

# SENATE, No. 375

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator ROBERT M. GORDON**

**District 38 (Bergen)**

**Co-Sponsored by:**

**Senators Cunningham, Turner, Gill, Sweeney and Van Drew**

**SYNOPSIS**

Requires Public Advocate intervention, additional public participation, and health impact study as conditions of conversion of health service corporation to domestic stock insurer.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the conversion of a health service corporation  
2 to a domestic stock insurer, and amending P.L.2001, c.131 and  
3 P.L.2005, c.155.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 3 of P.L.2001, c.131 (C.17:48E-51) is amended to  
9 read as follows:

10 3. a. The health service corporation shall file with the  
11 commissioner an application pursuant to subsection b. of this  
12 section for approval of, and permission to convert pursuant to, a  
13 plan of conversion. Concurrent with the filing of the application  
14 with the commissioner, the health service corporation shall submit a  
15 petition to the Attorney General pursuant to section 19 of this act  
16 and submit a copy of the petition to the commissioner. The health  
17 service corporation shall file a copy of the application with the  
18 Attorney General at the time the health service corporation files the  
19 application with the commissioner.

20 b. The application shall include the following:

21 (1) The plan of conversion and exhibits thereto.

22 (2) A business plan of the converted insurer and any parent  
23 corporation, including five-year financial projections and the  
24 number of shares of capital stock that the converted insurer and any  
25 parent corporation is authorized to issue, together with estimates of  
26 the capital which might be raised by the sales of the capital stock or  
27 securities convertible into capital stock.

28 (3) A certification by the secretary of the health service  
29 corporation that the plan of conversion has been duly adopted by  
30 action of not less than two-thirds of the total number of directors of  
31 the board of the health service corporation. Subscribers of the  
32 health service corporation shall not have the right to vote on or  
33 approve the plan of conversion, any amendments to the health  
34 service corporation's certificate of incorporation or bylaws, or the  
35 certificate of incorporation or bylaws of the converted insurer or  
36 parent corporation, notwithstanding any provision to the contrary in  
37 the certificate of incorporation or bylaws of the health service  
38 corporation.

39 (4) The proposed forms of the notice of **[hearing]** hearings  
40 required by subsection e. of this section and any other notices  
41 required by the plan of conversion or by the commissioner.

42 (5) Any information provided to the board of directors of the  
43 health service corporation in connection with its review and  
44 approval of the plan of conversion, except materials that are  
45 protected by attorney-client privilege.

**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 (6) A comparative premium rate analysis of all the policies of  
2 the health service corporation, comparing actual premium rates for  
3 the three-year period preceding the filing of the plan of conversion  
4 and projected premium rates for the three-year period following the  
5 proposed conversion. The rate analysis shall address the projected  
6 impact, if any, of the proposed conversion upon the cost to  
7 subscribers as well as the projected impact, if any, of the proposed  
8 conversion upon the health service corporation's underwriting  
9 profit, investment income, tax liability and loss and claim reserves,  
10 including the effect, if any, of adverse market or risk selection on  
11 reserves.

12 (7) Any conditions, other than approval of the plan of  
13 conversion by the commissioner, to be fulfilled on or before the  
14 effective time.

15 (8) Any proposed agreement between or among the foundation  
16 and the converted insurer or its parent corporation, if applicable,  
17 including, but not limited to, any agreement relating to the voting or  
18 registration for sale of any capital stock issued to the foundation by  
19 the converted insurer or any parent corporation.

20 (9) Any other additional information that the health service  
21 corporation believes is necessary.

22 (10) Any other additional information that the commissioner in  
23 his sole discretion deems appropriate.

24 c. If required pursuant to section 6 of this act, the plan of  
25 conversion shall include an appraisal of the fair market value, or  
26 range of values, of the aggregate equity of the converted insurer to  
27 be outstanding upon completion of the plan of conversion and, if a  
28 range of values, the methodology for fixing a final value coincident  
29 with the completion of the transactions provided for in the plan of  
30 conversion.

31 (1) The appraisal shall enable determinations of value of:

32 (a) the amount of cash or other assets that the foundation will be  
33 entitled to receive, without consideration, under the provisions of  
34 the plan of conversion; and

35 (b) the price of any shares to be issued pursuant to the optional  
36 provisions of a plan of conversion permitted by subsection e. of  
37 section 6 of this act;

38 (2) The appraisal required by this subsection c. shall be prepared  
39 by persons independent of the health service corporation,  
40 experienced and expert in the area of corporate appraisals and  
41 acceptable to the commissioner. The appraisal shall be in a form  
42 and content acceptable to the commissioner and contain a complete  
43 and detailed description of the elements that make up the appraisal,  
44 justification for the methodology employed and sufficient support  
45 for the conclusions reached in the appraisal. The commissioner  
46 may also require the appraisal to include an analysis of fair market

1 value based on actuarial considerations, as well as other methods  
2 for determining fair market value.

3 (3) To the extent that the appraisal is based on a capitalization  
4 of the pro forma income of the converted insurer, the appraisal shall  
5 indicate the basis for determination of the income to be derived  
6 from any proceeds of the sale of stock and demonstrate the  
7 appropriateness of the earnings-multiple used, including  
8 assumptions made regarding future earnings growth.

9 (4) To the extent that the appraisal is based on the comparison  
10 of the capital stock of the converted insurer with outstanding capital  
11 stock of existing stock entities offering comparable insurance  
12 products, the existing stock entities shall be reasonably comparable  
13 to the converted insurer in terms of factors such as size, market  
14 area, competitive conditions, profit history and expected future  
15 earnings.

16 (5) In those instances in which the commissioner determines  
17 that the appraisal is materially deficient or substantially incomplete,  
18 the commissioner may declare the entire application materially  
19 deficient or substantially incomplete and decline to further process  
20 or may reject the application.

21 (6) The health service corporation shall submit to the  
22 commissioner information demonstrating to the satisfaction of the  
23 commissioner the independence and expertise of any person  
24 preparing the appraisal or related materials under this subsection.

25 (7) The appraiser shall not serve as an underwriter or selling  
26 agent under the plan of conversion. With the prior written approval  
27 of the commissioner, an affiliate of the appraiser may act as an  
28 underwriter or selling agent if procedures are followed and  
29 representations and warranties are made to ensure that the appraiser  
30 is separate from the underwriter or selling agent affiliate and the  
31 underwriter or selling agent affiliate does not make  
32 recommendations or in any way have an impact on the appraisal.

33 (8) An appraiser may not receive any other fee except the fee for  
34 services rendered in connection with the appraisal.

35 d. The commissioner in his sole discretion: (1) shall determine,  
36 within 60 days of submission of the application, whether the  
37 application is complete and, if not, shall specify what additional  
38 information is required; and (2) shall further determine when an  
39 application is complete. The commissioner may request additional  
40 information from the health service corporation which the  
41 commissioner determines is necessary to review the application and  
42 plan of conversion. The commissioner may also conduct an  
43 examination under section 37 of P.L.1985, c.236 (C.17:48E-37) to  
44 obtain any information the commissioner determines necessary in  
45 connection with the application or transaction or series of  
46 transactions, that the commissioner determines constitute, or may  
47 constitute, a material change in form. The failure of the health

1 service corporation to provide the information or cooperate in the  
2 examination, in addition to other applicable penalties, constitutes  
3 grounds for denial of the application.

4 e. (1) Upon determining that the application is complete and  
5 the forms of notice are adequate, the commissioner shall designate  
6 [a date] dates for [a] at least four public [hearing] hearings on the  
7 plan of conversion, with at least one hearing each in the northern  
8 and southern regions of the State, and at least two in the central  
9 region of the State. Additionally, at least two public hearings shall  
10 be held before the commissioner has received and made public the  
11 health impact study prepared for the commissioner pursuant to the  
12 provisions of subsection g. of this section, and at least one public  
13 hearing shall be held after the commissioner's receipt and public  
14 release of all written reports obtained from his advisors and  
15 consultants, including the health impact study, focusing exclusively  
16 on these written reports, but with an emphasis on the health impact  
17 study. The public [hearing] hearings may be held on one or more  
18 days, the first commencing within 90 days after the date on which  
19 the commissioner determines the application is complete, unless the  
20 health service corporation requests, and the commissioner agrees to,  
21 a longer period for the purpose of preparing and distributing the  
22 notices required by this subsection. The public [hearing] hearings  
23 may, if the commissioner and Attorney General so agree, be  
24 conducted jointly as part of the public [hearing] hearings required  
25 under subsection e. of section 19 of this act.

26 [The] (2) Each hearing shall be in the nature of a legislative  
27 hearing and shall not constitute or be considered a contested case  
28 under the "Administrative Procedure Act," P.L.1968, c.410  
29 (C.52:14B-1 et seq.). The health service corporation shall provide  
30 the public with at least [45] 75 days' notice of the [hearing]  
31 schedule of hearings, the notice to be in the form, and provided in  
32 the manner, that the commissioner approves. The health service  
33 corporation shall cause notice of the time and place of [the] each  
34 public hearing to be published at least two times at intervals of not  
35 less than one week, the first publication to be not more than [45]  
36 75 days and the last publication not less than 15 days prior to the  
37 first scheduled public hearing in at least two newspapers of general  
38 circulation in New Jersey. The notice of the [hearing] hearings  
39 shall state the purpose thereof and the time and the place where  
40 [the] each hearing will occur. The purpose of the [hearing]  
41 hearings shall be to receive comments and information for the  
42 purpose of aiding the commissioner in making a decision as to  
43 whether to approve the plan of conversion. Persons wishing to  
44 make comments and submit information may submit written  
45 statements to the commissioner prior to [the] any public hearing  
46 and may appear and be heard at [the] any hearing.

1       (3) Notwithstanding the nature of the public hearings as  
2 legislative hearings, the Public Advocate, through the Division of  
3 Rate Counsel in the Department of the Public Advocate, shall act as  
4 an intervenor at each hearing, in representation of and to protect the  
5 public interest as defined in section 12 of P.L.2005, c.155  
6 (C.52:27EE-12).

7       (a) As an intervenor for the public interest, the Public Advocate  
8 shall participate in the review of the plan of conversion by first,  
9 independently reviewing the plan and any additional information  
10 obtained by the commissioner pursuant to subsection d. of this  
11 section, as well as any information provided to the commissioner by  
12 any advisor or consultant whose services the commissioner engages  
13 pursuant to subsection g. of this section, and only thereafter by  
14 requesting and accessing additional information directly from the  
15 health service corporation or other sources, for use at the public  
16 hearings, and for aiding the commissioner in making the decision as  
17 to whether to approve the plan of conversion. The Public Advocate  
18 may request access to information that has been designated as  
19 confidential and not a public record pursuant to section 10 of  
20 P.L.2001, c.131 (C.17:48E-58), subject to an executed non-  
21 disclosure agreement.

22       (b) As an intervenor for the public interest, the Public Advocate  
23 shall have the duty to consult with, and provide periodic updates to,  
24 representatives of interested organizations to the proposed plan of  
25 conversion, that are advocating for the health care interests of  
26 underserved individuals, or the health care interests of current  
27 subscribers of the health service corporation, or the interests of  
28 hospitals, physicians, or other health care providers in the State, or  
29 the promotion of fundamental improvements in the health status of  
30 all New Jerseyans. The Public Advocate may require that interested  
31 organizations advocating for identical or substantially similar  
32 individuals or interests designate one representative for those  
33 individuals or interests with whom the Public Advocate shall  
34 consult and provide updates.

35       (c) Status as an intervenor shall provide the Public Advocate  
36 standing to appeal the commissioner's decision as to whether to  
37 approve the plan of conversion consistent with the provisions of  
38 subsection b. of section 4 of P.L.2001, c.131 (C.17:48E-52).

39       f. [The] Each hearing shall be conducted by the commissioner  
40 or, at the commissioner's discretion, his designee, who shall report  
41 to and advise the commissioner on the matter, in which case the  
42 determination or order issued by the commissioner shall have the  
43 same force and effect as if the commissioner had conducted [the]  
44 each hearing personally. The commissioner's order or determination  
45 on the application pursuant to section 4 of this act shall be issued  
46 within 45 days after the closing of the record of the last scheduled  
47 hearing by the commissioner or his designee, as applicable. The

1 commissioner shall issue a written decision detailing the reasons for  
2 the approval or disapproval of the plan of conversion. The  
3 commissioner may, for good cause, extend the time within which he  
4 shall issue an order or determination on the application.

5 g. (1) The commissioner shall engage the services of a  
6 consultant to prepare a health impact study examining the direct and  
7 indirect health impact of the proposed conversion, which shall be  
8 completed for the commissioner and released to the public prior to  
9 conducting the final one or more public hearings as required by  
10 subsection e. of this section, and shall be used by the commissioner  
11 in making the final decision on the approval or disapproval of the  
12 plan of conversion pursuant to subsection f. of this section and  
13 section 4 of P.L.2001, c.131 (C.17:48E-52). The health impact  
14 study shall incorporate information and testimony presented at any  
15 public hearings already conducted and as otherwise obtained by the  
16 consultant, under the direction of the commissioner. The study  
17 shall examine all of the factors required to be considered by the  
18 commissioner in making the final decision on the approval or  
19 disapproval of the plan of conversion pursuant to subsection f. of  
20 this section and section 4 of P.L.2001, c.131 (C.17:48E-52), and  
21 shall additionally include, but not be limited to:

22 (a) assessing the impact of the conversion on the health care  
23 needs of subscribers;

24 (b) analyzing the business plan and comparative premium rate  
25 analysis submitted with the application pursuant to paragraphs (2)  
26 and (6) of subsection b. of this section, to determine whether the  
27 business plan and projections set forth in the rate analysis  
28 adequately address concerns of the health care costs of subscribers;

29 (c) assessing the impact of the conversion on accessible,  
30 available, affordable, and quality health care for underserved and  
31 vulnerable individuals, including children, seniors, low income or  
32 disabled individuals, and individuals with chronic illnesses;

33 (d) assessing the impact of the conversion on particular health  
34 insurance markets;

35 (e) assessing the impact of the conversion on provider contracts,  
36 current provider networks, and the development of additional  
37 provider networks;

38 (f) assessing the impact of the conversion on provider  
39 compensation;

40 (g) assessing the impact of the conversion on claims processing  
41 and payment; and

42 (h) assessing the impact of the conversion on the health care  
43 needs of all New Jerseyans and the promotion of the public interest.

44 (2) The commissioner may additionally engage the services of  
45 other advisors and consultants, which may include, but are not  
46 limited to, lawyers, actuaries, accountants, investment bankers,  
47 compensation and employee benefit plan consultants or any

1 combination thereof, to advise him on any matters related to the  
2 conversion. Any consultant engaged by the commissioner shall be  
3 subject to all applicable statutes, regulations, and rules of  
4 professional conduct governing conflicts of interest.

5 (3) All reasonable costs related to the development and  
6 examination of, and deliberations concerning, a plan of conversion  
7 and other related matters, including, but not limited to, those  
8 reasonable costs attributable to the consultant's completion of the  
9 health impact study and the use by the commissioner of other  
10 advisors and consultants, shall be paid by the health service  
11 corporation that makes the filing or initiates the discussions about a  
12 plan of conversion, both for services prior to the effective time and  
13 for services after the effective time. However, with respect to the  
14 Public Advocate as intervenor, the health service corporation shall  
15 only pay for those reasonable costs directly and solely attributable  
16 to the Public Advocate that are not duplicative of any costs  
17 attributable to the commissioner, and shall total no more than  
18 \$350,000, which total amount includes any amount attributable to  
19 the Public Advocate as intervenor regarding the foundation plan  
20 petition pursuant to section 19 of P.L.2001, c.131 (C.17:48E-67).  
21 (cf: P.L.2001, c.131, s.3)

22

23 2. Section 4 of P.L.2001, c.131 (C.17:48E-52) is amended to  
24 read as follows:

25 4. a. The commissioner shall approve the plan of conversion  
26 and issue a certificate of authority to the converted insurer to  
27 transact business in this State as a domestic stock insurer only if the  
28 commissioner finds, using the health impact study required to be  
29 completed pursuant to subsection g. of section 3 of P.L.2001, c.131  
30 (C.17:48E-51) and information otherwise obtained pursuant to  
31 P.L.2001, c.131 (C.17:48E-49 et al.), all of the following:

32 (1) The plan of conversion meets the requirements of sections 2  
33 and 3 of this act.

34 (2) Upon conversion, the converted insurer will meet the  
35 applicable standards and conditions under this section, including  
36 applicable minimum capital and surplus requirements.

37 (3) The plan of conversion adequately protects the existing  
38 contractual rights of subscribers.

39 (4) The plan of conversion will promote the best interests of the  
40 health service corporation.

41 (5) The health service corporation has complied with all  
42 requirements of sections 2 and 3 of this act.

43 (6) The plan of conversion is fair and equitable.

44 (7) The plan provides for the enhancement of the operations of  
45 the converted insurer.

1 (8) The plan provides for the transfer at or before the effective  
2 time of the entire fair market value of the health service corporation  
3 to the foundation in accordance with section 6 of this act.

4 (9) The plan is consistent with the foundation plan.

5 (10) The plan does not adversely affect the distribution of the  
6 health service corporation's value to the foundation.

7 (11) The plan is not contrary to law.

8 (12) The plan promotes the public interest.

9 (13) The Attorney General has concurred:

10 (a) with any findings of the commissioner pursuant to paragraph  
11 (8) of this subsection and section 6 of this act; and

12 (b) with the actions of the commissioner under subsection c. of  
13 section 3 of this act.

14 b. The commissioner's order approving or disapproving a plan  
15 of conversion under this section shall be a final agency decision  
16 subject to appeal in accordance with, and within the time periods  
17 specified by, the Rules Governing the Courts of the State of New  
18 Jersey.

19 (cf: P.L.2001, c.131, s.4)

20  
21 3. Section 19 of P.L.2001, c.131 (C.17:48E-67) is amended to  
22 read as follows:

23 19. a. (1) A health service corporation shall submit to the  
24 Attorney General a petition for review of a foundation plan at the  
25 same time that it submits a plan of conversion to the commissioner.  
26 The petition shall include the foundation plan and any other  
27 information that the Attorney General requests.

28 (2) Within 60 days of the health service corporation's  
29 submission of the petition to the Attorney General, the Attorney  
30 General shall advise the health service corporation in writing  
31 whether the petition is complete, and, if not, shall specify what  
32 additional information is required.

33 (3) The Attorney General shall, upon receipt of the information  
34 requested, notify the health service corporation in writing of the  
35 date of completion of the petition.

36 b. The Attorney General, and the Public Advocate, through the  
37 Division of Rate Counsel in the Department of the Public Advocate,  
38 acting as an intervenor as set forth in subsection g. of this section,  
39 shall review the petition and may either support the proposed  
40 foundation plan, with or without any specific modifications, or, if  
41 **[he]** the Attorney General or the Public Advocate finds that it is  
42 not in the public interest, oppose the foundation plan in the Superior  
43 Court proceeding commenced pursuant to subsection f. of this  
44 section.

45 c. When reviewing the petition, in addition to considering  
46 whether the foundation plan meets the requirements of subsection d.  
47 of this section, the Attorney General shall consider whether:

1 (1) the health service corporation exercised due diligence in  
2 deciding to effectuate the conversion, selecting any other party to  
3 the conversion or related transactions, and negotiating the terms and  
4 conditions of the conversion;

5 (2) the procedures used by the health service corporation in  
6 approving the conversion, including whether expert assistance was  
7 used, were appropriate;

8 (3) a conflict of interest was disclosed, including, but not  
9 limited to, conflicts of interest related to board members of,  
10 employees of, and experts retained by, the health service  
11 corporation or any other parties to the conversion;

12 (4) any management contract under the conversion or any  
13 related transaction is for reasonable fair value;

14 (5) (a) any proceeds of the conversion will be used solely for  
15 purposes of expanding access to affordable, quality health care for  
16 underserved individuals and similarly promoting fundamental  
17 improvements in the health status of New Jerseyans through  
18 accessible, available, affordable, and quality health care, including  
19 public health related activities; and

20 (b) any proceeds will not be used to replace any current  
21 government appropriations and any other spending on health care;

22 (6) the health service corporation established appropriate criteria  
23 in deciding to pursue a conversion and considered the proposed  
24 conversion as the only alternative or as the best alternative in  
25 relation to carrying out its mission and purposes; and

26 (7) officers, directors, board members or senior management of  
27 the health service corporation will receive contracts in any existing,  
28 new or affiliated health service corporation, foundation, the  
29 converted insurer, any parent corporation or any affiliate of any of  
30 the foregoing.

31 d. The foundation plan, subject to review by the Attorney  
32 General and the Public Advocate, shall meet the following  
33 requirements:

34 (1) The foundation plan shall provide for the establishment of  
35 one or more foundations that will receive the fair market value of  
36 the health service corporation following its conversion to a  
37 domestic stock insurer and that meets the following requirements:

38 (a) The foundation shall be a trust or nonprofit corporation  
39 formed under the laws of this State, but shall not include the health  
40 service corporation or any person controlled by the health service  
41 corporation.

42 (b) The foundation shall be a charitable entity that qualifies for  
43 federal income tax exemption under **【**paragraph (3) of subsection  
44 **(c) of】** section 501(c)(3) of the federal Internal Revenue Code **【**of  
45 1986,**】** (26 U.S.C. s.501(c)(3)).

46 (c) The foundation shall have the sole purposes of expanding  
47 access to affordable, quality health care for underserved individuals

1 and similarly promoting fundamental improvements in the health  
2 status of all New Jerseyans through accessible, available,  
3 affordable, and quality health care, including public health related  
4 activities.

5 (d) The foundation, its directors, officers and trustees and the  
6 assets of the foundation, including any stock of the converted  
7 insurer or a parent corporation, shall be independent of any  
8 influence or control by the converted insurer, its parent corporation,  
9 any of their subsidiaries or affiliates, any of their respective  
10 directors, officers, trustees or employees, except with the prior  
11 approval of the Attorney General and the commissioner.

12 (e) The foundation shall not have more than one of its directors  
13 serve as a director of the converted insurer or its parent corporation.

14 (f) The foundation shall not have as a director, officer or senior  
15 management any person who has been a director, officer, agent,  
16 trustee or employee of the health service corporation, the converted  
17 insurer, its parent corporation or any affiliate of any of them during  
18 the three-year period preceding the date of appointment as a  
19 director, officer or senior manager of the foundation.

20 (g) The foundation shall have a board of directors that when  
21 appointed will comply with section 20 of this act.

22 (2) The foundation shall provide the Attorney General with an  
23 annual report which shall include an audited financial statement and  
24 a detailed description of its grant-making and other charitable  
25 activities related to its use of the charitable assets received pursuant  
26 to the conversion. The annual report shall be made available to the  
27 public at both the Attorney General's office and the office of the  
28 foundation. Nothing contained in this act shall affect the  
29 obligations of an entity possessing endowment funds under the  
30 "Uniform Management of Institutional Funds Act," P.L.1975, c.26  
31 (C.15:18-15 et seq.).

32 (3) The governing body of the foundation shall establish or  
33 demonstrate that it has in place, as the case may be, a mechanism to  
34 avoid conflicts of interest, including those associated with grant-  
35 making activities that may benefit the converted insurer, its  
36 affiliates, any person who owns or controls any ownership interest  
37 in either the converted insurer or any of its affiliates, and any  
38 director or officer of the converted insurer or its affiliates.

39 e. The Attorney General shall, during the course of the review  
40 of the foundation plan pursuant to this section, hold at least **[one]**  
41 four public **[hearing]** hearings, with at least one hearing each in the  
42 northern and southern regions of the State, and at least two in the  
43 central region of the State, in which any person may file written  
44 comments and exhibits or appear and make a statement. The public  
45 **[hearing]** hearings may, if the Attorney General and the  
46 commissioner so agree, be conducted jointly as part of the public  
47 **[hearing]** hearings on the conversion required pursuant to

1 subsection e. of section 3 of this act. The Attorney General or the  
2 Public Advocate may subpoena additional information or witnesses,  
3 including, but not limited to, information about any transaction that  
4 is collateral to the proposed conversion and any related documents,  
5 require and administer oaths, require sworn statements, take  
6 depositions and use related discovery procedures for purposes of the  
7 **[hearing]** hearings and at any time prior to completing the review  
8 of the proposed conversion ; however, the Attorney General shall  
9 make available, and the Public Advocate shall review, any  
10 additional information subpoenaed or otherwise obtained by the  
11 Attorney General before exercising the Public Advocate's  
12 additional investigative authority provided by this subsection.  
13 **[The]** Each hearing shall be in the nature of a legislative hearing  
14 and shall not constitute or be considered a contested case under the  
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
16 seq.). The first public hearing shall be held no later than 90 days  
17 after the date that the petition is declared complete by the Attorney  
18 General. Public notice of **[the]** each hearing shall be provided by  
19 the health service corporation not more than **[45]** 75 days and not  
20 less than 15 days prior to the first scheduled public hearing in at  
21 least two newspapers of general circulation in New Jersey.

22 f. Upon completion by the Attorney General of the review of  
23 the petition, and completion by the Public Advocate of the review  
24 of the petition no later than one month next following the  
25 completion of the Attorney General's review, the health service  
26 corporation shall apply to the Superior Court for approval of the  
27 establishment of the foundation. In that action, which shall proceed  
28 in a summary manner, the Attorney General and the Public  
29 Advocate shall advise the court as to whether **[he]** that party  
30 supports or opposes the foundation plan, with or without any  
31 specific modifications, and the basis for that position. In  
32 considering whether the foundation plan is in the public interest, the  
33 court shall consider whether the requirements of paragraph (1) of  
34 subsection d. of this section have been satisfied and may consider  
35 the criteria established in subsection c. of this section, as applicable.  
36 If the health service corporation fails to comply with this  
37 subsection, the Attorney General or the Public Advocate may seek  
38 appropriate relief in Superior Court.

39 g. In addition to the Attorney General, the Public Advocate  
40 shall, through the Division of Rate Counsel in the Department of  
41 the Public Advocate, act as an intervenor in representation of and to  
42 protect the public interest as defined in section 12 of P.L.2005,  
43 c.155 (C.52:27EE-12), and participate in the review of the  
44 foundation plan petition as set forth in this section by first  
45 independently reviewing the foundation plan petition and any  
46 additional information obtained by the Attorney General pursuant to  
47 subsection e. of this section, section 14 of P.L.2001, c.131

1 (C.17:48E-62), as well as any information provided to the Attorney  
2 General by any advisor or consultant whose services the Attorney  
3 General engages pursuant to section 16 of P.L.2001, c.131  
4 (C.17:48E-64), and only thereafter by requesting and accessing  
5 further information and witnesses directly as permitted by  
6 subsection e. of this section, for use at the public hearings and the  
7 Superior Court proceeding seeking approval of the foundation plan.

8 (1) As an intervenor for the public interest, the Public Advocate  
9 may request access to information that has been designated as  
10 confidential and not a public record pursuant to section 10 of  
11 P.L.2001, c.131 (C.17:48E-58), subject to an executed non-  
12 disclosure agreement.

13 (2) As an intervenor for the public interest, the Public Advocate  
14 shall have the duty to consult with, and provide periodic updates to,  
15 representatives of interested organizations to the foundation plan  
16 petition, that are advocating for the health care interests of  
17 underserved individuals, or the health care interests of current  
18 subscribers of the health service corporation, or the interests of  
19 hospitals, physicians, or other health care providers in the State, or  
20 the promotion of fundamental improvements in the health status of  
21 all New Jerseyans. The Public Advocate may require that interested  
22 organizations advocating for identical or substantially similar  
23 individuals or interests designate one representative for those  
24 individuals or interests with whom the Public Advocate shall  
25 consult and provide updates.

26 (3) All reasonable costs related to the review of the foundation  
27 plan petition and related matters by the Public Advocate, that are  
28 directly and solely attributable to the Public Advocate and not  
29 duplicative of any costs attributable to the Attorney General  
30 pursuant to subsection b. of section 16 of P.L.2001, c.131  
31 (C.17:48E-64) or otherwise pursuant to P.L.2001, c.131 (C.17:48E-  
32 49 et al.), including in connection with any matter before any court  
33 or any administrative agency in which the health service  
34 corporation that files the petition is a party, shall be paid by that  
35 health service corporation, both for services prior to the effective  
36 time of the foundation plan and for services after the effective time;  
37 except that the reasonable costs of the Public Advocate paid by the  
38 health service corporation pursuant to this paragraph, combined  
39 with the reasonable costs of the Public Advocate paid by the health  
40 service corporation concerning the plan of conversion pursuant to  
41 subsection g. of section 3 of P.L.2001, c.131 (C.17:48E-51), shall  
42 be no more than \$350,000.

43 (cf: P.L.2001, c.131, s.19)

44  
45 4. Section 48 of P.L.2005, c.155 (C.52:27EE-48) shall be  
46 amended to read as follows:

47 48. Division of Rate Counsel; jurisdiction.

1       The Division of the Rate Counsel shall have the authority to  
2       conduct investigations, initiate studies, conduct research, present  
3       comments and testimony before governmental bodies, issue reports,  
4       and produce and disseminate consumer guides on any matters that  
5       fall within the Rate Counsel's jurisdiction. The Rate Counsel shall  
6       also have the authority to represent the public interest as set forth  
7       below.

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

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

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

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

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

40      (3) whether the filer is advancing a significantly different  
41      alternate ratemaking methodology to the standard methodology  
42      established pursuant to section 8 of P.L.1988, c.119 (C.17:29A-  
43      36.2);

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

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

6 c. Health insurance; health service corporation conversion.  
7 The Department of the Public Advocate, through the Division of  
8 Rate Counsel, shall represent and protect the public interest with  
9 respect to the conversion of a health service corporation to a  
10 domestic stock insurer by serving as an intervenor in that process as  
11 set forth under the provisions of P.L.2001, c.131 (C.17:48E-49 et  
12 al.).  
13 (cf: P.L.2005, c.155, s.48)

14  
15 5. Section 53 of P.L.2005, c.155 (C.52:27EE-53) is amended to  
16 read as follows:

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

19 a. Annual insurance assessment. The Director of the Division  
20 of Budget and Accounting in the Department of the Treasury shall,  
21 on or before August 15 in each year, ascertain and certify to the  
22 Commissioner of Banking and Insurance by category the total  
23 amount of expenses incurred by the State in connection with the  
24 administration of the special functions of the Division of Rate  
25 Counsel in the Department of the Public Advocate relative to the  
26 expenses of the Division of Rate Counsel in connection with the  
27 administration of insurance rate cases during the preceding fiscal  
28 year. The Department of Banking and Insurance shall make a  
29 separate special assessment on lines of insurance subject to the  
30 jurisdiction of the Rate Counsel pursuant to subsection b. of section  
31 48 of this act, on an annual basis, in accordance with the formula  
32 set forth in P.L.1995 c.156 (C.17:1C-19 et seq.).

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

40 (2) The calculation of the annual insurance assessment provided  
41 in subsection a. of this section shall not include any assessment for  
42 expenses incurred by the Department of the Public Advocate,  
43 through the Division of Rate Counsel, with respect to its  
44 jurisdiction concerning the conversion of a health service  
45 corporation to a domestic stock insurer pursuant to subsection c. of  
46 section 48 of P.L.2005, c.155 (C.52:27EE-48).

47 (cf: P.L.2005, c.155, s.53)



1 incorporate information and testimony presented at any public  
2 hearings already conducted and as otherwise obtained by the  
3 consultant, under the direction of the commissioner, and shall be  
4 used by the commissioner in making the final decision on the  
5 approval or disapproval of the plan of conversion.

6 The bill further increases public participation by requiring the  
7 Public Advocate to first independently review any information  
8 provided to the Commissioner of Banking and Insurance or the  
9 Attorney General, as appropriate, for the proposed plan of  
10 conversion or foundation plan petition, including information  
11 provided by any advisor or consultant whose services the  
12 commissioner or Attorney General engage, before requesting and  
13 accessing additional information directly from the health service  
14 corporation or other sources. Under the bill, the Public Advocate  
15 also acts as an intervenor at each public hearing for the public  
16 interest and consult with, and provide periodic updates to,  
17 representatives of interested organizations to the conversion  
18 process.

19 For purposes of the public hearings on the foundation plan  
20 petition and at any time prior to completing the review of the  
21 proposed conversion, the Public Advocate may, similar to the  
22 authorized actions of the Attorney General, subpoena additional  
23 information or witnesses, including, but not limited to, information  
24 about any transaction that is collateral to the proposed conversion  
25 and any related documents, require and administer oaths, require  
26 sworn statements, take depositions and use related discovery  
27 procedures. The Public Advocate shall also participate with the  
28 Attorney General in the summary proceeding before the Superior  
29 Court regarding the court's approval or disapproval of the  
30 establishment of the foundation.

31 Reasonable costs that are not duplicative of any costs attributable  
32 to the commissioner or Attorney General and are directly and solely  
33 attributable to the Public Advocate's activities concerning the  
34 conversion process, including those in connection with any matter  
35 before any court or any administrative agency in which the health  
36 service corporation that files the conversion application is a party,  
37 shall be paid by that health service corporation, both for services  
38 prior to the effective time of the conversion or foundation plan and  
39 for services after the effective time. However, the total costs paid  
40 by the health service corporation shall be no more than \$350,000.

41 The bill also ensures that the calculation of the annual insurance  
42 assessments by the State to cover certain expenses of the  
43 Department of the Public Advocate, does not include any  
44 assessment for expenses incurred by the Public Advocate, through  
45 the Division of Rate Counsel, with respect to the Public Advocate's  
46 role as an intervenor in the conversion process.