designee, shall serve ex-officio.
- f. The Director of the Administrative Office of the Courts, or a designee, shall serve ex-officio.

g. A representative of the Office of the Governor.

h. The Child Advocate, or a designee, shall serve ex-officio.

i. Two members of the Senate to be appointed by the President of the Senate who shall each be of different political parties and who shall serve during the legislative session in which the appointment is made, one of whom shall be the Chairman of the Senate Health, Human Services and Senior Citizens Committee, or its successor. A member may be appointed for any number of successive terms.

j. Two members of the General Assembly to be appointed by the Speaker of the General Assembly who shall each be of different political parties and who shall serve during the legislative session in which the appointment is made, one of whom shall be the Chairman of the Assembly Family, Women and Children's Services Committee, or its successor. A member may be appointed for any number of successive terms.

k. Eight public members shall be directly appointed by the Governor as follows:

(1) three public members who are representatives from employee organizations, two of whom are representatives of the Communications Workers of America;

(2) a public member who is a representative of the Association for Children of New Jersey;

(3) a public member who is a representative of Legal Services of New Jersey;

(4) a public member who is a representative of a contracted service provider to the Division of Youth and Family Services; and

(5) two public members, one of whom is a resource family parent and one of whom is an adoptive parent.

Repealer.

110. The following are repealed:

Section 17 of P.L.1979, c.496 (C.30:1A-2);

Sections 1 and 2 of P.L.1989, c.330 (C.52:27D-29.30 and 52:27D-20.31);

Sections 2 through 4 of P.L.1994, c.58 (C.52:27E-51 through 52:27E-53);

Sections 11 through 20 of P.L.1994, c.58 (C.52:27E-58 through C.52:27E-67);

Sections 22 through 25 of P.L.1994, c.58 (C.52:27E-68 through 52:27E-71);

Sections 27 through 28 of P.L.1994, c.58 (C.52:27E-72 through C.52:27E-73);

Section 33 of P.L.1994, c.58 (C.52:27E-74);

Section 68 of P.L.1994, c.58 (C.52:27E-79);
Section 44 of P.L.2003, c.89 (C.17:29A-53);and
Sections 1 through 11 of P.L.2003, c.187 (C.52:17D-1 et seq.).

111. Such sums as may be required for the costs of the Department of the Public Advocate shall be transferred from existing appropriations, subject to the approval of the Director of the Division of Budget and Accounting and such further approval as required pursuant to the transfer provisions of the annual appropriations act, to the Department of the Public Advocate for the purposes of implementing this act.

112. This act shall take effect at noon on January 17, 2006

Approved July 12, 2005.