

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2089

# STATE OF NEW JERSEY

DATED: JUNE 23, 2010

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2089.

This bill would abolish the Department of the Public Advocate and transfer certain of its functions, powers and duties.

The Department of the Public Advocate was first created by P.L.1974, c.27. The Department was abolished by P.L.1994, c.58 and then restored by P.L.2005, c.155 (C.52:27EE-1 et al.).

Currently, the Department of the Public Advocate consists of seven Divisions and one Office:

- the Division of Administration;
- the Division of Citizen Relations, which includes the Corrections Ombudsperson and the Dispute Settlement Office;
- the Division of Mental Health Advocacy;
- the Division of Advocacy for the Developmentally Disabled;
- the Division of Rate Counsel;
- the Division of Public Interest Advocacy;
- the Division of Elder Advocacy; and
- the Office of the Child Advocate (in, but independent of, the Public Advocate).

The following would be abolished by the bill:

- the Division of Administration;
- the Division of Citizen Relations (except for the Corrections Ombudsperson and Dispute Settlement Office);
- the Division of Public Interest Advocacy; and
- the Office of the Child Advocate.

The following would be retained by the bill, and transferred to other departments:

- the Corrections Ombudsperson (to be in, but independent of, the Department of the Treasury);
- the Division of Advocacy for the Developmentally Disabled (to be in, but independent of, the Department of the Treasury);
- the Division of Rate Counsel (to be in, but independent of, the Department of the Treasury);
- the Division of Elder Advocacy (to be in, but independent of, the Department of the Treasury);

- the Ombudsperson for the Institutionalized Elderly (to be in, but independent of, the Department of the Treasury);
- the Dispute Settlement Office (to be in the Office of the Public Defender); and
- the Division of Mental Health Advocacy (to be in the Office of the Public Defender).

Under the bill, the Governor would appoint the Corrections Ombudsperson, the Director of the Division of Rate Counsel, the Director of the Division of Advocacy for the Developmentally Disabled and the Ombudsperson for the Institutionalized Elderly.

Highlights of various sections of the bill are set out below:

*Section 1* provides that, except as otherwise provided in the bill, the Department of the Public Advocate would be abolished as a principal department in the Executive Branch; all of its functions, powers and duties, would be terminated; the offices and terms of the Public Advocate, and of the assistants, deputies, and directors of the various divisions and offices of the department, would be terminated; and regulations of the Department of the Public Advocate concerning its organization, function, practice, and procedure would be void. The bill also provides that, except as otherwise provided in the bill, 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.

*Section 1* provides that all communications between an individual client and an attorney in or engaged by the Department of the Public Advocate would remain fully protected by the attorney-client privilege, and that the confidentiality of medical records and other documents maintained as confidential by the department would likewise be protected subsequent to the effective date of the bill. Any person acting reasonably and in good faith who sought assistance from the department on behalf of another person would 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.

*Section 1* also provides that the responsibility for all cases pending on the effective date in which the Department of the Public Advocate is a party handled by divisions or offices being abolished would 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 would 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.

*Section 3* amends N.J.S.A.3B:15-1 in order to eliminate the role of the Public Advocate in certain estates and trusts. Currently, the statute requires certain fiduciaries to file periodic accountings of estates and trusts with the Superior Court and send copies to the Public Advocate. The Public Advocate is also authorized to file exceptions and objections and initiate actions to compel these filings. The new Division of Advocacy for the Developmentally Disabled in, but independent of, the Department of the Treasury would perform this function.

*Section 7* amends N.J.S.A.30:4-3.25 to provide that the new Division of Mental Health Advocacy in the Office of the Public Defender would be notified of unexpected deaths in State psychiatric hospitals. Currently, the statute requires the Public Advocate to be notified.

*Section 10* amends N.J.S.A.30:13-3 to provide that employees of the Office of the Public Defender would be authorized to assist nursing home residents with personal, social, and legal services and assist and advise residents in the assertion of their rights. Currently, the Department of the Public Advocate, and employees of the private entity, if any, designated by the Governor as the State's mental health protection and advocacy agency, are authorized to perform this function.

*Sections 13, 14 and 15* provide that the references to the Division of Rate Counsel in N.J.S.A.48:2-21.17, N.J.S.A.48:2-21.36 and N.J.S.A.48:3-87 would refer not to the Division of Rate Counsel in the Department of the Public Advocate but to the Division of Rate Counsel in, but independent of, the Department of the Treasury.

*Section 18* corrects N.J.S.A.52:27E-55 to reflect the current allocation of the Office of the Public Defender, which is within the Department of the Treasury but independent of the department's supervision or control.

*Section 19* removes several terms concerning functions of the Public Advocate from N.J.S.A.52:27EE-12, a definitional section.

*Sections 20, 21, and 22* transfer the Dispute Settlement Office from Department of the Public Advocate to the Office of the Public Defender.

*Section 23* transfers all functions, powers and duties of the Corrections Ombudsperson in the Department of the Public Advocate to the new Corrections Ombudsperson in, but independent of, the Department of the Treasury. The bill provides that the Corrections Ombudsperson would be an attorney-at-law of this State, appointed by the Governor.

*Section 24* transfers the Division of Mental Health Advocacy from the Department of the Public Advocate to the Office of the Public Defender and provides that the division is designated as the State's mental health protection and advocacy agency. This designation would be a continuation of current law. The division would have all

the powers necessary to carry out its responsibilities as required to qualify for federal funding as the State protection and advocacy agency.

*Sections 30 through 35* transfer the Division of Advocacy for the Developmentally Disabled from the Department of the Public Advocate to be in, but independent of, the Department of the Treasury. The division would be designated as the State's protection and advocacy agency for persons with developmental disabilities. 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.

*Sections 36 through 39 and 41* transfer the Division of Rate Counsel from the Department of the Public Advocate to be in, but independent of, the Department of the Treasury. The director of the division would be an attorney at law of the State, appointed by the Governor.

*Sections 42, 43 and 44* transfer the Division of Elder Advocacy to be in, but independent of, the Department of the Treasury. The director of the division would be appointed by the Governor.

*Sections 45, 46 and 47* transfer the functions, powers and duties of the Ombudsperson for the Institutionalized Elderly in the Department of the Public Advocate to the new Ombudsperson for the Institutionalized Elderly in, but not of, the Department of the Treasury. The ombudsperson would be appointed by the Governor and serve at the pleasure of the Governor.

*Section 55* repeals various statutory sections.

*Section 56* provides that the bill would take effect immediately.

**FISCAL IMPACT:**

The FY 2011 appropriations act anticipates a savings of \$3.967 million from the abolition of the Department of Public Advocate and the consolidation and relocation of parts of that department.