

# ASSEMBLY, No. 3813

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED DECEMBER 14, 2006

**Sponsored by:**

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**District 20 (Union)**

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**District 39 (Bergen)**

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**SYNOPSIS**

Allows State banks to provide for staggered terms of directors in certificate of incorporation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2007)**

1 AN ACT concerning the directors of State-chartered banks and  
2 amending P.L.1948, c.67.

3

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

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7 1. Section 102 of P.L.1948, c.67 (C.17:9A-102) is amended to  
8 read as follows:

9 102. Directors; classification; election; vacancies; tenure.

10 A. A bank may provide in its certificate of incorporation for the  
11 classification of its directors in respect to the time for which they  
12 shall severally hold office, but no class of directors shall hold office  
13 for a term shorter than one year or longer than five years, and the  
14 term of office of at least one class shall expire in each year. No  
15 classification of directors shall be effective prior to the first annual  
16 meeting of stockholders.

17 B. The directors named in the certificate of incorporation shall  
18 hold office until the first annual meeting of stockholders, and until  
19 their successors shall have been elected and qualified. At the first  
20 annual meeting of stockholders, and at each annual meeting  
21 thereafter, the stockholders shall elect directors to hold office until  
22 the next succeeding annual meeting of stockholders, except in the  
23 case of the classification of directors pursuant to subsection A. of  
24 this section.

25 C. Directors elected at each annual meeting of stockholders shall  
26 be elected by ballot of the stockholders [at each annual meeting].  
27 The persons [receiving] nominated for election as a director at each  
28 annual meeting of stockholders who receive the greatest number of  
29 votes shall be [the] elected as directors at that annual meeting.

30 D. When an increase in the number of directors is authorized,  
31 other than an increase authorized pursuant to subsection **[C]** F. of  
32 this section, the newly created directorships shall be filled by the  
33 stockholders. The board of directors may, at its option, fill any  
34 other vacancy in the board. If, following a vacancy, less than 5  
35 directors or less than a quorum remain, the directors in attendance  
36 at the next regular or special meeting of the board shall fill the  
37 vacancy.

38 **[B.]** E. A director elected at an annual meeting of the  
39 stockholders shall hold office for the term for which he is elected  
40 from the time when a majority of all directors elected at such  
41 meeting shall have qualified, and until [the time when a majority of  
42 the directors elected at the next annual meeting] his successor shall  
43 have been elected and qualified. A director otherwise elected or  
44 appointed, including a director appointed pursuant to subsection  
45 **[C]** F. of this section, shall hold office from the time when he shall

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 have qualified until the time when a majority of the directors  
2 elected at the next annual meeting shall have qualified.

3 **[C.] E.** If the original or amended certificate of incorporation  
4 of a bank so provides, the directors may, between annual meetings,  
5 increase the number of directors by not more than 2, and may,  
6 subject to the limitation imposed by subsection A\_ of section 101 of  
7 P.L.1948, c.67 (C.17:9A-101), appoint persons to fill the vacancies  
8 so created.

9 (cf: P.L.1964, c.32, s.1)

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11 2. This act shall take effect immediately.

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#### STATEMENT

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16 This bill allows a bank to provide for the "classification" or  
17 staggering of its directors in its certificate of incorporation, based  
18 on the time for which they hold office. Currently, all directors of a  
19 State-chartered bank must be elected each year at the bank's annual  
20 meeting of stockholders. Thus, a State-chartered bank is prohibited  
21 from having a "staggered" or "classified" board of directors.

22 Under the terms of the bill, no class of directors shall hold office  
23 for a term shorter than one year or longer than five years, and the  
24 term of office of at least one class shall expire in each year. No  
25 classification of directors shall be effective prior to the first annual  
26 meeting of stockholders. The directors named in the certificate of  
27 incorporation shall hold office until the first annual meeting of  
28 stockholders, and until their successors are elected and qualified.  
29 At the first annual meeting of stockholders, and at each annual  
30 meeting thereafter, the stockholders shall elect directors to hold  
31 office until the next succeeding annual meeting of stockholders,  
32 except in the case of the classification of directors.

33 Under the current law, New Jersey banks do not have the same  
34 flexibility as national banks and banks chartered under the laws of a  
35 majority of other states. National banks are expressly permitted to  
36 adopt bylaws that provide for a staggering of terms of directors, and  
37 New Jersey is one of only 12 states that do not permit the  
38 staggering of directors' terms. New Jersey business corporations  
39 are permitted to have staggered or classified boards as well. The  
40 most common benefits realized from having a staggered or  
41 classified board of directors are: continuity and stability of business  
42 strategies, policies and practices; consistent management; and  
43 consistent implementation of long-range strategic business  
44 initiatives and goals. This bill then would permit State-chartered  
45 banks to take advantage of the benefits realized from a staggered or  
46 classified board of directors, and put them on an equal footing with  
47 their national bank counterparts, and other types of business  
48 corporations.