

ASSEMBLY, No. 2158

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1996

By Assemblyman CARABALLO

1 AN ACT re-establishing the Department of the Public Advocate and  
2 revising parts of the statutory law.

3

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

6

7 1. (New section) Short title.

8 This act shall be known and may be cited as the "Department of the  
9 Public Advocate Act of 1996."

10

11 2. (New section) Establishment.

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

15 As used in this act, unless the context clearly indicates otherwise,  
16 the word "department" means the Department of the Public Advocate  
17 established herein.

18

19 3. (New section) Commissioner; appointment; term; salary.

20 The administrator and chief executive officer of the department  
21 shall be a commissioner, who shall be known as the Public Advocate  
22 and who shall be an attorney-at-law of this State and a person qualified  
23 by training and experience to perform the duties of the office. The  
24 Public Advocate shall be appointed by the Governor, with the advice  
25 and consent of the Senate, and shall serve at the pleasure of the  
26 Governor during the Governor's term of office and until the  
27 appointment and qualification of the Public Advocate's successor. The  
28 Public Advocate shall receive such salary as shall be provided by law.

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

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

**Matter underlined thus is new matter.**

1 salary for such other position.

2

3 4. (New section) Power and duties of Public Advocate.

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

6 a. Administer the work of the department;

7 b. Appoint and remove such officers, investigators, stenographic  
8 and clerical assistants and other personnel as may be required for the  
9 conduct of the department, subject to the provisions of Title 11 of the  
10 Revised Statutes, Civil Service, and other applicable statutes, except  
11 as provided otherwise herein;

12 c. Adopt, issue and promulgate, in the name of the department,  
13 such rules and regulations may be authorized by law;

14 d. Formulate and adopt rules and regulations for the efficient  
15 conduct of the work and general administration of the department, its  
16 officers and employees;

17 e. Institute or cause to be instituted such legal proceedings or  
18 processes consistent with the rules governing the courts of New Jersey  
19 and the practice of law therein as may be necessary properly to enforce  
20 and give effect to any of his powers or duties;

21 f. Prepare schedules of rates to be paid for services rendered other  
22 than by the staff, taking into account the nature of the services, the  
23 time involved, the skill and experience required and other pertinent  
24 factors;

25 g. Make such reports of the department's operation as the  
26 Governor or the Legislature shall from time to time request, or as may  
27 be required by law;

28 h. Perform, exercise and discharge the functions, powers and duties  
29 of the department through such divisions as may be established by this  
30 act or otherwise by law;

31 i. Organize and coordinate the work of the department in such  
32 divisions, not inconsistent with the provisions of this act, and in such  
33 bureaus and other organizational units as he may determine to be  
34 necessary for efficient and effective operation;

35 j. Integrate within the department, so far as practicable, all staff  
36 services of the department and of the several divisions and other  
37 agencies therein;

38 k. Maintain suitable headquarters for the department and such  
39 other quarters as he shall deem necessary to the proper functioning of  
40 the department;

41 l. Except as otherwise provided by law, appoint division directors  
42 who are qualified by training and experience to direct, under the  
43 supervision of the Public Advocate, the several divisions and offices  
44 established pursuant to this act. Such division directors shall serve at  
45 the pleasure of the Public Advocate who shall fix their compensation  
46 within the limits of available appropriations;

1 m. Solicit and accept grants of funds from the Federal Government  
2 and from private foundations, and allocate or restrict the use of such  
3 funds as may be required by the grantor; and

4 n. Perform such other functions as may be prescribed in this act or  
5 by any other law.

6  
7 5. (New section) Appointment of Assistant Public Advocate.

8 The Public Advocate may appoint an Assistant Public Advocate to  
9 serve at the pleasure of the Public Advocate. Such appointment shall  
10 be in writing and filed with the Secretary of State. The Assistant  
11 Public Advocate shall have and exercise the powers and perform the  
12 functions and duties of the Public Advocate during the absence or  
13 disability of the Public Advocate. The Assistant Public Advocate shall  
14 also have and exercise such of the powers and perform such of the  
15 functions and duties of the Public Advocate as he shall be authorized  
16 and directed by the Public Advocate. Any such authorization and  
17 direction shall be in writing, signed by the Public Advocate and filed  
18 with the Secretary of State, and shall include a designation of the  
19 period during which it shall be and remain in force. No such  
20 authorization and direction shall be deemed to preclude the Public  
21 Advocate from himself exercising the powers and the performance of  
22 the duties included in said authorization and direction. In the event  
23 that the Public Advocate shall die, resign or be removed from office,  
24 or become disqualified to execute the duties of his office, or a vacancy  
25 shall occur in the office of the Public Advocate for any cause  
26 whatsoever, the person then holding the office of Assistant Public  
27 Advocate shall continue to hold such office and shall have and exercise  
28 the powers and perform the functions and duties of the Public  
29 Advocate until the successor of the Public Advocate shall be appointed  
30 and shall qualify.

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

33  
34 6. (New section) Appointment of deputy public advocates and  
35 expert assistants.

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

42  
43 7. (New section) Division of Administration.

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

1       8. (New section) Duties of Division of Administration.

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

7

8       9. (New section) Office of Inmate Advocacy; established.

9       a. There is hereby established in the Office of the Public Advocate  
10 the Office of Inmate Advocacy.

11       b. All functions, powers and duties now vested in the Office of the  
12 Public Defender in, but not of, the Department of State related to any  
13 functions, powers and duties which had been vested in the Office of  
14 Inmate Advocacy in the Department of the Public Advocate prior to  
15 the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), are  
16 transferred to and again assumed by the Office of Inmate Advocacy in  
17 the Department of the Public Advocate.

18       c. Whenever, in any law, rule, regulation, order, reorganization  
19 plan, contract, document, judicial or administrative proceeding or  
20 otherwise, reference is made to the Office of the Public Defender in,  
21 but not of, the Department of State, concerning functions, powers and  
22 duties which had been vested in the Office of Inmate Advocacy in the  
23 Department of the Public Advocate prior to the effective date of  
24 P.L.1994, c.58 (C.52:27E-50 et al.), the same shall mean and refer to  
25 the Office of Inmate Advocacy in the Department of the Public  
26 Advocate.

27

28       10. (New section) Inmate: defined.

29       As used in this act, "inmate" shall mean any person who is  
30 committed to or confined in a jail, prison, lockup, penitentiary,  
31 reformatory, training school or other similar facility within the State  
32 of New Jersey.

33

34       11. (New section) Office of Inmate Advocacy; duties.

35       a. The Office of Inmate Advocacy may represent the interests of  
36 inmates in such disputes and litigation, as will, in the discretion of the  
37 Public Advocate, best advance the interests of inmates as a class on an  
38 issue of general application to them, and may act as representative of  
39 inmates with any principal department or other instrumentality of  
40 State, county or local government. The provisions of this section shall  
41 not be construed to affect the authority or responsibility of the Office  
42 of the Public Defender in, but not of, the Department of State, to  
43 represent inmates as individuals.

44       b. In addition to any other duties, the Office of Inmate Advocacy  
45 shall function as an ombudsman for inmates. In fulfilling this function,  
46 the Office shall establish and implement procedures for eliciting,

1 receiving, processing, responding and resolving complaints from  
2 inmates, their families, other interested citizens, public officials and  
3 government agencies concerning conditions in the correctional  
4 facilities listed in section 10 of this act.

5

6 12. (New section) Professional responsibilities.

7 The primary duty of all staff members and of others engaged by the  
8 department on a temporary or case basis shall be to the individual  
9 client, with like effect and to the same purpose as though privately  
10 engaged by the client and without regard to the use of public funds to  
11 provide the service. This responsibility shall not preclude the  
12 designation or assignment of different individuals to perform various  
13 parts of the service from time to time, the duty is such cases to be the  
14 same as would exist in the case of a privately engaged law firm.

15

16 13. (New section) Attorney-client privilege.

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

26

27 14. (New section) Standard of performance.

28 In providing legal services to clients pursuant to this act, every  
29 attorney, whether a member of the staff or engaged by the department  
30 on a temporary or case basis, shall adhere to the standards of  
31 performance established from time to time by the Supreme Court of  
32 New Jersey in the execution of its duty to supervise the practice of  
33 law; and the department shall furnish to such court materials and data  
34 as may be requisite to the measurement of the adequacy of the  
35 performance hereunder.

36

37 15. (New section) Division of Rate Counsel: established.

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

41

42 16. (New section) Director, Division of Rate Counsel; staff.

43 The Director of the Division of Rate Counsel shall be an attorney-  
44 at-law of this State and may employ such assistants on a full-time basis  
45 as are necessary to protect the public interest. When exceptional  
46 circumstances arise, the Director of the Division of Rate Counsel, with

1 the approval of the Public Advocate, may on a temporary basis retain  
2 such other expert assistants as are necessary to protect the public  
3 interest, pursuant to a reasonable fee schedule established in advance  
4 by the Public Advocate.

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

9

10 17. (New section) Division of Rate Counsel; jurisdiction.

11 The Division of Rate Counsel shall represent and protect the public  
12 interest as defined in section 31 of this act in proceedings before and  
13 appeals from any State department, commission, authority, council,  
14 agency or board charged with the regulation or control of any  
15 business, industry or utility regarding a requirement that the business,  
16 industry or utility provide a service or regarding the fixing of a rate,  
17 toll, fare or charge for a product or service. The Division of Rate  
18 Counsel may initiate any such proceedings when the director  
19 determines that a discontinuance or change in a required service or a  
20 rate, toll, fare or charge for a product or service is in the public  
21 interest.

22

23 18. (New section) Payment of expenses of Division of Rate  
24 Counsel.

25 a. Whenever the Division of Rate Counsel represents the public  
26 interest in a proceeding initiated by application of a business, industry  
27 or utility other than an insurance company or nonprofit service plan  
28 subject to the provisions of Title 17 of the Revised Statutes or Title  
29 17B of the New Jersey Statutes for authority to increase the rate, toll,  
30 fare or charge charged by it for any product or service or in a  
31 proceeding initiated by application of a business, industry or utility to  
32 discontinue or change any required service, the Director of the  
33 Division of Rate Counsel may, except as otherwise provided herein,  
34 assess the business, industry or utility up to 1/10 of 1% of its revenues  
35 derived in the calendar year last preceding the institution of such  
36 proceeding from its interstate sales of the product supplied or  
37 interstate service rendered, the rate, toll, fare or charge for which, or  
38 the discontinuance or charge for which, is the subject matter of such  
39 proceeding, or \$1,500.00, whichever is greater. The assessment shall  
40 not exceed \$500,000.00, unless the compensation and expenses of  
41 counsel, experts and assistants employed by the division in such  
42 proceeding exceed \$500,000.00, in which case the director shall send  
43 the business, industry or utility an itemized statement setting forth the  
44 amount, as of the date of such statement, of the compensation and  
45 expenses.

46 For cases where the gross annual revenues in the calendar year last

1 preceding the institution of the proceeding from the intrastate sales of  
2 the product supplied or intrastate service rendered, the rate, toll, fare  
3 or charge for which, or the discontinuance or charge for which, is the  
4 subject matter of the proceeding, do not exceed \$1,500,000.00, the  
5 director may assess the business, industry or utility up to \$1,500.00  
6 but not less than \$500.00. If an assessment exceeds \$500.00, the  
7 director shall send the business, industry or utility an itemized  
8 statement setting forth the amount, as of the date of statement, of the  
9 compensation and expenses of counsel, experts and assistants  
10 employed by the division in the proceeding. In no event shall an  
11 assessment in these cases exceed \$1,500.00.

12 b. Whenever the Division of Rate Counsel represents the public  
13 interest in a proceeding initiated by an insurance, company or  
14 nonprofit service plan subject to Title 17 of the Revised Statutes or  
15 Title 17B of the New Jersey Statutes for authority to increase or  
16 change the charges for insurance, the director shall send each insurer,  
17 nonprofit service plan or rating organization involved in such  
18 proceeding a statement of the compensation and expenses of counsel,  
19 experts and assistants employed by the division in such proceeding,  
20 together with an appropriate allocation to such insurance company,  
21 nonprofit service plan or rating organization of its fair share thereof.

22 c. All assessments or statements of compensation and expenses  
23 shall be paid by the business, industry or utility to the Department of  
24 the Treasury within 30 days after the date of assessment. The State  
25 Treasurer, upon receipt of any payment by the business, industry or  
26 utility pursuant to the provisions of this act, shall cause the same to be  
27 deposited in the General State Fund.

28 d. Any and all amounts paid by the business, industry or utility  
29 pursuant to this act shall be deemed to be operating expenses.

30 e. All assessments or statements of compensation and expenses  
31 pertaining to a business, industry or utility whose revenues do not  
32 exceed \$1,500,000.00, as computed pursuant to subsection a., shall be  
33 paid by the business, industry or utility to the Department of Treasury  
34 as follows:

35 (1) An assessment of \$500.00 shall be paid by the business,  
36 industry or utility within 30 days after the date of assessment.

37 (2) Any amount assessed in excess of \$500.00, but not in excess of  
38 \$1,500.00 shall be paid in equal monthly installments over such period  
39 as the recoupment of the case operating expenses is permitted by the  
40 executive authority with the power to make the final determination in  
41 such matters. The first installment payment shall be due on the date  
42 of the final decision rendered by the executive authority.

43 f. If any amount assessed pursuant to subsection e. is not received  
44 on any date in the schedule established pursuant to subsection e., the  
45 unpaid balance of the total assessment shall immediately become due  
46 and payable within 30 days.

1       19. (New section) Transfer of powers and duties of Division of  
2 Rate Counsel.

3       All functions, powers and duties which had been vested in the  
4 Division of Rate Counsel in the Department of the Public Advocate  
5 prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.) and  
6 which were transferred by P.L.1994, c.58 (C.52:27E-50 et al.) to the  
7 Office of the Public Defender in, but not of, the Department of State,  
8 to the Department of Environmental Protection, to the Department of  
9 Insurance and to the Division of the Ratepayer Advocate established  
10 by Reorganization Plan 94-001, are hereby transferred to and again  
11 assumed by the Division of Rate Counsel in the Department of the  
12 Public Advocate.

13       Whenever, in any law, rule, regulation, order, reorganization plan,  
14 contract, document, judicial or administrative proceeding or otherwise,  
15 reference is made to the Office of the Public Defender in, but not of,  
16 the Department of State, to the Department of Environmental  
17 Protection, to the Department of Insurance or to the Division of the  
18 Ratepayer Advocate concerning functions, powers and duties which  
19 had been vested in the Division of Rate Counsel in the Department of  
20 the Public Advocate prior to the effective date of P.L.1994, c.58  
21 (C.52:27E-50 et al.), the same shall mean and refer to the Division of  
22 Rate Counsel in the Department of the Public Advocate.

23

24       20. (New section) Division of Mental Health Advocacy;  
25 established.

26       a. There is hereby established in the Department of the Public  
27 Advocate the Division of Mental Health Advocacy under the  
28 supervision of the Director of the Division of Mental Health  
29 Advocacy.

30       b. All functions, powers and duties now vested in the Office of the  
31 Public Defender in, but not of, the Department of State related to any  
32 indigent mental hospital admittee's admission to, retention in, or  
33 release from confinement in a hospital, institution or facility are  
34 transferred to and again assumed by the Division of Mental Health  
35 Advocacy in the Department of the Public Advocate.

36       c. Whenever, in any law, rule, regulation, order, reorganization  
37 plan, contract, document, judicial or administrative proceeding or  
38 otherwise, reference is made to the Office of the Public Defender in,  
39 but not of, the Department of State, concerning functions, powers and  
40 duties which had been vested in the Division of Mental Health  
41 Advocacy in the Department of the Public Advocate prior to the  
42 effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the same shall  
43 mean and refer to the Division of Mental Health Advocacy in the  
44 Department of the Public Advocate.

45

46       21. (New section) Director to employ assistants.

1       The Director of the Division of Mental Health Advocacy may,  
2 with the approval of the Public Advocate, employ such assistants on  
3 a full-time basis as are necessary. When exceptional circumstances  
4 arise, the Director of the Division of Mental Health Advocacy, with  
5 the approval of the Public Advocate, may on a temporary basis retain  
6 such other expert assistants as are necessary pursuant to a reasonable  
7 fee schedule established in advance by the Public Advocate.

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

12  
13       22. (New section) Indigent mental hospital admittee; defined.

14       As used herein "indigent mental hospital admittee " means a person  
15 who has been admitted to and is a patient in a mental hospital, an  
16 institution for the care and treatment of the mentally ill, or a similar  
17 facility, whether public or private, State, county or local, or who is the  
18 subject of an action for admission as provided by R.S.30:4-27 and who  
19 does not have the present financial ability to secure competent legal  
20 representation and to provide all other necessary expenses of  
21 representation.

22  
23       23. (New section) a. Legal representation and medical  
24 consultation.

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

30       b. Patient Representatives.

31       The Division of Mental Health Advocacy shall provide patient  
32 representatives in such hospitals, institutions and facilities to represent  
33 and protect mental hospital admittees with respect to the use and  
34 administration of psychotropic medication in accordance with  
35 established constitutional principles concerning patients' right to refuse  
36 such medication.

37  
38       24. (New section) Class actions.

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

1 25. (New section) Eligibility for services.

2 Eligibility for the services of the Division of Mental Health Advocacy  
3 shall be determined on the basis of the need of the client. Need shall  
4 be measured according to the financial ability of the client to engage  
5 and compensate competent private counsel and to provide all other  
6 necessary expenses of representation. Such ability shall be recognized  
7 to be a variable depending on the nature, extent and liquidity of assets  
8 and on the disposable net income of the client on the one hand, and on  
9 the nature of the case, the effort and skill required to gather pertinent  
10 information, render advice, conduct trial or render other legal services,  
11 and probable expenses to be incurred, on the other hand. In the event  
12 that a determination of eligibility cannot be made before the time when  
13 the first services are to be rendered, or if an initial determination is  
14 found to be erroneous, the division shall undertake the same  
15 provisionally, and if it shall subsequently determine that the client is  
16 ineligible it shall so inform the client, and the client shall thereupon  
17 with the approval of the court be obliged to engage his own counsel  
18 and to reimburse the division for the cost of the services rendered to  
19 that time.

20

21 26. (New section) Financial status of defendant; investigation.

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

28

29 27. (New section) Division of Public Interest Advocacy:  
30 established.

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

35

36 28. (New section) Division of Public Interest Advocacy:  
37 jurisdiction.

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

42 29. (New section ) Public interest: defined.

43 As used in this act, public interest shall mean an interest or right  
44 arising from the Constitution, decisions of court, common law or other  
45 laws of the United States or of this State inhering in the citizens of this  
46 State or in a broad class of such citizens.

1 30. (New section ) Decision to represent particular public interest.  
2 The Public Advocate shall have sole discretion to represent or refrain  
3 from representing the public interest in any proceeding. He shall  
4 consider in exercising his discretion the importance and the extent of  
5 the public interest involved and whether that interest would be  
6 adequately represented without the action of the department. If the  
7 Public Advocate determines that there are inconsistent public interests  
8 involved in a particular matter, he may choose to represent one such  
9 interest based on the considerations in this section, to represent no  
10 interest in that matter, or to represent one such interest through the  
11 Division of Public Interest Advocacy and another or others through  
12 other divisions of the department or through outside counsel engaged  
13 on a case basis.

14

15 31. (New section) Division of Public Interest Advocacy: power.  
16 The Division of Public Interest Advocacy may represent and protect  
17 the public interest by:

18 a. Intervening in or instituting proceedings before any department,  
19 commission, agency or board of the State leading to an administrative  
20 adjudication or administrative rule as defined in section 2 of P.L.1968,  
21 c.410 (C.52:14B-2).

22 b. Instituting litigation on behalf of a broad public interest when  
23 authorized to do so by the Public Advocate.

24

25 32. (New section) Division of Citizen Complaints.

26 a. There is hereby established in the Department of the Public  
27 Advocate the Division of Citizen Complaints under the supervision of  
28 the Director of the Division of Citizen Complaints.

29 b. All functions, powers and duties now vested in the Office of the  
30 Public Defender in, but not of, the Department of State related to any  
31 functions, powers and duties which had been vested in the Office of  
32 Citizen Complaints of the Department of the Public Advocate prior to  
33 the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), are  
34 transferred to and again assumed by the Division of Citizen Complaints  
35 of the Department of the Public Advocate.

36 c. Whenever, in any law, rule, regulation, order, reorganization  
37 plan, contract, document, judicial or administrative proceeding or  
38 otherwise, reference is made to the Office of the Public Defender in,  
39 but not of, the Department of State, concerning functions, powers and  
40 duties which had been vested in the Office of Citizen Complaints prior  
41 to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the same  
42 shall mean and refer to the Division of Citizen Complaints of the  
43 Department of the Public Advocate.

44

45 33. (New section) Definitions.

46 a. "Agency" means and includes the State of New Jersey, and its

1 principal departments, and any division, bureau, board, commission,  
2 agency, office, authority or institution of the Executive branch of the  
3 State Government, and any officer, employee, or member thereof  
4 acting or purporting to act in the exercise of his official duties, except  
5 the Governor and the Governor's personal staff. "Agency" shall not  
6 include any portion of the legislative or judicial branches of  
7 government, or any unit of county or municipal government.

8 b. "Administrative act" means and includes any action, omission,  
9 decision, recommendation, practice or procedure of an agency, but  
10 does not include the preparation, presentation or introduction of  
11 legislation.

12

13 34. (New section) Powers and Duties.

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

17 a. Receive and forward to appropriate agencies of the State for  
18 determination complaints from any citizen relating to the  
19 administrative action or inaction of agencies.

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

24 (1) Unreasonable, unfair, oppressive or discriminatory, although in  
25 accordance with law;

26 (2) Unaccompanied by an adequate explanation;

27 (3) Performed in an inefficient manner.

28 c. Maintain records indicating the final disposition of any complaint  
29 forwarded by the office to an agency.

30

31 35. (New section) Notice to complainant and agency.

32 The Division of Citizen Complaints shall determine whether a  
33 complaint is or is not an appropriate subject for investigation under  
34 section 34 of this act, and shall inform the complainant of that  
35 decision, stating its reasons therefor. If the office decides to  
36 investigate a complaint, it shall also notify the affected agency of its  
37 decision.

38

39 36. (New section) Procedure after investigation.

40 If, after investigation, the Division of Citizen Complaints finds that:

41 a. A matter should be further considered by the agency;

42 b. An administrative action or inaction should be modified or  
43 canceled;

44 c. A statute or regulation on which an administrative action or  
45 inaction is based should be altered;

46 d. Reasons or more complete reasons should be given for an

1 administrative action or inaction; or  
2 e. Any other action should be taken by the agency;  
3 it shall report its findings and recommendations to the Public Advocate  
4 who may request the agency to notify him, within a specified time, of  
5 the action taken on such recommendations. The Public Advocate may  
6 refer the findings and recommendations of the Division of Citizen  
7 Complaints, to the Division of Public Interest Advocacy or, if  
8 appropriate, to the Division of Rate Counsel.

9  
10 37. (New section) Notice to the complainant.

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

14  
15 38. (New section) Division of Advocacy for Developmentally  
16 Disabled: established.

17 a. There is hereby established in the Department of the Public  
18 Advocate the Division of Advocacy for the Developmentally Disabled  
19 under the supervision of the Director of the Division of Advocacy for  
20 the Developmentally Disabled.

21 b. All functions, powers and duties now vested in the Office of the  
22 Public Defender in, but not of, the Department of State related to any  
23 functions, powers and duties which had been vested in the Division of  
24 Advocacy for the Developmentally Disabled of the Department of the  
25 Public Advocate prior to the effective date of P.L.1994, c.58  
26 (C.52:27E-50 et al.), are transferred to and again assumed by the  
27 Division of Advocacy for the Developmentally Disabled of the  
28 Department of the Public Advocate.

29 c. Whenever, in any law, rule, regulation, order, reorganization  
30 plan, contract, document, judicial or administrative proceeding or  
31 otherwise, reference is made to the Office of the Public Defender in,  
32 but not of, the Department of State, concerning functions, powers and  
33 duties which had been vested in the Division of Advocacy for the  
34 Developmentally Disabled of the Department of the Public Advocate  
35 prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the  
36 same shall mean and refer to the Division of Advocacy for the  
37 Developmentally Disabled of the Department of the Public Advocate.

38  
39 39. (New section) Assistants; employment; assignment of cases to  
40 staff or hired by case attorneys.

41 The Director of the Division of Advocacy for the Developmentally  
42 Disabled may, with the approval of the Public Advocate, employ such  
43 assistants on a full-time basis as are necessary to protect the rights of  
44 developmentally disabled persons. When exceptional circumstances  
45 arise, the Director of the Division of Advocacy for the  
46 Developmentally Disabled, with the approval of the Public Advocate,

1 may on a temporary basis retain such other expert assistants as are  
2 necessary pursuant to a reasonable fee schedule established in advance  
3 by the Public Advocate.

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

8

9 40. (New section) Developmentally disabled person defined.

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

14

15 41. (New section) Powers and duties.

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

25

26 42. (New section) Eligibility for services.

27 Eligibility for services by the Division of Advocacy for the  
28 Developmentally Disabled shall be determined on the basis of the need  
29 of the client and in a manner consistent with the conditions of any  
30 grant obtained by the Public Advocate to assist in implementing this  
31 act.

32

33 43. (New section) Division of Child Advocacy; established.

34 There is hereby established in the Department of the Public  
35 Advocate the Division of Child Advocacy under the supervision of the  
36 Director of the Division of Child Advocacy.

37

38 44. (New section) Powers and duties.

39 The Division of Child Advocacy may receive and investigate  
40 complaints and provide such legal representation and other advocacy  
41 services on an individual or class basis as the Public Advocate deems  
42 appropriate to protect and advocate the rights of children. The  
43 Division shall serve as an advocate for abused and neglected children  
44 in this State, assist the Governor and the Commissioner of Human  
45 Services in developing and funding programs for the prevention and  
46 treatment of child abuse and neglect, examine records and reports of

1 child abuse and neglect obtained by the Division of Youth and Family  
2 Services and make such recommendations as the Division of Child  
3 Advocacy deems necessary in order to further the State's ability to  
4 protect and promote the interests of abused and neglected children.

5  
6 45. Ombudsman for the Institutionalized Elderly; transfer to  
7 Department of Public Advocate.

8 a. There is hereby established in the Department of the Public  
9 Advocate the Office of the Ombudsman for the Institutionalized  
10 Elderly.

11 b. All functions, powers and duties now vested in the Office of the  
12 Ombudsman for the Institutionalized Elderly pursuant to P.L.1977,  
13 c.239 (C.52:27G-3 et seq.) are hereby transferred to and assumed by  
14 the Office of the Ombudsman for the Institutionalized Elderly in the  
15 Department of the Public Advocate.

16 c. Whenever, in any law, rule, regulation, order, reorganization plan,  
17 contract, document, judicial or administrative proceeding or otherwise,  
18 reference is made to the Office of the Ombudsman for the  
19 Institutionalized Elderly in, but not of, the Department of Community  
20 Affairs, the same shall mean and refer to the Office of the Ombudsman  
21 for the Institutionalized Elderly in the Department of the Public  
22 Advocate.

23  
24 46. Public Guardian for Elderly Adults; transfer to Department of  
25 Public Advocate.

26 a. There is hereby established in the Department of the Public  
27 Advocate the Office of the Public Guardian for Elderly Adults.

28 b. All functions, powers and duties now vested in the Office of the  
29 Public Guardian for Elderly Adults pursuant to P.L.1985, c.298  
30 (C.52:27G-20 et seq.) are hereby transferred to and assumed by the  
31 Office of the Public Guardian for Elderly Adults in the Department of  
32 the Public Advocate.

33 c. Whenever, in any law, rule, regulation, order, reorganization plan,  
34 contract, document, judicial or administrative proceeding or otherwise,  
35 reference is made to the Office of the Public Guardian for Elderly  
36 Adults in the Executive Branch of the State Government, the same  
37 shall mean and refer to the Office of the Public Guardian for Elderly  
38 Adults in the Department of the Public Advocate.

39  
40 47. (New section) Actions; name of party.

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

1 48. (New section) Suits or causes of action against legislature or  
2 officers thereof.

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

6

7 49. (New section) Applicability of "State Agency Transfer Act."

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

10

11 50. (New section) Supersedure and repeal of inconsistent acts.

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

15

16 51. (New section) Assertion of claim against spill compensation  
17 fund for class by Public Advocate.

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

22

23 52. Section 7 of P.L.1967, c.43 (C.2A:158A-7) is amended to read  
24 as follows:

25 7. The Public Defender shall:

26 (a) Appoint such investigators, stenographic and clerical assistants  
27 and other personnel as may be required for the conduct of the office,  
28 subject to the provisions of Title 11A, Civil Service, of the New Jersey  
29 Statutes, and other applicable statutes;

30 (b) Establish and maintain suitable headquarters for the office and  
31 such regional quarters within the State as the Public Defender shall  
32 deem necessary for the proper functioning of the office;

33 (c) Maintain one or more trial pools of lawyers who shall be  
34 available to serve as counsel on a case basis as needed;

35 (d) Engage counsel from said trial pools on a case basis as may be  
36 necessary for the proper performance of the duties of the office and  
37 compensate them for their services;

38 (e) Accept the services of volunteer workers or consultants at no  
39 compensation or at nominal or token compensation and reimburse  
40 them for their proper and necessary expenses;

41 (f) (Deleted by amendment, P.L.1972, c.168);

42 (g) Keep and maintain proper financial records and records in  
43 respect to particular cases handled and develop records for use in the  
44 calculation of direct and indirect costs of all or any aspect of the  
45 operation of the office;

46 (h) On the basis of available data or estimates to prepare schedules

1 of rates from time to time of amounts to be paid for services rendered  
2 other than by the staff, taking into account the nature of the services,  
3 the time involved, trouble and risk, the skill and experience required,  
4 and other pertinent factors;

5 (i) Have a general responsibility for the operation of the office;

6 (j) Formulate and adopt rules and regulations as are necessary to  
7 effectuate the purposes of this act and for the efficient conduct of the  
8 work and general administration of the office, its professional staff and  
9 other employees;

10 (k) Be the request officer of the office within the meaning of such  
11 term as defined in P.L.1944, c. 112;

12 (l) Have the authority to make all necessary arrangements to  
13 coordinate services to the office with any federal program to provide  
14 counsel to the indigent, and to arrange for the receipt by the office,  
15 wherever possible, of sums allowable under such federal program,  
16 whether by direct allowance, by assignment or transfer, or otherwise;

17 (m) Have the authority to solicit, apply for and expend grants,  
18 donations, or other funds available from the federal government or  
19 private foundations as may be available to support the programs of the  
20 office[; and].

21 (n) [Assume responsibility for representation in litigation formerly  
22 handled by the Office of Inmate Advocacy in the Department of the  
23 Public Advocate that is pending on the effective date of P.L.1994, c.58  
24 (C.52:27E-50 et al.). ] (Deleted by amendment, P.L. , c. (C. )  
25 (now pending before the Legislature as this bill.)

26 (cf: P.L.1994,c.58,s.9)

27

28 53. Section 17 of P.L.1979, c.496 (C.30:1A-2) is amended to read  
29 as follows:

30 17. Every executive department or agency of this State charged with  
31 administering any licensing, inspection, enforcement, referral or  
32 placement program for residential health care facilities, rooming  
33 houses or boarding houses shall cooperate fully, and coordinate its  
34 programs to the greatest extent possible, with any other department or  
35 agency so charged.

36 In order to facilitate such cooperation and coordination, the  
37 Commissioner of the Department of Human Services shall convene  
38 quarterly meetings of a policy coordinating committee, which shall  
39 consist of said commissioner, the Commissioners of the Departments  
40 of Community Affairs and Health and the Ombudsman for the  
41 Institutionalized Elderly or their designated representatives, and to  
42 which the Public [Defender] Advocate, and representatives of such  
43 other State and local agencies as may be designated by said  
44 commissioner, shall be invited to attend.

45 At meetings of the policy coordinating committee, and on a  
46 continuous basis:

1 a. The Commissioner of Human Services shall, at a minimum: (1)  
2 Provide the Commissioners of Community Affairs and Health with  
3 such information consistent with federal law and regulations,  
4 concerning the disbursement of Supplemental Security Income checks,  
5 under P.L.1973, c.256 (C.44:7-85 et seq.), as may be necessary to  
6 implement their duties under the provisions of this act and prevent  
7 fraud and improper payment, and work with the federal government  
8 to ensure close supervision of the disbursement of such checks; (2)  
9 Refer complaints concerning services and conditions at residential  
10 health care facilities, rooming houses and boarding houses to said  
11 commissioners, as appropriate; and (3) Render services to residents of  
12 such facilities through its several divisions and by means of its  
13 responsibilities delegated to county welfare boards;

14 b. The Commissioner of Community Affairs shall, at a minimum,  
15 solicit recommendations from the Commissioners of Human Services  
16 and Health on the preparation of standards for rooming and boarding  
17 houses, and when such recommendations are not adopted, inform said  
18 commissioners of the reasons therefor, notify said commissioners  
19 concerning any waiver, modification or postponement granted under  
20 the provisions of section 5 of this act, and inform said commissioners  
21 as quickly as possible of any such facilities that have relinquished their  
22 licenses or had their licenses revoked, and of any serious violations of  
23 standards for such facilities;

24 c. The Commissioner of Health shall, at a minimum, solicit  
25 recommendations from the Commissioners of Human Services and  
26 Community Affairs on the preparation of standards for residential  
27 health care facilities, and when such recommendations are not  
28 adopted, inform the commissioners of the reasons therefor, inform the  
29 commissioners as quickly as possible of any such facilities that have  
30 relinquished their licenses or had their licenses revoked, and of any  
31 serious violations of standards for such facilities; and

32 d. The Ombudsman for the Institutionalized Elderly shall, at a  
33 minimum, refer all complaints received concerning services and  
34 conditions at residential health care facilities, rooming and boarding  
35 houses to the Commissioners of Human Services, Community Affairs  
36 and Health.

37 (cf: P.L.1994,c.58,s.46)

38

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

41 1. a. There is established in, but not of, the Department of Human  
42 Services the New Jersey Boarding Home Advisory Council. The  
43 council shall consist of 14 members, to be appointed by the  
44 Commissioner of Human Services in consultation with the  
45 Commissioners of Community Affairs and Health, the Public  
46 [Defender] Advocate, the Public Guardian for Elderly Adults in the

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

29 b. The terms of office of each appointed member shall be three  
30 years, but of the members first appointed, two shall be appointed for  
31 terms of one year, five for terms of two years, and seven for terms of  
32 three years. All vacancies shall be filled for the balance of the  
33 unexpired term in the same manner as the original appointment. The  
34 members of the council shall not receive any compensation for their  
35 services, but shall be reimbursed for the actual and necessary expenses  
36 incurred in the performance of their duties as members of the council.  
37 (cf: P.L.1994,c.58,s.47)

38

39 55. Section 4 of P.L.1979, c.105 (C.30:1AA-4) is amended to read  
40 as follows:

41 4. The public members shall be representative of the diverse social,  
42 economic and geographical interests in the State, and shall include at  
43 least 15 persons who are consumers or representatives of consumers  
44 of services for persons with developmental disabilities. [One public  
45 member shall be a representative of the private entity designated by the  
46 Governor as the State's protection and advocacy agency for persons

1 with developmental disabilities pursuant to section 33 of P.L.1994,  
2 c.58 (C.52:27E-74)]. The State members shall be official  
3 representatives of State agencies responsible for the following  
4 programs: Special Education; Residential Services for Mentally  
5 Retarded Persons; Health Services for Crippled Children and for  
6 Maternal and Child Health; Comprehensive Health Planning; Medical  
7 Assistance; Higher Education; Community Affairs, Youth and Family  
8 Services; Public Welfare; Mental Health Services; Vocational  
9 Rehabilitation Services; and the Public [Defender] Advocate.  
10 (cf: P.L.1994,c.58,s.48)

11

12 56. Section 6 of P.L.1987, c.5 (C.30:1AA-15) is amended to read  
13 as follows:

14 6. a. The Governor's Council on the Prevention of Mental  
15 Retardation, originally created by Executive Order No. 72 (signed  
16 May 24, 1984), shall serve as an advisory council to the Commissioner  
17 of the Department of Human Services and to the Office for Prevention  
18 of Mental Retardation and Developmental Disabilities.

19 The State Departments of Human Services, Education, Health and  
20 Environmental Protection are authorized and directed, to the extent  
21 consistent with the law, to cooperate with the Governor's Council on  
22 the Prevention of Mental Retardation and to furnish it with resources  
23 necessary to carry out its purposes under this act.

24 b. The Governor's Council on the Prevention of Mental Retardation  
25 shall establish from its members the Executive Committee of the  
26 Governor's Council on the Prevention of Mental Retardation. This  
27 committee shall have full power to act in lieu of the full council.

28 The executive committee shall consist of 11 members, all of whom  
29 are members of the Governor's council. The Commissioners of the  
30 Departments of Health, Human Services, Education and  
31 Environmental Protection shall serve as ex officio members. [An  
32 advocate for the mentally retarded and developmentally disabled] The  
33 Public Advocate and the Chairperson of the Governor's council shall  
34 serve as nonvoting, ex officio members of the executive committee.  
35 The Governor's council shall elect from its membership the remaining  
36 five members of the executive committee. These persons, as members  
37 of the Governor's council, shall be selected for their knowledge,  
38 competence, experience or interest in connection with the prevention  
39 of mental retardation and developmental disabilities. Members of the  
40 executive committee may, from time to time, designate other  
41 individuals as their representatives.

42 The executive committee shall serve without compensation, but shall  
43 be reimbursed for necessary expenses incurred in the performance of  
44 their duties. The Governor's council shall elect an executive committee  
45 chairperson from among the four voting cabinet members of the  
46 executive committee. The executive committee may select from

1 among its members a vice-chairperson and other officers or  
2 subcommittees which are deemed necessary or appropriate.

3 (cf: P.L.1994,c.58,s.26)

4

5 57. Section 6 of P.L.1990, c.50 (C.30:4-165.13a) is amended to  
6 read as follows:

7 6. The Commissioner of Human Services, in consultation with the  
8 Public [Defender] Advocate, shall report to the Governor and the  
9 Legislature annually on: the number of cases reviewed by the  
10 commissioner pursuant to section 8 of P.L.1985, c.133  
11 (C.30:4-165.13); the disposition of these cases, including the number  
12 of cases referred to the Attorney General; the number of cases  
13 remaining to be reviewed; the number of cases in which the Public  
14 [Defender] Advocate was appointed to serve as counsel; and the  
15 disposition of these cases. The commissioner shall include in the report  
16 any recommendations for administrative or legislative action that he  
17 deems necessary in order to ensure that all cases are reviewed as  
18 required pursuant to section 8 of P.L.1985, c.133 (C.30:4-165.13).  
19 (cf: P.L.1994,c.58,s.35)

20

21 58. Section 9 of P.L.1985, c.133 (C.30:4-165.14) is amended to  
22 read as follows:

23 9. The court shall appoint the Public [Defender] Advocate to serve  
24 as counsel for persons who do not have an attorney and over whom  
25 guardianship is sought pursuant to P.L.1985, c.133 (C.30:4-165.4 et  
26 al.) if the petition seeks only guardianship of the person, to the extent  
27 that funds are available for this purpose. If the Public [Defender]  
28 Advocate is unable to perform this service, the court shall appoint an  
29 attorney licensed by the State of New Jersey and in good standing. No  
30 attorney's fee is payable for the rendering of this service by the private  
31 attorney.

32 (cf: P.L.1994,c.58,s.36)

33

34 59. Section 10 of P.L.1985, c.133 (C.30:4-165.15) is amended to  
35 read as follows:

36 10. a. Whenever the commissioner believes that guardianship is no  
37 longer required or that another person should be appointed to serve as  
38 guardian, he shall apply to the Superior Court for an order modifying  
39 or terminating the letters of guardianship. Where someone other than  
40 the commissioner is serving as guardian, notice shall be provided to  
41 that person.

42 b. At least once every three years, the commissioner shall review  
43 the case of each person who receives functional or other services and  
44 who has a guardian.

45 c. The Public [Defender] Advocate, the incompetent person, or  
46 someone acting in his behalf may institute a similar action for judicial

1 review at any time.

2 d. In cases where the commissioner serves as guardian, the Public  
3 [Defender] Advocate shall be given notice of any actions taken  
4 pursuant to subsection a. or b. of this section. The Public [Defender]  
5 Advocate shall be given an opportunity to meet the person subject to  
6 review and inspect the commissioner's records.

7 (cf: P.L.1994,c.58,s.49)

8

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

11 3. Every nursing home shall have the responsibility for:

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

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

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

37 d. Ensuring that discrimination based upon age, race, religion, sex  
38 or nationality with respect to participation in recreational activities,  
39 meals or other social functions is prohibited. However, the  
40 participation of a resident in recreational activities, meals or other  
41 social functions may be restricted or prohibited if recommended by a  
42 resident's attending physician in writing and consented to by the  
43 resident.

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

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

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

8 g. Permitting citizens, with the consent of the resident being visited,  
9 legal services programs, employees of the [Office of the Public  
10 Defender, employees of the private entity designated by the Governor  
11 as the State's mental health protection and advocacy agency pursuant  
12 to section 22 of P.L.1994, c.58 (C.52:27E-68)] Department of the  
13 Public Advocate, and employees and volunteers of the Office of the  
14 Nursing Home Ombudsman Program in the Department of Community  
15 Affairs, whose purposes include rendering assistance without charge  
16 to nursing home residents, full and free access to the nursing home in  
17 order to visit with and make personal, social and legal services  
18 available to all residents and to assist and advise residents in the  
19 assertion of their rights with respect to the nursing home, involved  
20 governmental agencies and the judicial system.

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

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

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

36 h. Ensuring compliance with all applicable State and Federal  
37 statutes and rules and regulations.

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

1 include the payment, fee, deposit and refund policy of the nursing  
2 home.

3 (cf: P.L.194,c.58,s.50)

4

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

7 4. The Commissioner of Human Services shall develop an  
8 interdepartmental plan for the implementation of an individualized,  
9 appropriate child and family driven care system for children with  
10 special emotional needs and for the reduction of inappropriate use of  
11 out-of-home placements of these children. The plan shall first address  
12 children ready to be returned from institutions such as the Arthur  
13 Brisbane Child Treatment Center and other in-State and out-of-State  
14 residential facilities, and those at imminent risk of extended  
15 out-of-home placement. The commissioner shall consult with  
16 appropriate representatives from the State departments of Education,  
17 Corrections, Health, Community Affairs and the [Office of the Public  
18 Defender, the private entity designated by the Governor as the State's  
19 mental health protection and advocacy agency pursuant to section 22  
20 of P.L.1994, c.58 (C.52:27E-68)] Public Advocate, the Statewide  
21 Children's Coordinating Council in the Department of Human Services,  
22 the Administrative Office of the Courts, and Statewide family  
23 advocacy groups, in the development of the plan.

24 (cf: P.L.1994,c.58,s.51)

25

26 62. Section 1 of P.L.1974, c.119 (C.9:6-8.21) is amended to read as  
27 follows:

28 1. As used in this act, unless the specific context indicates  
29 otherwise:

30 a. "Parent or guardian" means any natural parent, adoptive parent,  
31 foster parent, stepparent, or any person, who has assumed  
32 responsibility for the care, custody or control of a child or upon whom  
33 there is a legal duty for such care. Parent or guardian includes a  
34 teacher, employee or volunteer, whether compensated or  
35 uncompensated, of an institution who is responsible for the child's  
36 welfare and any other staff person of an institution regardless of  
37 whether or not the person is responsible for the care or supervision of  
38 the child. Parent or guardian also includes a teaching staff member or  
39 other employee, whether compensated or uncompensated, of a day  
40 school as defined in section 1 of P.L.1974, c.119 (C.9:6-8.21).

41 b. "Child" means any child alleged to have been abused or  
42 neglected.

43 c. "Abused or neglected child" means a child less than 18 years of  
44 age whose parent or guardian, as herein defined, (1) inflicts or allows  
45 to be inflicted upon such child physical injury by other than accidental  
46 means which causes or creates a substantial risk of death, or serious

1 or protracted disfigurement, or protracted impairment of physical or  
2 emotional health or protracted loss or impairment of the function of  
3 any bodily organ; (2) creates or allows to be created a substantial or  
4 ongoing risk of physical injury to such child by other than accidental  
5 means which would be likely to cause death or serious or protracted  
6 disfigurement, or protracted loss or impairment of the function of any  
7 bodily organ; (3) commits or allows to be committed an act of sexual  
8 abuse against the child; (4) or a child whose physical, mental, or  
9 emotional condition has been impaired or is in imminent danger of  
10 becoming impaired as the result of the failure of his parent or  
11 guardian, as herein defined, to exercise a minimum degree of care (a)  
12 in supplying the child with adequate food, clothing, shelter, education,  
13 medical or surgical care though financially able to do so or though  
14 offered financial or other reasonable means to do so, or (b) in  
15 providing the child with proper supervision or guardianship, by  
16 unreasonably inflicting or allowing to be inflicted harm, or substantial  
17 risk thereof, including the infliction of excessive corporal punishment;  
18 or by any other acts of a similarly serious nature requiring the aid of  
19 the court; (5) or a child who has been willfully abandoned by his  
20 parent or guardian, as herein defined; (6) or a child upon whom  
21 excessive physical restraint has been used under circumstances which  
22 do not indicate that the child's behavior is harmful to himself, others  
23 or property; (7) or a child who is in an institution and (a) has been  
24 placed there inappropriately for a continued period of time with the  
25 knowledge that the placement has resulted or may continue to result  
26 in harm to the child's mental or physical well-being or (b) who has  
27 been willfully isolated from ordinary social contact under  
28 circumstances which indicate emotional or social deprivation.

29 A child shall not be considered abused or neglected pursuant to  
30 paragraph (7) of subsection c. of this section if the acts or omissions  
31 described therein occur in a day school as defined in this section.

32 No child who in good faith is under treatment by spiritual means  
33 alone through prayer in accordance with the tenets and practices of a  
34 recognized church or religious denomination by a duly accredited  
35 practitioner thereof shall for this reason alone be considered to be  
36 abused or neglected.

37 d. "Law guardian" means an attorney admitted to the practice of  
38 law in this State, regularly employed by the [Office of the Public  
39 Defender] Department of the Public Advocate or appointed by the  
40 court, and designated under this act to represent minors in alleged  
41 cases of child abuse or neglect. The Public Advocate may, by  
42 regulation, provide that certain classes of cases be handled by the  
43 Office of the Public Defender.

44 e. "Attorney" means an attorney admitted to the practice of law in  
45 this State who shall be privately retained; or, in the instance of an  
46 indigent parent or guardian, an attorney from the [Office of the Public

1 Defender] Department of the Public Advocate or an attorney  
2 appointed by the court who shall be appointed in order to avoid  
3 conflict between the interests of the child and the parent or guardian  
4 in regard to representation. The Public Advocate may, by regulation,  
5 provide that certain classes of cases be handled by the Office of the  
6 Public Defender.

7 f. "Division" means the Division of Youth and Family Services in  
8 the Department of Human Services unless otherwise specified.

9 g. "Institution" means a public or private facility in the State which  
10 provides children with out of home care, supervision or maintenance.  
11 Institution includes, but is not limited to, a correctional facility,  
12 detention facility, treatment facility, day care center, residential school,  
13 shelter and hospital.

14 h. "Day school" means a public or private school which provides  
15 general or special educational services to day students in grades  
16 kindergarten through 12. Day school does not include a residential  
17 facility, whether public or private, which provides care on a 24-hour  
18 basis.

19 (cf: P.L.1994,c.58,s.39)

20

21 63. Section 23 of P.L.1974, c.119 (C.9:6-8.43) is amended to read  
22 as follows:

23 23. Notice of rights. a. The court shall advise the parent or  
24 guardian of his right to have an adjournment to retain counsel and  
25 consult with him. The court shall advise the respondent that if he is  
26 indigent, he may apply for an attorney through the [Office of the  
27 Public Defender] Department of the Public Advocate. The court shall  
28 appoint a law guardian for the child as provided by this act.

29 b. The general public may be excluded from any hearing under this  
30 act, and only such persons and the representatives of authorized  
31 agencies may be admitted thereto as have an interest in the case.

32 (cf: P.L.1994,c.58,s.40)

33

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

36 14. a. With regard to all property and casualty lines, a filer may,  
37 from time to time, alter, supplement, or amend its rates, rating  
38 systems, or any part thereof, by filing with the commissioner copies of  
39 such alterations, supplements, or amendments, together with a  
40 statement of the reason or reasons for such alteration, supplement, or  
41 amendment, in a manner and with such information as may be required  
42 by the commissioner. If such alteration, supplement, or amendment  
43 shall have the effect of increasing or decreasing rates, the  
44 commissioner shall determine whether the rates as altered thereby are  
45 reasonable, adequate, and not unfairly discriminatory. If the  
46 commissioner shall determine that the rates as so altered are not

1 unreasonably high, or inadequate, or unfairly discriminatory, he shall  
2 make an order approving them. If he shall find that the rates as altered  
3 are unreasonable, inadequate, or unfairly discriminatory, he shall issue  
4 an order disapproving such alteration, supplement or amendment.

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

6 c. If an insurer or rating organization files a proposed alteration,  
7 supplement or amendment to its rating system, or any part thereof,  
8 which would result in a change in rates, the commissioner may, or  
9 upon the request of the filer or the [appropriate division or office in  
10 the Department of Insurance] Public Advocate shall, certify the matter  
11 for a hearing. The hearing shall, at the commissioner's discretion, be  
12 conducted by himself, by a person appointed by the commissioner  
13 pursuant to section 26 of P.L.1944, c.27 (C.17:29A-26), or by the  
14 Office of Administrative Law, created by P.L.1978, c.67 (C.52:14F-1  
15 et seq.), as a contested case. The following requirements shall apply  
16 to the hearing:

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

32 (2) The commissioner, or the Director of the Office of  
33 Administrative Law, as appropriate, shall notify all interested parties,  
34 including the [appropriate division or office in the Department of  
35 Insurance] Public Advocate on behalf of insurance consumers, of the  
36 date set for commencement of the hearing, on the date of the filing of  
37 the request for a hearing, or within 10 days of the decision that a  
38 hearing is to be held.

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

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

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

2 e. In order to meet, as closely as possible, the deadlines in section  
3 17 of P.L.1983, c.362 (C.39:6A-23) for provision of notice of  
4 available optional automobile insurance coverages pursuant to section  
5 13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70  
6 (C.39:6A-8), and to implement these coverages, the commissioner may  
7 require the use of rates, fixed by him in advance of any hearing, for  
8 deductible, exclusion, setoff and tort limitation options, on an interim  
9 basis, subject to a hearing and to a provision for subsequent  
10 adjustment of the rates, by means of a debit, credit or refund  
11 retroactive to the effective date of the interim rates. The public hearing  
12 on initial rates applicable to the coverages available under section 13  
13 of P.L.1983, c.362 (C.39:6A-4.3) and section 8 of P.L.1972, c.70  
14 (C.39:6A-8) shall not be limited by the provisions of subsection c. of  
15 this section governing changes in previously approved rates or rating  
16 systems.

17 (cf: P.L.1994, c.58, s.43)

18

19 65. Section 5 of P.L.1988, c.156 (C.17:29A-44) is amended to read  
20 as follows:

21 5. a. A filer may charge rates for private passenger automobile  
22 insurance in the voluntary or residual market which are not in excess  
23 of the following:

24 (1) For private passenger automobile personal injury protection  
25 coverage, residual bodily injury and property damage insurance, the  
26 maximum permissible annual rate increase applicable to each rate level  
27 utilized by an insurer in the voluntary market pursuant to section 6 of  
28 P.L.1988, c.156 (C.17:29A-45) or by any plan established pursuant to  
29 section 1 of P.L.1970, c.215 (C.17:29D-1) to provide insurance for  
30 automobiles, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2),  
31 shall be a Statewide average rate change of not more than the last  
32 published increase in the medical care services components of the  
33 national Consumer Price Index, all urban consumers, U.S. city  
34 average, plus three percentage points.

35 (2) For private passenger automobile physical damage coverage, the  
36 maximum permissible annual rate increase applicable to each rate level  
37 utilized by an insurer in the voluntary market pursuant to section 6 of  
38 P.L.1988, c.156 (C.17:29A-45) or by any plan established pursuant to  
39 section 1 of P.L.1970, c.215 (C.17:29D-1) to provide insurance for  
40 automobiles, as defined in section 2 of P.L.1972, c.70 (C.39:6A-2),  
41 shall be a Statewide average rate change of not more than the last  
42 published increase in the automobile maintenance and repair  
43 components of the national Consumer Price Index, U.S. city average,  
44 plus three percentage points.

45 b. For the purposes of this section, "Statewide average rate change"  
46 means the total Statewide premium for all coverages combined at the

1 rates in effect at the time of the filing for each rate level.

2 c. Any change in excess of the rate changes permitted by paragraphs  
3 (1) and (2) of subsection a. shall be subject to the provisions of  
4 P.L.1944, c.27 (C.17:29A-1 et seq.).

5 d. If, at any time, the commissioner believes that an increase in  
6 either or both of the published indices will produce rate levels which  
7 are excessive, he may modify the Statewide average rate change which  
8 may be used pursuant to this section.

9 e. A filer may implement a change in rate level, pursuant to  
10 subsection a. of this section, in whole or in part, in a single or in  
11 multiple filings by making an informational filing with the  
12 commissioner in a manner and form approved by the commissioner.  
13 The filing shall include a statement of the reason or reasons for the  
14 change in rate level, including, but not limited to, the claim and  
15 expense experience of the individual filer.

16 f. Other than filings made pursuant to subsection c. of this section,  
17 the provisions of subsection c. of section 14 of P.L.1944, c.27  
18 (C.17:29A-14) shall not apply to any filing made pursuant to this  
19 section. However, the commissioner shall provide a copy of any filing  
20 made or other information provided by a filer pursuant to the  
21 provisions of this section to the [appropriate division or office in the  
22 Department of Insurance] Department of the Public Advocate,  
23 Division of Rate Counsel. The [appropriate division or office in the  
24 Department of Insurance] Public Advocate may challenge a rate  
25 change implemented pursuant to subsection a. of this section after the  
26 effective date of the rate change by filing such challenge in writing  
27 with the commissioner within 30 days of the effective date of the rate  
28 change. The commissioner shall hear the matter on an expedited basis  
29 and shall render a final determination within six months of the date of  
30 filing. The commissioner may, for good cause, extend this six-month  
31 period up to an additional three months. If [that division or office in  
32 the Department of Insurance] the Public Advocate prevails, the  
33 commissioner shall reduce or rescind the rate change as appropriate.  
34 If the commissioner reduces or rescinds a rate change as a result of a  
35 challenge by the [appropriate division or office in the Department of  
36 Insurance] Public Advocate filed pursuant to the provisions of this  
37 subsection, the filer shall bear the cost of the reasonable expenses  
38 incurred by [that division or office in the Department of Insurance] the  
39 Public Advocate in maintaining the challenge.

40 g. (Deleted by amendment, P.L.1995, c.151.)

41 (cf: P.L.1995,c.151,s.2)

42

43 66. Section 8 of P.L.1992, c.161 (C.17B:27A-9) is amended to read  
44 as follows:

45 8. a. The board shall make application to the Hospital Rate Setting  
46 Commission on behalf of all carriers for approval of discounted or

1 reduced rates of payment to hospitals for health care services provided  
2 under an individual health benefits plan provided pursuant to this act.

3 b. In addition to discounted or reduced rates of hospital payment,  
4 the board shall make application on behalf of all carriers for any other  
5 subsidies, discounts, or funds that may be provided for under State or  
6 federal law or regulation. A carrier may include discounted or reduced  
7 rates of hospital payment and other subsidies or funds granted to the  
8 board to reduce its premium rates for individual health benefits plans  
9 subject to this act.

10 c. A carrier shall not issue individual health benefits plans on a new  
11 contract or policy form pursuant to this act until an informational filing  
12 of a full schedule of rates which applies to the contract or policy form  
13 has been filed with the board. The board shall forward the  
14 informational filing to the commissioner and the [Attorney General]  
15 Public Advocate.

16 d. A carrier shall make an informational filing with the board of  
17 any change in its rates for individual health benefits plans pursuant to  
18 section 3 of this act prior to the date the rates become effective. The  
19 board shall file the informational filing with the commissioner and the  
20 [Attorney General] Public Advocate. If the carrier has filed all  
21 information required by the board, the filing shall be deemed to be  
22 complete.

23 e. (1) Rates shall be formulated on contracts or policies required  
24 pursuant to section 3 of this act so that the anticipated minimum loss  
25 ratio for a contract or policy form shall not be less than 75% of the  
26 premium. The carrier shall submit with its rate filing supporting data,  
27 as determined by the board, and a certification by a member of the  
28 American Academy of Actuaries, or other individuals acceptable to the  
29 board and to the commissioner, that the carrier is in compliance with  
30 the provisions of this subsection.

31 (2) Following the close of each calendar year, if the board  
32 determines that a carrier's loss ratio was less than 75% for that  
33 calendar year, the carrier shall be required to refund to policy or  
34 contract holders the difference between the amount of net earned  
35 premium it received that year and the amount that would have been  
36 necessary to achieve the 75% loss ratio.

37 f. Notwithstanding the provisions of P.L.1992, c.161  
38 (C.17B:27A-2 et seq.) to the contrary, the schedule of rates filed  
39 pursuant to this section by a carrier which insured at least 50% of the  
40 community-rated individually insured persons on the effective date of  
41 P.L.1992, c.161 (C.17B:27A-2 et seq.) shall not be required to  
42 produce a loss ratio which when combined with the carrier's  
43 administrative costs and investment income results in self-sustaining  
44 rates prior to January 1, 1996, for individual policies or contracts  
45 issued prior to August 1, 1993. The carrier shall, not later than 30  
46 days after the effective date of P.L.1994, c.102 (C.17B:27A-4 et al.),

1 file with the board for approval, a plan to achieve this objective.  
2 (cf: P.L.1994,c.102,s.2)

3  
4 67. Section 2 of P.L.1985, c.363 (C.52:9Y-2) is amended to read as  
5 follows:

6 2. There is created a permanent commission to be known as the  
7 "New Jersey Commission on Legal and Ethical Problems in the  
8 Delivery of Health Care." The commission shall consist of [28] 27  
9 members to be appointed as follows: the Commissioner of the  
10 Department of Community Affairs, the Commissioner of the  
11 Department of Health, the Commissioner of the Department of Human  
12 Services, the Public [Defender] Advocate, the Ombudsman for the  
13 Institutionalized Elderly or their designees; [a representative of the  
14 private entity designated by the Governor as the State's mental health  
15 protection and advocacy agency pursuant to section 22 of P.L.1994,  
16 c.58 (C.52:27E-68)], two members of the Senate, to be appointed by  
17 the President of the Senate, not more than one of whom shall be of the  
18 same political party; two members of the General Assembly, to be  
19 appointed by the Speaker of the General Assembly, not more than one  
20 of whom shall be of the same political party; nine public members, two  
21 to be appointed by the President of the Senate, two to be appointed by  
22 the Speaker of the General Assembly and five to be appointed by the  
23 Governor, who are distinguished in one or more of the fields of  
24 medicine, health care and health administration, law, ethics, theology,  
25 the natural sciences, the social sciences, the humanities, and public  
26 affairs.

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

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

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

44 Vacancies in the membership of the commission shall be filled in the  
45 same manner as original appointments were made, and the term of any  
46 person reappointed or appointed to fill a vacancy shall only run for the

1 balance of the three-year term that had commenced when the  
 2 reappointment was made or the vacancy occurred. Members shall  
 3 serve without compensation but shall be reimbursed for the reasonable  
 4 travel and other out-of-pocket expenses incurred in the performance  
 5 of their duties.

6 (cf: P.L.1994,c.58,s.52)

7

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

10 1. Notwithstanding the provisions of the annual appropriations act  
 11 and section 7 of P.L.1974, c.55 (C.52:14-15.110), the Governor shall  
 12 fix and establish the annual salaries for the following officers within  
 13 the limits as follows:

14 Title	Salary Not to
	15 Exceed
16 Agriculture Department	
17 Secretary of Agriculture .....	\$115,000
18 Banking Department	
19 Commissioner of Banking .....	\$115,000
20 Commerce, Energy and Economic Development Department	
21 Commissioner of Commerce, Energy and	
22 Economic Development .....	\$115,000
23 Community Affairs Department	
24 Commissioner of Community Affairs .....	\$115,000
25 Corrections Department	
26 Commissioner of Corrections .....	\$115,000
27 Education Department	
28 Commissioner of Education .....	\$115,000
29 Environmental Protection Department	
30 Commissioner of Environmental Protection .....	\$115,000
31 Health Department	
32 Commissioner of Health .....	\$115,000
33 Higher Education Department	
34 Chancellor .....	\$115,000
35 Human Services Department	
36 Commissioner of Human Services .....	\$115,000
37 Insurance Department	
38 Commissioner of Insurance .....	\$115,000
39 Labor Department	
40 Commissioner of Labor .....	\$115,000
41 Law and Public Safety Department	
42 Attorney General .....	\$115,000
43 Military and Veterans' Affairs Department	
44 Adjutant General .....	\$115,000
45 Personnel Department	
46 Commissioner of Personnel .....	\$115,000

1 Public Advocate Department  
2 Public Advocate.....\$115,000  
3 State Department  
4 Secretary of State ..... \$115,000  
5 Transportation Department  
6 Commissioner of Transportation ..... \$115,000  
7 Treasury Department  
8 State Treasurer ..... \$115,000  
9 Members, Board of Public Utilities ..... \$115,000  
10 (cf: P.L.1994,c.58,s.53)

11  
12 69. Section 2 of P.L.1989, c.330 (C.52:27D-29.31) is amended to  
13 read as follows:

14 2. There is established in the Division on Aging in the Department  
15 of Community Affairs an Interdepartmental Task Force on the Elderly  
16 for the purpose of fostering communication among the various  
17 departments whose programs and policies affect senior citizens. The  
18 task force shall consist of 14 representatives of the following  
19 governmental entities: the Division on Aging and the Division on  
20 Women in the Department of Community Affairs; the Departments of  
21 Education, Health, Higher Education, Human Services, Insurance,  
22 Labor, Public Advocate, Transportation and Treasury[; the Office of  
23 the Public Defender]; the Office of the Public Guardian; the Office of  
24 the Ombudsman for the Institutionalized Elderly; and the New Jersey  
25 Housing and Mortgage Finance Agency.

26 A chairman of the task force shall be elected from among the  
27 members. The task force shall meet at least monthly to conduct its  
28 work and at such other times as designated by the chairman.  
29 (cf: P.L.1994,c.58,s.54)

30  
31 70. Section 1 of P.L.1991, J.R.2 (C.52:9DD-1) is amended to read  
32 as follows:

33 1. There is created a 21-member Commission on Racism, Racial  
34 Violence and Religious Violence to be appointed as follows: two shall  
35 be members of the Senate appointed by the President thereof, who  
36 shall not be of the same political party; two shall be members of the  
37 General Assembly appointed by the Speaker thereof, who shall not be  
38 of the same political party; the Attorney General or his designee; the  
39 Public [Defender] Advocate or his designee; and 15 public members  
40 to be appointed by the Governor. The public members shall be  
41 representative of the ethnic, racial and religious diversity of the State's  
42 population and shall include representatives from the following  
43 groups: the National Association for the Advancement of Colored  
44 People, the Puerto Rican Congress, the Anti-Defamation League of  
45 [B'Nai B'Rith] B'nai B'rith, the New Jersey Black Issues  
46 Convention, the New Jersey Chapter of the National Rainbow

1 Coalition, and the American Civil Liberties Union.  
2 (cf: P.L.1994,c.58,s.55)

3  
4 71. Section 12 of P.L.1980, c.125 (C.56:12-12) is amended to read  
5 as follows:

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

13 (cf: P.L.1994,c.58,s.56)

14

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

17 1. Whenever any small water company is found, after notice and  
18 public hearing, to have failed to comply, within a specified time, with  
19 any order of the Department of Environmental Protection concerning  
20 the availability of water, the potability of water and the provision of  
21 water at adequate volume and pressure, which the department is  
22 authorized to enforce pursuant to Title 58 of the Revised Statutes, the  
23 department and the Board of Public Utilities shall, after notice to  
24 capable proximate public or private water companies, municipal  
25 utilities authorities established pursuant to P.L.1957, c.183  
26 (C.40:14B-1 et seq.), municipalities or any other suitable  
27 governmental entities wherein the small water company provides  
28 service, and the Department of the Public Advocate, conduct a joint  
29 public hearing to determine: the actions that may be taken and the  
30 expenditures that may be required, including acquisition costs, to make  
31 all improvements necessary to assure the availability of water, the  
32 potability of water and the provision thereof at adequate volume and  
33 pressure, including, but not necessarily limited to, the acquisition of  
34 the small water company by the most suitable public or private entity.  
35 As used in this act, "small water company" means any company,  
36 purveyor or entity, other than a governmental agency, that provides  
37 water for human consumption and which regularly serves less than  
38 1,000 customer connections.

39 (cf: P.L.1994, c.58, s.57)

40

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

43 5. A contracting unit which intends to enter into a contract with a  
44 private vendor for the provision of water supply services pursuant to  
45 the provisions of this act shall notify, at least 60 days prior to issuing  
46 a request for qualifications from interested vendors pursuant to section

1 6 of this act, the division, the department [and], the Board of Public  
2 Utilities and the Department of the Public Advocate of its intention,  
3 and shall publish notice of its intention in at least one newspaper of  
4 general circulation in the jurisdiction which would be served under the  
5 terms of the proposed contract.

6 (cf: P.L.1994,c.58,s.58)

7

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

10 11. Upon designating the selected vendor or vendors pursuant to  
11 section 10 of this act, a contracting unit shall negotiate with the  
12 selected vendor or vendors a proposed contract, which shall include  
13 the accepted proposal and the provisions required pursuant to section  
14 15 of this act. Upon negotiating a proposed contract, the contracting  
15 unit shall make the proposed contract available to the public at its  
16 main offices, and shall transmit a copy of the proposed contract to the  
17 division, the department [and], the Board of Public Utilities and the  
18 Department of the Public Advocate.

19 (cf: P.L.1994,c.58,s.59)

20

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

23 12. a. A contracting unit shall conduct a public hearing or hearings  
24 on the charges, rates, or fees, or the formula for determining these  
25 charges, rates, or fees, and the other provisions contained in a  
26 proposed contract negotiated pursuant to section 11 of this act. The  
27 contracting unit shall provide at least 90 days' public notice of this  
28 public hearing to the Department of the Public Advocate, prospective  
29 consumers and other interested parties. This notice shall be published  
30 in at least one newspaper of general circulation in the jurisdiction to  
31 be served under the terms of the proposed contract. Within 45 days  
32 after giving notice of the public hearing, the contracting unit shall hold  
33 a meeting with prospective consumers and other interested parties to  
34 explain the terms and conditions of the proposed contract, and to  
35 receive written questions which will be part of the record of the public  
36 hearing. At the public hearing, the selected vendor or vendors shall be  
37 present, and the contracting unit shall have the burden to answer the  
38 questions received at the meeting, and to show that the proposed  
39 contract complies with the provisions of section 15 of this act, and that  
40 it constitutes the best means of securing the required water supply  
41 services among available alternatives. The contracting unit shall  
42 provide that a verbatim record be kept of the public hearing, and that  
43 a written transcript of this record be printed and made available to the  
44 public within 30 days of the close of the public hearing. After the  
45 public hearing the contracting unit and the vendor may agree to make  
46 changes to the proposed contract, and shall transmit the proposed

1 contract, a copy of the printed transcript of the public hearing, and a  
2 statement summarizing the major issues raised at the public hearing  
3 and the response of the contracting unit to these issues, to the division,  
4 the department, the Board of Public Utilities, and the Department of  
5 the Public Advocate, and to all persons who attended the public  
6 hearing.

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

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

18 (cf: P.L.1994,c.58,s.60)

19

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

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

31 (cf: P.L.1994,c.58,s.61)

32

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

35 11. Upon designating the selected vendor or vendors pursuant to  
36 section 10 of this act, a contracting unit shall negotiate with the  
37 selected vendor or vendors a proposed contract, which shall include  
38 the accepted proposal and the provisions required pursuant to section  
39 15 of this act. Upon negotiating a proposed contract, the contracting  
40 unit shall make the proposed contract available to the public at its  
41 main offices, and shall transmit a copy of the proposed contract to the  
42 division [and], the department, and the Department of the Public  
43 Advocate.

44 (cf: P.L.1994,c.58,s.62)

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

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

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

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

46 (cf: P.L.1994,c.58,s.63)

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

2 59:1-3. Definitions. As used in this subtitle:

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

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

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

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

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

19 "Public employee" means an employee of a public entity and includes  
20 a person participating, under the supervision of the Palisades Interstate  
21 Park Commission, in a volunteer program in that part of the Palisades  
22 Interstate Park located in New Jersey [and any person retained by the  
23 public defender to serve as an arbitrator, mediator, or in such similar  
24 capacity. "Public employee" does not include any independent  
25 contractors or other individuals, agencies, or entities not established  
26 in or employed by the Office of the Public Defender designated to  
27 provide protection and advocacy services to indigent mental hospital  
28 admittees or persons with a developmental disability as the term is  
29 defined in section 3 of P.L.1977, c.82 (C.30:6D-3)].

30 "Public entity" includes the State, and any county, municipality,  
31 district, public authority, public agency, and any other political  
32 subdivision or public body in the State. ["Public entity" does not  
33 include any independent contractors or other individuals, agencies, or  
34 entities not established in or employed by the Office of the Public  
35 Defender designated to provide protection and advocacy services to  
36 indigent mental hospital admittees or persons with a developmental  
37 disability as the term is defined in section 3 of P.L.1977, c.82  
38 (C.30:6D-3)].

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

45 "Statute" means an act adopted by the Legislature of this State or by

1 the Congress of the United States.

2 (cf: P.L.1995,c.383,s.4)

3

4 80. The following are repealed:

5 Sections 1 through 6 of P.L. 1994, c.58 (C.52:27E-50 through  
6 C.52:27E-55);

7 Section 8 of P.L. 1994, c.58 (C.52:27E-56);

8 Sections 10 through 25 of P.L. 1994, c.58 (C.52:27E-57 through  
9 C.52:27E-71);

10 Sections 28 through 33 of P.L. 1994, c.58 (C.52:27E-72 through  
11 C.52:27E-74);

12 Section 37 of P.L. 1994, c.58 (C.52:27E-75).

13 Sections 3 and 4 of P.L.1977, c.239 (C.52:27G-3 and 52:27G-4).

14 Sections 4 and 5 of P.L.1985, c.298 (C.52:27G-23 and 52:27G-24).

15

16 81. This act shall take effect on the 90th day following enactment.

17

18

19

#### STATEMENT

20

21 This bill, the "Department of the Public Advocate Act of 1996,"  
22 would re-establish the Department of the Public Advocate in New  
23 Jersey. The Department was abolished by P.L.1994, c.58, enacted  
24 on June 29, 1994.

25 Under this bill, the advocacy functions previously performed by  
26 the Department of the Public Advocate would be restored with the  
27 exception of the Public Defender, which would remain as a separate  
28 Office in the Executive Branch. In addition, the Department of the  
29 Public Advocate would gain new advocacy functions.

30 The bill establishes a new Division within the Department of the  
31 Public Advocate, to be known as the Division of Child Advocacy.  
32 The new division would investigate complaints and provide legal  
33 representation and other advocacy services on an individual or class  
34 basis to protect and advocate the rights of abused and neglected  
35 children.

36 The bill provides that the following divisions and Offices would be  
37 contained in the Department of the Public Advocate: the Division of  
38 Rate Counsel, Division of Mental Health Advocacy, Office of  
39 Inmate Advocacy, Division of Public Interest Advocacy, Division of  
40 Citizen Complaints, and Division of Advocacy for the  
41 Developmentally Disabled. (The former Office of Dispute  
42 Resolution, which had been part of the Public Advocate's Division  
43 of Citizen Complaints and Dispute Resolution, would not be  
44 restored to the Public Advocate.)

45 In addition, the bill consolidates advocacy functions now

46 performed in other departments by transferring the Office of the

1 Ombudsman for the Institutionalized Elderly (currently in the  
2 Executive Branch) and the Office of the Public Guardian for Elderly  
3 Adults (currently allocated to, but independent of, the Department  
4 of Community Affairs), to the Office of the Public Advocate.

5 The bill also requires the Division of Mental Health Advocacy in  
6 the Department of the Public Advocate to provide patient  
7 representatives to represent and protect mental hospital admittees  
8 with respect to the use and administration of psychotropic drugs.  
9 Pursuant to State and Federal case law (see Rennie v. Klein, 720  
10 F.2d 266 (C.A.N.J.1983), patients committed to psychiatric  
11 institutions have a constitutional right to refuse the administration  
12 of such medication, subject to the requirements of needed care and  
13 legitimate administrative concerns. Currently, the Division of  
14 Mental Health and Hospitals in the Department of Human Services  
15 provides so-called "Rennie advocates" in State institutions to  
16 advocate for patients pursuant to these standards. Under the bill,  
17 the "Rennie" advocacy functions would be performed by the  
18 Department of the Public Advocate.

19 The bill also provides that the Office of Inmate Advocacy would,  
20 in addition to its other duties, function as an ombudsman for  
21 inmates in resolving complaints from inmates, their families, other  
22 interested citizens, public officials and government agencies  
23 concerning conditions in correctional facilities.

24

25

26

27

28 Re-establishes the Department of the Public Advocate; establishes  
29 new Division of Child Advocacy within the Department.