CHAPTER 34

AN ACT abolishing the Department of the Public Advocate, transferring certain of its functions and revising and supplementing various parts of the statutory law.

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

C.52:27EE-86 Department of the Public Advocate abolished.

1. a. The Department of the Public Advocate created by P.L.2005, c.155 (C.52:27EE-1 et al.) is abolished as a principal department in the Executive Branch of State Government and all of its functions, powers and duties, except as otherwise provided in this act, are hereby terminated.

b. The offices and terms of the Public Advocate, and of the assistants, deputies, and directors of the various divisions and offices of the Department of the Public Advocate, except as otherwise provided in this act, are hereby terminated.

c. Regulations of the Department of the Public Advocate concerning its organization, function, practice, and procedure are void. Except as otherwise provided in this act, whenever in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Department of the Public Advocate, the same shall mean and refer to the Office of the Public Defender in, but not of, the Department of the Treasury.

d. All communications between an individual client and an attorney in or engaged by the Department of the Public Advocate shall remain fully protected by the attorney-client privilege subsequent to the effective date of this act. The confidentiality of medical records and other documents maintained as confidential by the Department of the Public Advocate shall likewise be protected subsequent to the effective date of this act. Any record held by the department that 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. Any person acting reasonably and in good faith who sought 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.

e. This act shall not affect the tenure, compensation, and pension rights, if any, of the holder of a position not specifically abolished herein in office upon the effective date of this act, nor alter the term of a member of a board, commission, or public body, not specifically abolished herein, in office on the effective date of this act, or require the reappointment thereof.

f. The provisions of this act in and of themselves shall not be construed to create any new cause of action, or to authorize any suit against any public entity or employee.

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

h. 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.).

i. The Governor may take such action by Executive Order, or other formal redesignation document, for the purpose of designating a private entity as the State's protection and advocacy agency for persons with mental illness or developmental disabilities.

j. The responsibility for all cases pending on the effective date of this act in which the Department of the Public Advocate is a party handled by divisions or offices being abolished shall be assumed by the Office of the Public Defender, unless the Public Defender, exercising discretion, determines that there are not sufficient resources to continue any particular litigation. In assuming responsibility for such cases, the Public Defender shall be bound by the terms of any orders, judgments, determinations, or settlements in the same manner as its predecessor the Department of the Public Advocate.

k. The Office of the Public Defender may take such actions as the Governor may by Executive Order, or other formal redesignation document, authorize for the purpose of coordinating and cooperating with any private entity designated by the Governor as the State's mental health protection and advocacy agency and protection and advocacy agency for persons with developmental disabilities.

2. Section 3 of P.L.1967, c.43 (C.2A:158A-3) is amended to read as follows:

C.2A:158A-3 Establishment of the Office of the Public Defender.

3. There is hereby established in the Executive Branch of the State Government the Office of the Public Defender. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Office of the Public Defender is hereby allocated within the Department of the Treasury, but, notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

3. N.J.S.3B:15-1 is amended to read as follows:

Bonds of fiduciaries; exceptions.

3B:15-1. The court or surrogate appointing a fiduciary in any of the instances enumerated below shall secure faithful performance of the duties of his office by requiring the fiduciary thereby authorized to act to furnish bond to the Superior Court in a sum and with proper conditions and sureties, having due regard to the value of the estate in his charge and the extent of his authority, as the court shall approve:

a. When an appointment is made upon failure of the will, or other instrument creating or continuing a fiduciary relationship, to name a fiduciary;

b. When a person is appointed in the place of the person named as fiduciary in the will, or other instrument creating or continuing the fiduciary relationship;

c. When the office to which the person is appointed is any form of administration, except (1) administration ad litem which may be granted with or without bond; or (2) administration granted to a surviving spouse where the decedent's entire estate is payable to the surviving spouse;

d. When the office to which the person is appointed is any form of guardianship of a minor or incapacitated person, except as otherwise provided in N.J.S.3B:12-16 or N.J.S.3B:12-33 with respect to a guardian appointed by will;

e. When letters are granted to a nonresident executor, except in cases where the will provides that no security shall be required of the person named as executor therein;

f. When an additional or substituted fiduciary is appointed;

g. When an appointment is made under chapter 26 of this title, of a fiduciary for the estate or property, or any part thereof, of an absentee;

h. When a fiduciary moves from the State, the court may require him to give such security as it may determine; or

i. (1) When an appointment is made, regardless of any direction in a last will and testament relieving a personal representative, testamentary guardian or testamentary trustee or their successors from giving bond, that person shall, before receiving letters or exercising any authority or control over the property, provide bond to secure performance of his duties with respect to property to which a developmentally disabled person as defined in section 3 of P.L.1985, c.145 (C.30:6D-25) is, or shall be entitled, if:

(a) the testator has identified that a devisee or beneficiary of property of the decedent's estate is such a developmentally disabled person; or

(b) the person seeking appointment has actual knowledge that a devisee or beneficiary of property of the decedent's estate is such a developmentally disabled person.

(2) No bond shall be required pursuant to paragraph (1) of this subsection if:

(a) the court has appointed another person as guardian of the person or guardian of the estate for the developmentally disabled person;

(b) the person seeking the appointment is a family member within the third degree of consanguinity of the developmentally disabled person; or

(c) the total value of the real and personal assets of the estate or trust does not exceed $25,000.

(3) A personal representative, testamentary guardian or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection shall file with the Superior Court an initial inventory and a final accounting of the estate in his charge containing a true account of all assets of the estate. Such person shall file an interim accounting every five years, or a lesser period of time if so ordered by the Superior Court, in the case of an extended estate or trust administration.

(4) A personal representative, testamentary guardian or testamentary trustee who is required to provide bond pursuant to paragraph (1) of this subsection may make application to the court to waive the bond or reduce the amount of bond for good cause shown, including the need to preserve assets of the estate.

This subsection shall not apply to qualified financial institutions pursuant to section 30 of P.L.1948, c.67 (C.17:9A-30) or to non-profit community trusts organized pursuant to P.L.1985, c.424 (C.3B:11-19 et seq.).

Nothing contained in this section shall be construed to require a bond in any case where it is specifically provided by law that a bond need not be required.

4. 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 Director of the Division of Rate Counsel in, but not of, the Department of the Treasury, 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 Director of the Division of Rate Counsel 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 P.L.2005, c.155 (C.52:27EE-51), shall apply to this section.

5. 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 Defender, the Public Guardian for Elderly Adults and the Ombudsperson for the Institutionalized Elderly, 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.

6. Section 4 of P.L.2009, c.329 (C.30:1B-6.3) is amended to read as follows:

C.30:1B-6.3 Coordinator for Reentry and Rehabilitation Services.

4. a. The Commissioner of Corrections shall designate a staff member as Coordinator for Reentry and Rehabilitative Services. The coordinator shall be qualified by training and experience to perform the duties of this position. The coordinator may be chosen by the commissioner from among the current employees of the department and the chosen employee

may continue the duties and responsibilities of the current position in addition to the duties and responsibilities of the coordinator position as provided in this section.

b. The coordinator shall compile and disseminate to inmates information concerning organizations and programs, whether faith-based or secular programs, which provide assistance and services to inmates reentering society after a period of incarceration. In compiling this information, the coordinator shall consult with non-profit entities, including but not limited to the New Jersey Institute for Social Justice, that provide informational services concerning reentry, and the Executive Director of the Office of Faith-based Initiatives in the Department of State, and the Corrections Ombudsperson in, but not of, the Department of the Treasury.

c. The coordinator shall ensure that inmates are made aware of and referred to organizations which provide services in the county where the inmate is to reside after being released from incarceration. The coordinator shall assist inmates in gaining access to programs and procuring the appropriate services.

d. The coordinator may employ professional and clerical staff as necessary within the limits of available appropriations.

7. Section 3 of P.L.2009, c.161 (C.30:4-3.25) is amended to read as follows:

C.30:4-3.25 Notification relative to certain deaths.

3. The department shall notify the Division of Mental Health Advocacy in the Office of the Public Defender within 24 hours after an unexpected death occurs at a State psychiatric hospital and shall promptly notify the Division of Mental Health Advocacy of any death of which the department has knowledge that occurs within seven days after a patient was discharged from a State psychiatric hospital.

8. Section 7 of P.L.2009, c.328 (C.30:4-8.8) is amended to read as follows:

C.30:4-8.8 Submission of complaints concerning female inmates.

7. The commissioner shall semiannually submit all inmate complaints submitted to the department concerning female inmates to the Director of the Division on Women in the Department of Community Affairs established pursuant to the "Division on Women Act of 1974," P.L.1974, c.87 (C.52:27D-43.8 et seq.).

9. 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 Children and Families 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 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, Human Services, Corrections, Health and Senior Services and Community Affairs, the Office of the Public Defender, the Statewide Children's Coordinating Council in the Department of Children and Families, the Administrative Office of the Courts, and Statewide family advocacy groups, in the development of the plan.

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

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

3. Every nursing home shall have the responsibility for:

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

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

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

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

e. Ensuring that no resident shall be subjected to physical restraints except upon written orders of an attending physician for a specific period of time when necessary to protect such resident from injury to himself or others. Restraints shall not be employed for purposes of punishment or the convenience of any nursing home staff personnel. The confinement of a resident in a locked room shall be prohibited.

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

g. Permitting citizens, with the consent of the resident being visited, legal services programs, employees of the Office of Public Defender and employees and volunteers of the Office of the Ombudsman for the Institutionalized Elderly, 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.

11. Section 3 of P.L.1971, c.223 (C.46:8-21.1) is amended to read as follows:

C.46:8-21.1 Return of deposit; displaced tenant; termination of lease; civil penalties, certain.

3. Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or licensee, or, in the case of a lease terminated pursuant to P.L.1971, c.318 (C.46:8-9.1), the executor or administrator of the estate of the tenant or licensee or the surviving spouse of the tenant or licensee so terminating the lease. The interest or earnings and any such deductions shall be itemized and the tenant, licensee, executor, administrator or surviving spouse notified thereof by personal delivery, registered or certified mail. Notwithstanding the provisions of this or any other section of law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.

Within five business days after:

a. the tenant is caused to be displaced by fire, flood, condemnation, or evacuation, and

b. an authorized public official posts the premises with a notice prohibiting occupancy; or

c. any building inspector, in consultation with a relocation officer, where applicable, has certified within 48 hours that displacement is expected to continue longer than seven days and has so notified the owner or lessee in writing, the owner or lessee shall have available and return to the tenant or the tenant's designated agent upon his demand the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of the contract, lease or agreement and less any rent due and owing at the time of displacement.

Within 15 business days after a lease terminates as described in section 3 of P.L.2008, c.111 (C.46:8-9.6), the owner or lessee shall have available and return to the tenant or the tenant's designated agent upon his demand any money or advance of rent deposited as security plus the tenant's portion of the interest or earnings accumulated thereon, including the portion of any money or advance of rent due to a victim of domestic violence terminating a lease pursuant to section 3 of P.L.2008, c.111 (C.46:8-9.6), less any charges expended in accordance with the terms of the contract, lease or agreement and less any rent due and owing at the time of the lease termination.

Such net sum shall continue to be available to be returned upon demand during normal business hours for a period of 30 days at a location in the same municipality in which the subject leased property is located and shall be accompanied by an itemized statement of the interest or earnings and any deductions. The owner or lessee may, by mutual agreement with the municipal clerk, have the municipal clerk of the municipality in which the subject leased property is located return said net sum in the same manner. Within three business days after receiving notification of the displacement, the owner or lessee shall provide written notice to a displaced tenant by personal delivery or mail to the tenant's last known address. In the event that a lease terminates as described in section 3 of P.L.2008, c.111 (C.46:8-9.6), within three business days after the termination, the owner or lessee shall provide written notice to the victim of domestic violence by personal delivery or mail to the tenant's last known address. Such notice shall include, but not be limited to, the location at which and the hours and days during which said net sum shall be available to him. The owner or lessee shall provide a duplicate notice in the same manner to the relocation officer. Where a relocation officer has not been designated, the duplicate notice shall be provided to the municipal clerk. When the last known address of the tenant is that from which he was displaced and the mailbox of that address is not accessible during normal business hours, the owner or lessee shall also post such notice at each exterior public entrance of the property from which the tenant was displaced. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), or any other law to the contrary, the municipal clerk, and any designee, agent or employee of the municipal clerk, shall not knowingly disclose or otherwise make available personal information about any victim of domestic violence that the clerk or any designee, agent or employee has obtained pursuant to the procedures described in section 3 of P.L.1971, c.223 (C.46:8-21.1).

Any such net sum not demanded by and returned to the tenant or the tenant's designated agent within the period of 30 days shall be redeposited or reinvested by the owner or lessee in an appropriate interest bearing or dividend yielding account in the same investment company, State or federally chartered bank, savings bank or savings and loan association from which it was withdrawn. In the event that said displaced tenant resumes occupancy of the premises, said tenant shall redeliver to the owner or lessee one-third of the security deposit immediately, one-third in 30 days and one-third 60 days from the date of reoccupancy. Upon the failure of said tenant to make such payments of the security deposit, the owner or lessee may institute legal action for possession of the premises in the same manner that is authorized for nonpayment of rent.

The Commissioner of Community Affairs, the Attorney General, or any State entity which made deposits on behalf of a tenant may impose a civil penalty against an owner or lessee who has willfully and intentionally withheld deposits in violation of section 1 of P.L.1967, c.265 (C.46:8-19), when the deposits were made by or on behalf of a tenant who has received financial assistance through any State or federal program, including welfare or rental assistance. An owner or lessee of a tenant on whose behalf deposits were made by a State

entity and who has willfully and intentionally withheld such deposits in violation of this section shall be liable for a civil penalty of not less than $500 or more than $2,000 for each offense. The penalty prescribed in this paragraph shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The State entity which made such deposits on behalf of a tenant shall be entitled to any penalty amounts recovered pursuant to such proceedings.

In any action by a tenant, licensee, executor, administrator or surviving spouse, or other person acting on behalf of a tenant, licensee, executor, administrator or surviving spouse, for the return of moneys due under this section, the court upon finding for the tenant, licensee, executor, administrator or surviving spouse shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.

12. Section 7 of P.L.2003, c.64 (C.46:10B-28) is amended to read as follows:

C.46:10B-28 Enforcement by department.

7. a. The department shall conduct examinations and investigations and issue subpoenas and orders to enforce the provisions of this act with respect to a person licensed or subject to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. The department shall examine any instrument, document, account, book, record, or file of a person originating or brokering a high-cost home loan under this act. The department shall recover the cost of examinations from the person. A person originating or brokering high-cost home loans shall maintain its records in a manner that will facilitate the department in determining whether the person is complying with the provisions of this act and the regulations promulgated thereunder. The department shall require the submission of reports by persons originating or brokering high-cost home loans which shall set forth such information as the department shall require by regulation.

c. In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from a court of competent jurisdiction requiring the person to produce the requested information.

d. If the department determines that a person has violated the provisions of this act, the department may do any combination of the following that it deems appropriate:

(1) Impose a civil penalty of up to $10,000 for each offense, 40% of which penalty shall be dedicated for and used by the department for consumer education through nonprofit organizations which can establish to the satisfaction of the department that they have sufficient experience in credit counseling and financial education. In determining the penalty to be assessed, the commissioner shall consider the following criteria: whether the violation was willful; whether the violation was part of a pattern and practice; the amount of the loan; the points and fees charged; the financial condition of the violator; and other relevant factors. The department may require the person to pay investigative costs, if any.

(2) Suspend, revoke, or refuse to renew any license issued by the department.

(3) Prohibit or permanently remove an individual responsible for a violation of this act from working in his present capacity or in any other capacity related to activities regulated by the department.

(4) Order a person to cease and desist any violation of this act and to make restitution for actual damages to borrowers.

(5) Pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the commissioner may enter an appropriate temporary order to be effective immediately and until entry of a final order. The temporary emergent order may include: a temporary suspension of the creditor's authority to make high-cost home loans under this act; a temporary cease and desist order; a temporary prohibition against a creditor transacting high-cost home loan business in this State, or such other order relating to high-cost home loans as the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. Orders issued pursuant to this section shall be subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary emergent order shall be held, in any event, within five days after it is issued, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(6) Impose such other conditions as the department deems appropriate.

e. Any person aggrieved by a decision of the department and who has a direct interest in the decision may appeal the decision of the department to the commissioner. The appeal shall be conducted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

f. The department may maintain an action for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act.

g. A decision of the commissioner shall be a final order of the department and shall be enforceable in a court of competent jurisdiction. The department shall publish the final adjudication issued in accordance with this section, subject to redaction or modification to preserve confidentiality.

h. The provisions of this section shall not limit the authority of the Attorney General from instituting or maintaining any action within the scope of the Attorney General’s authority with respect to the practices prohibited under this act.

13. Section 2 of P.L.1991, c.428 (C.48:2-21.17) is amended to read as follows:

C.48:2-21.17 Definitions.

2. As used in this act:

"Alternative form of regulation" means a form of regulation of telecommunications services other than traditional rate base, rate of return regulation to be determined by the board and may include, but not be limited to, the use of an index, formula, price caps, or zone of rate freedom.

"Assess" means, in relation to the Director of the Division of Rate Counsel in, but not of, the Department of the Treasury, the making of any assessment or statement of the compensation and expense of counsel, experts and assistants employed by rate counsel and billed by the Director of the Division of Rate Counsel in, but not of, the Department of the Treasury as a final agency order or determination to a local exchange telecommunications company or an interexchange telecommunications carrier filing a petition with the Board of Regulatory Commissioners pursuant to the provisions of this act.

"Board" means the Board of Regulatory Commissioners or its predecessor agency.

"Competitive service" means any telecommunications service determined by the board to be competitive prior to the effective date of this act or determined to be competitive pursuant to section 4 or 5 of this act, or any telecommunications service not regulated by the board.

"Interexchange telecommunications carrier" means a carrier, other than a local exchange telecommunications company, authorized by the board to provide long-distance telecommunications services.

"LATA" means Local Access Transport Area as defined by the board in conformance with applicable federal law.

"Local exchange telecommunications company" means a carrier authorized by the board to provide local telecommunications services.

"Protected telephone services" means any of the following telecommunications services provided by a local exchange telecommunications company, unless the board determines, after notice and hearing, that any of these services is competitive or should no longer be a protected telephone service: telecommunications services provided to business or residential customers for the purpose of completing local calls; touch-tone service or similar service; access services other than those services that the board has previously found to be competitive; toll service provided by a local exchange telecommunications company; and the ordering, installation and restoration of these services.

"Rate counsel" means the Division of Rate Counsel in, but not of, the Department of the Treasury acting pursuant to sections 46 through 54 of P.L.2005, c.155 (C.52:27EE-46 through C.52:27EE-54), as amended and supplemented by P.L.2010, c.34 (C.52:27EE-86 et al.).

"Telecommunications service" means any telecommunications service which is subject to regulation by the board pursuant to Title 48 of the Revised Statutes.

14. Section 3 of P.L.2007, c.94 (C.48:2-21.36) is amended to read as follows:

C.48:2-21.36 Definitions relative to a manufacturing facility; electricity, natural gas agreements.

3. a. As used in this section, "manufacturing facility" means a facility:

(1) with respect to which the owner of the facility shall have entered into an off-tariff rate agreement with an electric public utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.);

(2) that manufactures products made from using "postconsumer material," as that term is defined in 40 C.F.R. s.247.3, and other recovered material feedstocks that meet the requirements of the Comprehensive Procurement Guideline For Products Containing Recovered Materials as promulgated by the United States Environmental Protection Agency in 40 C.F.R. s.247.1 et seq., pursuant to the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No. 13101, issued by the President of the United States on September 14, 1998, provided that at least 75 percent of the manufacturing facility's total annual sales dollar volume of such products that are produced in New Jersey meet the recycled content standards within such guidelines;

(3) for which a "comprehensive energy audit," as that term is defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have been undertaken within 90 days after the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-effective energy efficiency and conservation measures as part of the efforts to reduce energy costs;

(4) that has been in operation in this State for at least 25 years as of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

(5) at which at least 800 employees are employed on the first business or work day after the expiration of such off-tariff rate agreement.

b. An electric public utility or a gas public utility may enter into an agreement with the owner of a manufacturing facility that establishes a price for the transmission or distribution of electricity or natural gas, as appropriate, to that manufacturing facility that is different from, but in no case higher than, that specified in the electric public utility's or gas public utility's current cost-of-service based tariff rate for transmission or distribution service otherwise applicable to the manufacturing facility.

c. The board shall approve the agreement if such agreement meets all of the following conditions:

(1) The agreement shall be filed with the board and the Division of Rate Counsel in the Department of the Treasury;

(2) The agreement shall contain a provision that the owner of the manufacturing facility would have relocated the facility outside of the State to a location where electric power or natural gas supply could be obtained at a lower cost, had it not entered into the agreement;

(3) There shall be no retroactive recovery by the electric public utility or gas public utility, as appropriate, from its general ratepayer base of any revenue erosion that occurs prior to the conclusion of the utility's next base rate case. Subsequent to the conclusion of the utility's next base rate case, any such recovery shall be prospective only. The board may require the utility to provide proof that there shall be no such retroactive recovery;

(4) There shall be no undue transfer of cost allocation or revenue recovery responsibility by the electric public utility or gas public utility, as appropriate, from the utility to its general ratepayer base. The utility agrees to be subject to an independent audit or such accounting and reporting systems the board may deem as necessary to ensure that costs are allocated properly and that revenue recovery responsibility is not transferred; and

(5) The term of the rate agreement shall begin within one year of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.) and shall not exceed seven years in duration.

15. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to read as follows:

C.48:3-87 Environmental disclosure requirements; standards; rules; terms defined.

38. a. The board shall require an electric power supplier or basic generation service provider to disclose on a customer's bill or on customer contracts or marketing materials, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer, including, but not limited to:

(1) Its fuel mix, including categories for oil, gas, nuclear, coal, solar, hydroelectric, wind and biomass, or a regional average determined by the board;

(2) Its emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant that the board may determine to pose an environmental or health hazard, or an emissions default to be determined by the board; and

(3) Any discrete emission reduction retired pursuant to rules and regulations adopted pursuant to P.L.1995, c.188.

b. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment and public hearing, interim standards to implement this disclosure requirement, including, but not limited to:

(1) A methodology for disclosure of emissions based on output pounds per megawatt hour;

(2) Benchmarks for all suppliers and basic generation service providers to use in disclosing emissions that will enable consumers to perform a meaningful comparison with a supplier's or basic generation service provider's emission levels; and

(3) A uniform emissions disclosure format that is graphic in nature and easily understandable by consumers. The board shall periodically review the disclosure requirements to determine if revisions to the environmental disclosure system as implemented are necessary.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

c. (1) The board may adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment, an emissions portfolio standard applicable to all electric power suppliers and basic generation service providers, upon a finding that:

(a) The standard is necessary as part of a plan to enable the State to meet federal Clean Air Act or State ambient air quality standards; and

(b) Actions at the regional or federal level cannot reasonably be expected to achieve the compliance with the federal standards.

(2) By July 1, 2009, the board shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a greenhouse gas emissions portfolio standard to mitigate leakage or another regulatory mechanism to mitigate leakage applicable to all electric power suppliers and basic generation service providers that provide electricity to customers within the State. The greenhouse gas emissions portfolio standard or any other regulatory mechanism to mitigate leakage shall:

(a) Allow a transition period, either before or after the effective date of the regulation to mitigate leakage, for a basic generation service provider or electric power supplier to either meet the emissions portfolio standard or other regulatory mechanism to mitigate leakage, or to transfer any customer to a basic generation service provider or electric power supplier that meets the emissions portfolio standard or other regulatory mechanism to mitigate leakage. If the transition period allowed pursuant to this subparagraph occurs after the implementation of an emissions portfolio standard or other regulatory mechanism to mitigate leakage, the transition period shall be no longer than three years; and

(b) Exempt the provision of basic generation service pursuant to a basic generation service purchase and sale agreement effective prior to the date of the regulation.

Unless the Attorney General or the Attorney General's designee determines that a greenhouse gas emissions portfolio standard would unconstitutionally burden interstate commerce or would be preempted by federal law, the adoption by the board of an electric energy efficiency portfolio standard pursuant to subsection g. of this section, a gas energy efficiency portfolio standard pursuant to subsection h. of this section, or any other enhanced energy efficiency policies to mitigate leakage shall not be considered sufficient to fulfill the requirement of this subsection for the adoption of a greenhouse gas emissions portfolio standard or any other regulatory mechanism to mitigate leakage.

d. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, renewable energy portfolio standards that shall require:

(1) that two and one-half percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I or Class II renewable energy sources; and

(2) beginning on January 1, 2001, that one-half of one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I renewable energy sources. The board shall increase the required percentage for Class I renewable energy sources so that by January 1, 2006, one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources and shall additionally increase the required percentage for Class I renewable energy sources by one-half of one percent each year until January 1, 2012, when four percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources.

An electric power supplier or basic generation service provider may satisfy the requirements of this subsection by participating in a renewable energy trading program approved by the board in consultation with the Department of Environmental Protection.

(3) that the board establish a multi-year schedule, applicable to each electric power supplier or basic generation service provider in this State, beginning with the one-year period commencing on June 1, 2010, and continuing for each subsequent one-year period up to and including, the one-year period commencing on June 1, 2025, that requires suppliers or providers to purchase at least the following number of kilowatt-hours from solar electric power generators in this State:

EY 2011 306 Gigawatthours (Gwhrs)
EY 2012 442 Gwhrs
EY 2013 596 Gwhrs
EY 2014 772 Gwhrs
EY 2015 965 Gwhrs
EY 2016 1,150 Gwhrs
EY 2017 1,357 Gwhrs
EY 2018 1,591 Gwhrs
EY 2019 1,858 Gwhrs
EY 2020 2,164 Gwhrs
EY 2021 2,518 Gwhrs
EY 2022 2,928 Gwhrs
EY 2023 3,433 Gwhrs
EY 2024 3,989 Gwhrs
EY 2025 4,610 Gwhrs
EY 2026 5,316 Gwhrs

EY 2027, and for every energy year thereafter, at least 5,316 Gwhrs per energy year to reflect an increasing number of kilowatt-hours to be purchased by suppliers or providers from solar electric power generators in this State, and to establish a framework within which suppliers and providers shall purchase at least 2,518 Gwhrs in the energy year 2021 and 5,316 Gwhrs in the energy year 2026 from solar electric power generators in this State, provided, however, that the number of solar kilowatt-hours required to be purchased by each supplier or provider, when expressed as a percentage of the total number of solar kilowatt-hours purchased in this State, shall be equivalent to each supplier's or provider's proportionate share of the total number of kilowatt-hours sold in this State by all suppliers and providers.

The solar renewable portfolio standards requirements in paragraph (3) of this subsection shall automatically increase by 20% for the remainder of the schedule in the event that the following two conditions are met: (a) the number of SRECs generated meets or exceeds the requirement for three consecutive reporting years, starting with energy year 2013; and (b) the average SREC price for all SRECs purchased by entities with renewable energy portfolio standards obligations has decreased in the same three consecutive reporting years. The board shall exempt providers' existing supply contracts that are: (a) effective prior to the date of P.L.2009, c.289; or (b) effective prior to any future increase in the solar renewable portfolio standard beyond the multi-year schedule established in paragraph (3) of this subsection. This exemption shall apply to the number of SRECs that exceeds the number mandated by the solar renewable portfolio standards requirements that were in effect on the date that the providers executed their existing supply contracts. This limited exemption for providers' existing supply contracts shall not be construed to lower the Statewide solar purchase requirements set forth in paragraph (3) of this subsection. Such incremental new requirements shall be distributed over the electric power suppliers and providers not subject to the existing supply contract exemption until such time as existing supply contracts expire and all suppliers are subject to the new requirement.

An electric power supplier or basic generation service provider may satisfy the requirements of this subsection by participating in a renewable energy trading program approved by the board in consultation with the Department of Environmental Protection, or compliance with the requirements of this subsection may be demonstrated to the board by suppliers or providers through the purchase of SRECs.

The renewable energy portfolio standards adopted by the board pursuant to paragraphs (1) and (2) of this subsection shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

The renewable energy portfolio standards adopted by the board pursuant to paragraph (3) of this subsection shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 30 months after such filing, and shall, thereafter, be amended, adopted or readopted by the board in accordance with the "Administrative Procedure Act."

e. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing:

(1) net metering standards for electric power suppliers and basic generation service providers. The standards shall require electric power suppliers and basic generation service providers to offer net metering at non-discriminatory rates to industrial, large commercial, residential and small commercial customers, as those customers are classified or defined by the board, that generate electricity, on the customer's side of the meter, using a Class I renewable energy source, for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period. Systems of any sized capacity, as measured in watts, are eligible for net metering. If the amount of electricity generated by the customer-generator, plus any kilowatt hour credits held over from the previous billing periods, exceeds the electricity supplied by the electric power supplier or basic generation service provider, then the electric power supplier or basic generation service provider, as the case may be, shall credit the customer-generator for the excess kilowatt hours until the end of the annualized period at which point the customer-generator will be

compensated for any remaining credits or, if the customer-generator chooses, credit the customer-generator on a real-time basis, at the electric power supplier's or basic generation service provider's avoided cost of wholesale power or the PJM electric power pool's real-time locational marginal pricing rate, adjusted for losses, for the respective zone in the PJM electric power pool. Alternatively, the customer-generator may execute a bilateral agreement with an electric power supplier or basic generation service provider for the sale and purchase of the customer-generator's excess generation. The customer-generator may be credited on a real-time basis, so long as the customer-generator follows applicable rules prescribed by the PJM electric power pool for its capacity requirements for the net amount of electricity supplied by the electric power supplier or basic generation service provider. The board may authorize an electric power supplier or basic generation service provider to cease offering net metering whenever the total rated generating capacity owned and operated by net metering customer-generators Statewide equals 2.5 percent of the State's peak electricity demand;

(2) safety and power quality interconnection standards for Class I renewable energy source systems used by a customer-generator that shall be eligible for net metering.

Such standards or rules shall take into consideration the goals of the New Jersey Energy Master Plan, applicable industry standards, and the standards of other states and the Institute of Electrical and Electronic Engineers. The board shall allow electric public utilities to recover the costs of any new net meters, upgraded net meters, system reinforcements or upgrades, and interconnection costs through either their regulated rates or from the net metering customer-generator; and

(3) credit or other incentive rules for generators using Class I renewable energy generation systems that connect to New Jersey's electric public utilities' distribution system but who do not net meter.

Such rules shall require the board or its designee to issue a credit or other incentive to those generators that do not use a net meter but otherwise generate electricity derived from a Class I renewable energy source and to issue an enhanced credit or other incentive, including, but not limited to, a solar renewable energy credit, to those generators that generate electricity derived from solar technologies.

Such standards or rules shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

f. The board may assess, by written order and after notice and opportunity for comment, a separate fee to cover the cost of implementing and overseeing an emission disclosure system or emission portfolio standard, which fee shall be assessed based on an electric power supplier's or basic generation service provider's share of the retail electricity supply market. The board shall not impose a fee for the cost of implementing and overseeing a greenhouse gas emissions portfolio standard adopted pursuant to paragraph (2) of subsection c. of this section, the electric energy efficiency portfolio standard adopted pursuant to subsection g. of this section, or the gas energy efficiency portfolio standard adopted pursuant to subsection h. of this section.

g. The board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an electric energy efficiency portfolio standard that may require each electric public utility to implement energy efficiency measures that reduce electricity usage in the State by 2020 to a level that is 20 percent below the usage projected by the board in the absence of such a standard. Nothing in this section shall be construed to prevent

an electric public utility from meeting the requirements of this section by contracting with another entity for the performance of the requirements.

h. The board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a gas energy efficiency portfolio standard that may require each gas public utility to implement energy efficiency measures that reduce natural gas usage for heating in the State by 2020 to a level that is 20 percent below the usage projected by the board in the absence of such a standard. Nothing in this section shall be construed to prevent a gas public utility from meeting the requirements of this section by contracting with another entity for the performance of the requirements.

i. After the board establishes a schedule of solar kilowatt-hour sale or purchase requirements pursuant to paragraph (3) of subsection d. of this section, the board may initiate subsequent proceedings and adopt, after appropriate notice and opportunity for public comment and public hearing, increased minimum solar kilowatt-hour sale or purchase requirements, provided that the board shall not reduce previously established minimum solar kilowatt-hour sale or purchase requirements, or otherwise impose constraints that reduce the requirements by any means.

j. The board shall determine an appropriate level of solar alternative compliance payment, and establish a 15-year solar alternative compliance payment schedule, that permits each supplier or provider to submit an SACP to comply with the solar electric generation requirements of paragraph (3) of subsection d. of this section. The board may initiate subsequent proceedings and adopt, after appropriate notice and opportunity for public comment and public hearing, an increase in solar alternative compliance payments, provided that the board shall not reduce previously established levels of solar alternative compliance payments, nor shall the board provide relief from the obligation of payment of the SACP by the electric power suppliers or basic generation service providers in any form. Any SACP payments collected shall be refunded directly to the ratepayers by the electric public utilities.

k. The board may allow electric public utilities to offer long-term contracts and other means of financing, including but not limited to loans, for the purchase of SRECs and the resale of SRECs to suppliers or providers or others, provided that after such contracts have been approved by the board, the board's approvals shall not be modified by subsequent board orders.

l. The board shall implement its responsibilities under the provisions of this section in such a manner as to:

(1) place greater reliance on competitive markets, with the explicit goal of encouraging and ensuring the emergence of new entrants that can foster innovations and price competition;

(2) maintain adequate regulatory authority over non-competitive public utility services;

(3) consider alternative forms of regulation in order to address changes in the technology and structure of electric public utilities;

(4) promote energy efficiency and Class I renewable energy market development, taking into consideration environmental benefits and market barriers;

(5) make energy services more affordable for low and moderate income customers;

(6) attempt to transform the renewable energy market into one that can move forward without subsidies from the State or public utilities;

(7) achieve the goals put forth under the renewable energy portfolio standards;

(8) promote the lowest cost to ratepayers; and

(9) allow all market segments to participate.

m. The board shall ensure the availability of financial incentives under its jurisdiction, including, but not limited to, long-term contracts, loans, SRECs, or other financial support, to ensure market diversity, competition, and appropriate coverage across all ratepayer segments, including, but not limited to, residential, commercial, industrial, non-profit, farms, schools, and public entity customers.

n. For projects which are owned, or directly invested in, by a public utility pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1), the board shall determine the number of SRECs with which such projects shall be credited; and in determining such number the board shall ensure that the market for SRECs does not detrimentally affect the development of non-utility solar projects and shall consider how its determination may impact the ratepayers.

o. The board, in consultation with the Department of Environmental Protection, electric public utilities, the Division of Rate Counsel in, but not of, the Department of the Treasury, affected members of the solar energy industry, and relevant stakeholders, shall periodically consider increasing the renewable energy portfolio standards beyond the minimum amounts set forth in subsection d. of this section, taking into account the cost impacts and public benefits of such increases including, but not limited to:

(1) reductions in air pollution, water pollution, land disturbance, and greenhouse gas emissions;

(2) reductions in peak demand for electricity and natural gas, and the overall impact on the costs to customers of electricity and natural gas;

(3) increases in renewable energy development, manufacturing, investment, and job creation opportunities in this State; and

(4) reductions in State and national dependence on the use of fossil fuels.

p. Class I RECs shall be eligible for use in renewable energy portfolio standards compliance in the energy year in which they are generated, and for the following two energy years. SRECs shall be eligible for use in renewable energy portfolio standards compliance in the energy year in which they are generated, and for the following two energy years.

16. 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

Children and Families Department

Commissioner of Children and Families

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
State Department
Secretary of State
Transportation Department
Commissioner of Transportation
Treasury Department
State Treasurer
Members, Board of Public Utilities

17. Section 26 of P.L.2008, c.46 (C.52:27D-329.15) is amended to read as follows:

C.52:27D-329.15 Interdepartmental working group.

26. a. An interdepartmental working group is established for the purpose of supporting the activities of the commission and its preparation of the draft plan.

b. The membership of the working group shall consist of the commissioners or executive directors of the following departments or agencies of State government: the Department of Community Affairs, the Council on Affordable Housing, the New Jersey Housing and Mortgage Finance Agency, the Department of Human Services, the Department of Children and Families, the Department of Health and Senior Services, the Department of Education, the Department of Environmental Protection, the Department of Transportation, the Office of Smart Growth, the Department of the Treasury, the Highlands Council, the Pinelands Commission, and the New Jersey Meadowlands Commission.

c. The Commissioner of Community Affairs may appoint the Senior Deputy Commissioner for Housing as his or her representative to serve on the working group.

d. Each other commissioner or executive director may appoint a representative to serve on the working group, who shall be a senior employee of the department or agency with substantial background, experience, or training relevant to the mission of the working group.

e. The working group shall be chaired by the Commissioner of Community Affairs or by the Senior Deputy Commissioner for Housing as the commissioner's designee, if so appointed.

f. Meetings of the working group shall be called by the chair as needed during the course of preparation of the plan or the annual performance report.

g. Each department or agency constituting the working group shall make available such personnel and information as may be necessary to enable the working group to perform its responsibilities.

18. Section 6 of P.L.1994, c.58 (C.52:27E-55) is amended to read as follows:

C.52:27E-55 Office of the Public Defender continued, transferred to the Department of the Treasury.

6. a. The Office of the Public Defender created by P.L.1967, c.43 (C.2A:158A-1 et seq.), together with all its functions, powers and duties is continued and transferred to and constituted as the Office of the Public Defender in, but not of, the Department of the Treasury. Notwithstanding this allocation, the office shall not be subject to the supervision or control of the Department of the Treasury or any of its officers or employees.

b. 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 Public Defender, the same shall mean and refer to the Office of the Public Defender in, but not of, the Department of the Treasury.

19. Section 37 of P.L.1994, c.58 (C.52:27E-75) is amended to read as follows:

C.52:27E-75 Access to client records, files by designated agencies.

37. Any agency designated by the Governor to serve as the State's protection and advocacy agency for the mentally ill and for the developmentally disabled shall have the same access to client records and files, to agency records and to the premises of State or private institutions as the Division of Mental Health Advocacy in the Office of the Public Defender. The intent of this section is that any private protection and advocacy agency designated by the Governor have all of the powers necessary to carry out its responsibilities as required to qualify for federal funding as the protection and advocacy agency.

20. Section 12 of P.L.2005, c.155 (C.52:27EE-12) is amended to read as follows:

C.52:27EE-12 Definitions.

12. Definitions.

As used in sections 27, 32, 33, 48, 50, 51 and 64 of P.L.2005, c.155 (C.52:27EE-27, C.52:27EE-32, C.52:27EE-33, C.52:27EE-48, C.52:27EE-50, C.52:27EE-51 and C.52:27EE-64):

“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;

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

"facility" whenever referred to in section 64 of P.L.2005, c.155 (C.52:27EE-64), 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;

“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;

“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.

21. Section 21 of P.L.2005, c.155 (C.52:27EE-21) is amended to read as follows:

C.52:27EE-21 Dispute settlement office; established.

21. Dispute Settlement Office; established.

There is hereby established in the Office of the Public Defender the Dispute Settlement Office.

22. Section 22 of P.L.2005, c.155 (C.52:27EE-22) is amended to read as follows:

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 Defender, 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 Defender 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 Defender 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.

23. Section 23 of P.L.2005, c.155 (C.52:27EE-23) is amended to read as follows:

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 Relations in the Department of the Public Advocate are hereby transferred to and assumed by the Dispute Settlement Office of the Office of the Public Defender.

Whenever in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Dispute Settlement Office in the Department of the Public Advocate, the same shall mean and refer to the Dispute Settlement Office in the Office of the Public Defender.

24. Section 26 of P.L.2005, c.155 (C.52:27EE-26) is amended to read as follows:

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 Corrections Ombudsperson in the Department of the Public Advocate are hereby transferred to and assumed by the Corrections Ombudsperson in, but not of, the Department of the Treasury. The Corrections Ombudsperson shall be appointed by the Governor. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Corrections Ombudsperson is hereby allocated to the Department of the Treasury, but, notwithstanding this allocation, the ombudsperson shall be independent of any supervision or control by the department or by any board or officer thereof.

b. Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Corrections Ombudsperson in the Department of the Public Advocate the same shall mean and refer to the Corrections Ombudsperson in, but not of, the Department of the Treasury.

25. Section 29 of P.L.2005, c.155 (C.52:27EE-29) is amended to read as follows:

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

29. Division of Mental Health Advocacy; established.

a. There is hereby established in the Office of the Public Defender 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 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.

26. Section 31 of P.L.2005, c.155 (C.52:27EE-31) is amended to read as follows:

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 Defender, the interests of indigent mental hospital admittees in such disputes and litigation as will, in the discretion of the Public Defender, 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.

27. Section 34 of P.L.2005, c.155 (C.52:27EE-34) is amended to read as follows:

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 Office of the Public Defender 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.

28. Section 35 of P.L.2005, c.155 (C.52:27EE-35) is amended to read as follows:

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 Defender, 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 Defender, on a temporary basis such other expert assistants as are necessary pursuant to a reasonable fee schedule established in advance by the Public Defender.

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. Employees of the Division of Mental Health Advocacy in the Department of the Public Advocate who are client services representatives or patient advocates for the mentally ill providing patient advocacy services in State or county facilities that provide inpatient care, supervision and treatment for persons with mental illness, including psychiatric facilities, and the functions of such employees, are hereby transferred to the Office of the Public Defender to be employees thereof. The Public Defender through the Division of Mental Health Advocacy shall employ such persons and continue such functions in the manner the Public Defender and the director of the division shall deem appropriate and necessary. These employees shall report to the division director and the Public Defender.

29. Section 36 of P.L.2005, c.155 (C.52:27EE-36) is amended to read as follows:

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 Office of the Public Defender 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.

30. Section 37 of P.L.2005, c.155 (C.52:27EE-37) is amended to read as follows:

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 are hereby transferred to and assumed by the Division of Mental Health Advocacy in the Office of the Public Defender.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Division of Mental Health Advocacy in the Department of the Public Advocate, the same shall mean and refer to the Division of Mental Health Advocacy in the Office of the Public Defender.

31. Section 46 of P.L.2005, c.155 (C.52:27EE-46) is amended to read as follows:

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

46. Division of Rate Counsel; established.

There is hereby established in the Department of the Treasury the Division of Rate Counsel to be under the supervision of the Director of the Division of Rate Counsel. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Rate Counsel is hereby allocated to the Department of the Treasury, but, notwithstanding this allocation, the division shall be independent of any supervision or control by the department or by any board or officer thereof.

32. Section 47 of P.L.2005, c.155 (C.52:27EE-47) is amended to read as follows:

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 Governor.

b. When exceptional circumstances arise, the Director of the Division of Rate Counsel, with the approval of the State Treasurer, 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 Treasurer.

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.

33. Section 48 of P.L.2005, c.155 (C.52:27EE-48) is amended to read as follows:

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

48. Division of Rate Counsel; jurisdiction.

The Division of the Rate Counsel in, but not of, the Department of the Treasury 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 P.L.2005, c.155 (C.52:27EE-12) 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 Division of Rate Counsel shall represent and protect the public interest with respect to insurance matters 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 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.

The Director of the Division of Rate Counsel 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).

34. Section 52 of P.L.2005, c.155 (C.52:27EE-52) is amended to read as follows:

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 P.L.2010, c.34 (C.52:27EE-86 et al.), including any assessments due and owing as of the effective date of P.L.2005, c.155 (C.52:27EE-1 et seq.) shall be deemed due and owing to the Division of Rate Counsel in, but not of, the Department of the Treasury.

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 ¼ 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.

35. Section 53 of P.L.2005, c.155 (C.52:27EE-53) is amended to read as follows:

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 Office of Management and Budget 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 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 Director of the Division of Rate Counsel pursuant to subsection b. of section 48 of P.L.2005, c.155 (C.52:27EE-48), 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 to subsection a. of this section, shall not exceed the amount appropriated by the Legislature for those expenses.

36. Section 54 of P.L.2005, c.155 (C.52:27EE-54) is amended to read as follows:

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 are hereby transferred to and assumed by the Division of Rate Counsel in, but not of, the Department of the Treasury.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Division of Rate Counsel in the Department of the Public Advocate, the same shall mean and refer to the Division of Rate Counsel in**,** but not of, the Department of the Treasury.

37. Section 61 of P.L.2005, c.155 (C.52:27EE-61) is amended to read as follows:

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

61. Division of Elder Advocacy; established.

There is hereby established in the Department of the Treasury the Division of Elder Advocacy to be under the supervision of the Director of the Division of Elder Advocacy, appointed by the Governor**.** For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Elder Advocacy is

hereby allocated to the Department of the Treasury, but, notwithstanding this allocation, the division shall be independent of any supervision or control by the department or by any board or officer thereof.

38. Section 62 of P.L.2005, c.155 (C.52:27EE-62) is amended to read as follows:

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 director deems shall best serve the interests of elderly adults.

39. Section 63 of P.L.2005, c.155 (C.52:27EE-63) is amended to read as follows:

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; and

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

40. Section 65 of P.L.2005, c.155 (C.52:27EE-65) is amended to read as follows:

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

65. Ombudsperson for the Institutionalized Elderly; transfer to Department of the Treasury. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Ombudsperson for the Institutionalized Elderly is hereby allocated to the Department of the Treasury, but, notwithstanding this allocation, the Ombudsperson shall be independent of any supervision or control by the department or by any board or officer thereof.

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

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

c. All functions, powers, and duties now vested in the Ombudsperson for the Institutionalized Elderly in the Department of the Public Advocate are hereby transferred to and assumed by the Ombudsperson for the Institutionalized Elderly in, but not of, the Department of the Treasury.

Whenever, in any law, rule, regulation, order, reorganization plan, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Ombudsperson for the Institutionalized Elderly in the Department of the Public Advocate, the same shall mean and refer to the Ombudsperson for the Institutionalized Elderly in, but not of, the Department of the Treasury.

41. 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 the Ombudsperson for the Institutionalized Elderly. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Office of the Ombudsperson for the Institutionalized Elderly is hereby allocated to the Department of the Treasury, but, notwithstanding this allocation, the ombudsperson shall be independent of any supervision or control by the department or by any board or officer thereof.

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

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

4. The administrator and chief executive officer of the office shall be the Ombudsperson for the Institutionalized Elderly, who shall be a person qualified by training and experience to perform the duties of the office. The Ombudsperson shall be appointed by the Governor and shall serve at the pleasure of the Governor.

43. 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, court costs.

12. The Office of the Attorney General, the Division of Consumer Affairs, the Division of Rate Counsel in, but not of, the Department of the Treasury, 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.

44. 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 Division of Rate Counsel in, but not of, the Department of the Treasury 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.

45. 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 Director of the Division of Rate Counsel in, but not of, the Department of the Treasury 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.

46. 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 Division of Rate Counsel in, but not of, the Department of the Treasury.

47. 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 Division of Rate Counsel in, but not of, the Department of the Treasury, 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 Division of Rate Counsel, and to all persons who attended the public hearing.

b. If the Division of Rate Counsel 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.

48. 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 Division of Rate Counsel in, but not of, the Department of the Treasury.

49. 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 Division of Rate Counsel in, but not of, the Department of the Treasury, 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 Division of Rate Counsel, and shall make copies available to any other person upon request.

b. If the Division of Rate Counsel 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.

Repealer.

50. The following sections are repealed:

Section 1 of P.L.1994, c.58 (C.52:27E-50);

Sections 1 through 11 of P.L.2005, c.155 (C.52:27EE-1 through C.52:27EE-11);

Sections 13 through 20 of P.L.2005, c.155 (C.52:27EE-13 through C.52:27EE-20);

Sections 24 and 25 of P.L.2005, c.155 (C.52:27EE-24 and C.52:27EE-25);

Sections 38 through 45 of P.L.2005, c.155 (C.52:27EE-38 through C.52:27EE-45);

Sections 56 through 60 of P.L.2005, c.155 (C.52:27EE-56 through C.52:27EE-60); and Sections 66 through 85 of P.L.2005, c.155 (C.52:27EE-66 through C.52:27EE-85).

51. This act shall take effect immediately.

Approved June 29, 2010.