

SENATE, No. 1292

STATE OF NEW JERSEY

INTRODUCED JUNE 6, 1996

By Senator RICE

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 as 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. Except for the Public Defender, such  
45 division directors shall serve at the pleasure of the Public Advocate  
46 who shall fix their compensation within the limits of available

1 appropriations;

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

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

7

8 5. (New section) Appointment of Assistant Public Advocate.

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

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

34

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

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

43

44 7. (New section) Division of Administration.

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

1 of the Director of the Division of Administration.

2

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

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

9

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

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

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

21

22 10. (New section) Duties of Public Defender unchanged.

23 Allocation of the Office of Public Defender to the Department of  
24 the Public Advocate as provided herein shall not alter or change the  
25 term, tenure of office, rights, obligations, duties or responsibilities  
26 otherwise provided by law for the Public Defender.

27

28 11. (New section) Office of Inmate Advocacy; established.

29 There is hereby established in the Office of the Public Defender the  
30 Office of Inmate Advocacy.

31

32 12. (New section) Inmate: defined.

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

37

38 13. (New section) Office of Inmate Advocacy; duties.

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

1 14. (New section) Professional responsibilities.

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

10

11 15. (New section) Attorney-client privilege.

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

21

22 16. (New section) Standard of performance.

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

31

32 17. (New section) Division of Rate Counsel: established.

33 There is hereby established in the Department of the Public  
34 Advocate the Division of Rate Counsel to be under the supervision of  
35 the Director of the Division of Rate Counsel.

36

37 18. (New section) Director, Division of Rate Counsel; staff.

38 The Director of the Division of Rate Counsel shall be an attorney-  
39 at-law of this State and may employ such assistants on a full-time basis  
40 as are necessary to protect the public interest. When exceptional  
41 circumstances arise, the Director of the Division of Rate Counsel, with  
42 the approval of the Public Advocate, may on a temporary basis retain  
43 such other expert assistants as are necessary to protect the public  
44 interest, pursuant to a reasonable fee schedule established in advance  
45 by the Public Advocate.

46 Cases shall be assigned to staff attorneys or to attorneys hired by

1 case on a basis calculated to provide competent representation in the  
2 light of the nature of the case, the services to be performed, the  
3 experience of the particular attorney and other relevant factors.

4  
5 19. (New section) Division of Rate Counsel; jurisdiction.

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

17  
18 20. (New section) Payment of expenses of Division of Rate  
19 Counsel.

20 a. Whenever the Division of Rate Counsel represents the public  
21 interest in a proceeding initiated by application of a business, industry  
22 or utility other than an insurance company or nonprofit service plan  
23 subject to the provisions of Title 17 of the Revised Statutes or Title  
24 17B of the New Jersey Statutes for authority to increase the rate, toll,  
25 fare or charge charged by it for any product or service or in a  
26 proceeding initiated by application of a business, industry or utility to  
27 discontinue or change any required service, the Director of the  
28 Division of Rate Counsel may, except as otherwise provided herein,  
29 assess the business, industry or utility up to 1/10 of 1% of its revenues  
30 derived in the calendar year last preceding the institution of such  
31 proceeding from its interstate sales of the product supplied or  
32 interstate service rendered, the rate, toll, fare or charge for which, or  
33 the discontinuance or charge for which, is the subject matter of such  
34 proceeding, or \$1,500.00, whichever is greater. The assessment shall  
35 not exceed \$500,000.00, unless the compensation and expenses of  
36 counsel, experts and assistants employed by the division in such  
37 proceeding exceed \$500,000.00, in which case the director shall send  
38 the business, industry or utility an itemized statement setting forth the  
39 amount, as of the date of such statement, of the compensation and  
40 expenses.

41 For cases where the gross annual revenues in the calendar year last  
42 preceding the institution of the proceeding from the intrastate sales of  
43 the product supplied or intrastate service rendered, the rate, toll, fare  
44 or charge for which, or the discontinuance or charge for which, is the  
45 subject matter of the proceeding, do not exceed \$1,500,000.00, the  
46 director may assess the business, industry or utility up to \$1,500.00

1 but not less than \$500.00. If an assessment exceeds \$500.00, the  
2 director shall send the business, industry or utility an itemized  
3 statement setting forth the amount, as of the date of statement, of the  
4 compensation and expenses of counsel, experts and assistants  
5 employed by the division in the proceeding. In no event shall an  
6 assessment in these cases exceed \$1,500.00.

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

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

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

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

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

32 (2) Any amount assessed in excess of \$500.00, but not in excess of  
33 \$1,500.00 shall be paid in equal monthly installments over such period  
34 as the recoupment of the case operating expenses is permitted by the  
35 executive authority with the power to make the final determination in  
36 such matters. The first installment payment shall be due on the date  
37 of the final decision rendered by the executive authority.

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

42  
43 21. (New section) Transfer of powers and duties of Office of the  
44 Public Defender.

45 All functions, powers and duties which had been vested in the  
46 Division of Rate Counsel in the Department of the Public Advocate

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

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

19

20 22. (New section) Division of Mental Health Advocacy;  
21 established.

22 a. There is hereby established in the Department of the Public  
23 Advocate the Division of Mental Health Advocacy under the  
24 supervision of the Director of the Division of Mental Health  
25 Advocacy.

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

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

41

42 23. (New section) Director to employ assistants.

43 The Director of the Division of Mental Health Advocacy may,  
44 with the approval of the Public Advocate, employ such assistants on  
45 a full-time basis as are necessary. When exceptional circumstances  
46 arise, the Director of the Division of Mental Health Advocacy, with

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

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

8  
9 24. (New section) Indigent mental hospital admittee; defined.

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

18  
19 25. (New section) Legal representation and medical consultation.

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

25  
26 26. (New section) Class actions.

27 The Division of Mental Health Advocacy may, with the approval  
28 of the Public Advocate, represent the interests of indigent mental  
29 hospital admittees in such disputes and litigation, as will, in the  
30 discretion of the Director of the Division of Mental Health Advocacy,  
31 best advance the interests of indigent mental hospital admittees as a  
32 class on an issue of general application to them, and may act as  
33 representative of indigent mental hospital admittees with any principal  
34 department or other instrumentality of State, county or local  
35 government.

36  
37 27. (New section) Eligibility for services.

38 Eligibility for the services of the Division of Mental Health  
39 Advocacy shall be determined on the basis of the need of the client.  
40 Need shall be measured according to the financial ability of the client  
41 to engage and compensate competent private counsel and to provide  
42 all other necessary expenses of representation. Such ability shall be  
43 recognized to be a variable depending on the nature, extent and  
44 liquidity of assets and on the disposable net income of the client on the  
45 one hand, and on the nature of the case, the effort and skill required  
46 to gather pertinent information, render advice, conduct trial or render

1 other legal services, and probable expenses to be incurred, on the  
2 other hand. In the event that a determination of eligibility cannot be  
3 made before the time when the first services are to be rendered, or if  
4 an initial determination is found to be erroneous, the division shall  
5 undertake the same provisionally, and if it shall subsequently determine  
6 that the client is ineligible it shall so inform the client, and the client  
7 shall thereupon with the approval of the court be obliged to engage his  
8 own counsel and to reimburse the division for the cost of the services  
9 rendered to that time.

10

11 28. (New section) Financial status of defendant; investigation.

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

19

20 29. (New section) Division of Public Interest Advocacy:  
21 established.

22 There is hereby established in the Department of the Public  
23 Advocate, the Division of Public Interest Advocacy under the  
24 supervision of the Director of the Division of Public Interest  
25 Advocacy, who shall be an attorney-at-law of this State.

26

27 30. (New section) Division of Public Interest Advocacy:  
28 jurisdiction.

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

33

34 31. (New section ) Public interest: defined.

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

39

40 32. (New section) Decision to represent particular public interest.

41 The Public Advocate shall have sole discretion to represent or  
42 refrain from representing the public interest in any proceeding. He  
43 shall consider in exercising his discretion the importance and the extent  
44 of the public interest involved and whether that interest would be  
45 adequately represented without the action of the department. If the  
46 Public Advocate determines that there are inconsistent public interests

1 involved in a particular matter, he may choose to represent one such  
2 interest based on the considerations in this section, to represent no  
3 interest in that matter, or to represent one such interest through the  
4 Division of Public Interest Advocacy and another or others through  
5 other divisions of the department or through outside counsel engaged  
6 on a case basis.

7  
8 33. (New section) Division of Public Interest Advocacy: power.

9 The Division of Public Interest Advocacy may represent and  
10 protect the public interest by:

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

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

17  
18 34. (New section) Division of Citizen Complaints and Dispute  
19 Settlement.

20 a. There is hereby established in the Department of the Public  
21 Advocate the Division of Citizen Complaints and Dispute Settlement  
22 under the supervision of the Director of the Division of Citizen  
23 Complaints and Dispute Settlement.

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

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

41  
42 35. (New section) Office of Citizen Complaints.

43 There is hereby established in the Division of Citizen Complaints  
44 and Dispute Settlement the Office of Citizen Complaints.

45  
46 36. (New section) Definitions.

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

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

13  
14 37. (New section) Powers and Duties.

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

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

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

26 (1) Unreasonable, unfair, oppressive or discriminatory, although  
27 in accordance with law;

28 (2) Unaccompanied by an adequate explanation;

29 (3) Performed in an inefficient manner.

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

32  
33 38. (New section) Notice to complainant and agency.

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

40  
41 39. (New section) Procedure after investigation.

42 If, after investigation, the Office of Citizen Complaints finds that:

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

44 b. An administrative action or inaction should be modified or  
45 canceled;

46 c. A statute or regulation on which an administrative action or

1 inaction is based should be altered;

2 d. Reasons or more complete reasons should be given for an  
3 administrative action or inaction; or

4 e. Any other action should be taken by the agency;

5 it shall report its findings and recommendations to the Public Advocate  
6 who may request the agency to notify him, within a specified time, of  
7 the action taken on such recommendations. The Public Advocate may  
8 refer the findings and recommendations of the Office of Citizen  
9 Complaints, to the Division of Public Interest Advocacy or, if  
10 appropriate, to the Division of Rate Counsel.

11

12 40. (New section) Notice to the complainant.

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

16

17 41. (New section) Office of Dispute Settlement.

18 There is hereby established in the Division of Citizen Complaints  
19 and Dispute Settlement the Office of Dispute Settlement.

20

21 42. (New section) Duties and Powers.

22 The Office of Dispute Settlement may in the discretion of the  
23 Public Advocate provide mediation, conciliation and other third party  
24 services to community and civic groups, associations and  
25 organizations, and to municipal and county governmental agencies for  
26 the purpose of aiding such parties in resolving disputes which involve  
27 the public interest, provided that such groups, associations,  
28 organizations and governmental agencies request such services.

29

30 43. (New section) Division of Advocacy for Developmentally  
31 Disabled: established.

32 a. There is hereby established in the Department of the Public  
33 Advocate the Division of Advocacy for the Developmentally Disabled  
34 under the supervision of the Director of the Division of Advocacy for  
35 the Developmentally Disabled.

36 b. All functions, powers and duties now vested in the Office of  
37 the Public Defender in, but not of, the Department of State related to  
38 any functions, powers and duties which had been vested in the  
39 Division of Advocacy for the Developmentally Disabled of the  
40 Department of the Public Advocate prior to the effective date of  
41 P.L.1994, c.58 (C.52:27E-50 et al.), are transferred to and again  
42 assumed by the Division of Advocacy for the Developmentally  
43 Disabled of the Department of the Public Advocate.

44 c. Whenever, in any law, rule, regulation, order, reorganization  
45 plan, contract, document, judicial or administrative proceeding or  
46 otherwise, reference is made to the Office of the Public Defender in,

1 but not of, the Department of State, concerning functions, powers and  
2 duties which had been vested in the Division of Advocacy for the  
3 Developmentally Disabled of the Department of the Public Advocate  
4 prior to the effective date of P.L.1994, c.58 (C.52:27E-50 et al.), the  
5 same shall mean and refer to the Division of Advocacy for the  
6 Developmentally Disabled of the Department of the Public Advocate.

7  
8 44. (New section) Assistants; employment; assignment of cases  
9 to staff or hired by case attorneys.

10 The Director of the Division of Advocacy for the Developmentally  
11 Disabled may, with the approval of the Public Advocate, employ such  
12 assistants on a full-time basis as are necessary to protect the rights of  
13 developmentally disabled persons. When exceptional circumstances  
14 arise, the Director of the Division of Advocacy for the  
15 Developmentally Disabled, with the approval of the Public Advocate,  
16 may on a temporary basis retain such other expert assistants as are  
17 necessary pursuant to a reasonable fee schedule established in advance  
18 by the Public Advocate.

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

23  
24 45. (New section) Developmentally disabled person defined.

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

29  
30 46. (New section) Powers and duties.

31 The Division of Advocacy for the Developmentally Disabled may  
32 receive and investigate complaints and provide such legal  
33 representation and other advocacy services on an individual or class  
34 basis as the Public Advocate deems appropriate to protect and  
35 advocate the rights of developmentally disabled persons. The Division  
36 of Advocacy for the Developmentally Disabled may also, within the  
37 limits of available funding, provide services to other handicapped  
38 persons or classes of persons found by the Public Advocate to have  
39 needs similar to developmentally disabled people.

40  
41 47. (New section) Eligibility for services.

42 Eligibility for services by the Division of Advocacy for the  
43 Developmentally Disabled shall be determined on the basis of the need  
44 of the client and in a manner consistent with the conditions of any  
45 grant obtained by the Public Advocate to assist in implementing this  
46 act.

1 48. (New section) Actions; name of party.

2 Any action brought by the Public Advocate or any persons  
3 authorized herein to institute or participate in actions before the courts  
4 or agencies of this State shall be brought in the name of the person  
5 serving as the Public Advocate or in the name of an affected individual  
6 or group, but shall not be brought in the name of the State or the  
7 people thereof.

8

9 49. (New section) Suits or causes of action against legislature or  
10 officers thereof.

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

14

15 50. (New section) Applicability of "State Agency Transfer Act."

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

18

19 51. (New section) Supersedure and repeal of inconsistent acts.

20 All acts and parts of acts inconsistent with any of the provisions  
21 of this act are, to the extent of such inconsistency, superseded and  
22 repealed.

23

24 52. (New section) Annual report.

25 The Public Advocate shall present a detailed report of the  
26 operation of sections 29 through 32 of this act and sections 11  
27 through 13 of this act to the Governor and to each member of the  
28 Legislature on December 1 of each year.

29

30 53. (New section) Violation of parole; legal representation by  
31 Public Defender.

32 The Public Defender shall in the manner prescribed by P.L.1967,  
33 c.43 (C.2A:158A-1 et seq.) provide for the legal representation of any  
34 person on parole from a correctional institution of this State or  
35 otherwise under the parole supervision of this State who is charged  
36 with violation of that parole or who is under consideration for  
37 revocation of parole.

38

39 54. (New section) Assertion of claim against spill compensation  
40 fund for class by Public Advocate.

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

45

46 55. Section 7 of P.L.1967, c.43 (C.2A:158A-7) is amended to

1 read as follows:

2 7. The Public Defender shall:

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

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

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

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

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

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

19 (g) Keep and maintain proper financial records and records in  
20 respect to particular cases handled and develop records for use in the  
21 calculation of direct and indirect costs of all or any aspect of the  
22 operation of the office;

23 (h) On the basis of available data or estimates to prepare  
24 schedules of rates from time to time of amounts to be paid for services  
25 rendered other than by the staff, taking into account the nature of the  
26 services, the time involved, trouble and risk, the skill and experience  
27 required, and other pertinent factors;

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

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

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

35 (l) Have the authority to make all necessary arrangements to  
36 coordinate services to the office with any Federal program to provide  
37 counsel to the indigent, and to arrange for the receipt by the office,  
38 wherever possible, of sums allowable under such Federal program,  
39 whether by direct allowance, by assignment or transfer, or otherwise;

40 (m) [Have the authority to solicit, apply for and expend grants,  
41 donations, or other funds available from the Federal Government or  
42 private foundations as may be available to support the programs of the  
43 office; and] (Deleted by amendment, P.L. , c. (C. ) (now pending  
44 before the Legislature as this bill.)

45 (n) [Assume responsibility for representation in litigation formerly  
46 handled by the Office of Inmate Advocacy in the Department of the

1 Public Advocate that is pending on the effective date of P.L.1994, c.58  
2 (C.52:27E-50 et al.].] (Deleted by amendment, P.L. , c. (C. ))  
3 (now pending before the Legislature as this bill.)  
4 (cf: P.L.1994, c.58, s.9)

5

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

8 17. Every executive department or agency of this State charged  
9 with administering any licensing, inspection, enforcement, referral or  
10 placement program for residential health care facilities, rooming  
11 houses or boarding houses shall cooperate fully, and coordinate its  
12 programs to the greatest extent possible, with any other department or  
13 agency so charged.

14 In order to facilitate such cooperation and coordination, the  
15 Commissioner of the Department of Human Services shall convene  
16 quarterly meetings of a policy coordinating committee, which shall  
17 consist of said commissioner, the Commissioners of the Departments  
18 of Community Affairs and Health and the Ombudsman for the  
19 Institutionalized Elderly or their designated representatives, and to  
20 which the Public [Defender] Advocate, and representatives of such  
21 other State and local agencies as may be designated by said  
22 commissioner, shall be invited to attend.

23 At meetings of the policy coordinating committee, and on a  
24 continuous basis:

25 a. The Commissioner of Human Services shall, at a minimum: (1)  
26 Provide the Commissioners of Community Affairs and Health with  
27 such information consistent with Federal law and regulations,  
28 concerning the disbursement of Supplemental Security Income checks,  
29 under P.L.1973, c.256 (C.44:7-85 et seq.), as may be necessary to  
30 implement their duties under the provisions of this act and prevent  
31 fraud and improper payment, and work with the Federal Government  
32 to ensure close supervision of the disbursement of such checks; (2)  
33 Refer complaints concerning services and conditions at residential  
34 health care facilities, rooming houses and boarding houses to said  
35 commissioners, as appropriate; and (3) Render services to residents of  
36 such facilities through its several divisions and by means of its  
37 responsibilities delegated to county welfare boards;

38 b. The Commissioner of Community Affairs shall, at a minimum,  
39 solicit recommendations from the Commissioners of Human Services  
40 and Health on the preparation of standards for rooming and boarding  
41 houses, and when such recommendations are not adopted, inform said  
42 commissioners of the reasons therefor, notify said commissioners  
43 concerning any waiver, modification or postponement granted under  
44 the provisions of section 5 of this act, and inform said commissioners  
45 as quickly as possible of any such facilities that have relinquished their  
46 licenses or had their licenses revoked, and of any serious violations of

1 standards for such facilities;

2 c. The Commissioner of Health shall, at a minimum, solicit  
3 recommendations from the Commissioners of Human Services and  
4 Community Affairs on the preparation of standards for residential  
5 health care facilities, and when such recommendations are not  
6 adopted, inform the commissioners of the reasons therefor, inform the  
7 commissioners as quickly as possible of any such facilities that have  
8 relinquished their licenses or had their licenses revoked, and of any  
9 serious violations of standards for such facilities; and

10 d. The Ombudsman for the Institutionalized Elderly shall, at a  
11 minimum, refer all complaints received concerning services and  
12 conditions at residential health care facilities, rooming and boarding  
13 houses to the Commissioners of Human Services, Community Affairs  
14 and Health.

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

16

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

19 1. a. There is established in, but not of, the Department of  
20 Human Services the New Jersey Boarding Home Advisory Council.  
21 The council shall consist of 14 members, to be appointed by the  
22 Commissioner of Human Services in consultation with the  
23 Commissioners of Community Affairs and Health, the Public  
24 [Defender] Advocate, the Public Guardian for Elderly Adults and the  
25 Ombudsman for the Institutionalized Elderly, as follows: two persons  
26 who own or operate a boarding house as defined in P.L.1979, c.496  
27 (C.55:13B-1 et al.); two persons who own or operate a residential  
28 health care facility as defined in section 1 of P.L.1953, c.212  
29 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et  
30 seq.); two persons who currently reside in a boarding house or a  
31 residential health care facility; one person who is a member of the  
32 organization which represents operators of boarding houses or  
33 residential health care facilities, or both; one person who represents  
34 the health care professions; one person who represents a county office  
35 on aging; one person who represents a municipal building code  
36 department; one person who represents an organization or agency  
37 which advocates for mentally ill persons in this State; one person who  
38 represents an organization or agency which advocates for physically  
39 disabled persons in this State; and two other members who shall be  
40 chosen from among persons whose work, knowledge or interest  
41 relates to boarding houses or residential health care facilities and the  
42 residents thereof, including but not limited to municipal and county  
43 elected officials, county prosecutors, social workers, and persons  
44 knowledgeable about fire prevention standards and measures needed  
45 to assure safety from structural, mechanical, plumbing and electrical  
46 deficiencies in boarding houses and residential health care facilities.

1 In addition, the Chairman of the General Assembly Standing Reference  
2 Committee on Health and Human Resources and the Chairman of the  
3 Senate Standing Reference Committee on Institutions, Health and  
4 Welfare or their designees shall serve as ex officio members of the  
5 council.

6 b. The terms of office of each appointed member shall be three  
7 years, but of the members first appointed, two shall be appointed for  
8 terms of one year, five for terms of two years, and seven for terms of  
9 three years. All vacancies shall be filled for the balance of the  
10 unexpired term in the same manner as the original appointment. The  
11 members of the council shall not receive any compensation for their  
12 services, but shall be reimbursed for the actual and necessary expenses  
13 incurred in the performance of their duties as members of the council.  
14 (cf: P.L.1994, c.58, s.47)

15

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

18 4. The public members shall be representative of the diverse  
19 social, economic and geographical interests in the State, and shall  
20 include at least 15 persons who are consumers or representatives of  
21 consumers of services for persons with developmental disabilities.  
22 [One public member shall be a representative of the private entity  
23 designated by the Governor as the State's protection and advocacy  
24 agency for persons with developmental disabilities pursuant to section  
25 33 of P.L.1994, c.58 (C.52:27E-74)]. The State members shall be  
26 official representatives of State agencies responsible for the following  
27 programs: Special Education; Residential Services for Mentally  
28 Retarded Persons; Health Services for Crippled Children and for  
29 Maternal and Child Health; Comprehensive Health Planning; Medical  
30 Assistance; Higher Education; Community Affairs, Youth and Family  
31 Services; Public Welfare; Mental Health Services; Vocational  
32 Rehabilitation Services; and the Public [Defender] Advocate.  
33 (cf: P.L.1994, c.58, s.48)

34

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

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

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

1       b. The Governor's Council on the Prevention of Mental  
2 Retardation shall establish from its members the Executive Committee  
3 of the Governor's Council on the Prevention of Mental Retardation.  
4 This committee shall have full power to act in lieu of the full council.

5       The executive committee shall consist of 11 members, all of whom  
6 are members of the Governor's council. The Commissioners of the  
7 Departments of Health, Human Services, Education and  
8 Environmental Protection shall serve as ex officio members. [An  
9 advocate for the mentally retarded and developmentally disabled] The  
10 Public Advocate and the Chairperson of the Governor's council shall  
11 serve as nonvoting, ex officio members of the executive committee.  
12 The Governor's council shall elect from its membership the remaining  
13 five members of the executive committee. These persons, as members  
14 of the Governor's council, shall be selected for their knowledge,  
15 competence, experience or interest in connection with the prevention  
16 of mental retardation and developmental disabilities. Members of the  
17 executive committee may, from time to time, designate other  
18 individuals as their representatives.

19       The executive committee shall serve without compensation, but  
20 shall be reimbursed for necessary expenses incurred in the performance  
21 of their duties. The Governor's council shall elect an executive  
22 committee chairperson from among the four voting cabinet members  
23 of the executive committee. The executive committee may select from  
24 among its members a vice-chairperson and other officers or  
25 subcommittees which are deemed necessary or appropriate.

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

27

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

30       6. The Commissioner of Human Services, in consultation with the  
31 Public [Defender] Advocate, shall report to the Governor and the  
32 Legislature annually on: the number of cases reviewed by the  
33 commissioner pursuant to section 8 of P.L.1985, c.133  
34 (C.30:4-165.13); the disposition of these cases, including the number  
35 of cases referred to the Attorney General; the number of cases  
36 remaining to be reviewed; the number of cases in which the Public  
37 [Defender] Advocate was appointed to serve as counsel; and the  
38 disposition of these cases. The commissioner shall include in the report  
39 any recommendations for administrative or legislative action that he  
40 deems necessary in order to ensure that all cases are reviewed as  
41 required pursuant to section 8 of P.L.1985, c.133 (C.30:4-165.13).

42 (cf: P.L.1994, c.58, s.35)

43

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

46       9. The court shall appoint the Public [Defender] Advocate to

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

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

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

13 10. a. Whenever the commissioner believes that guardianship is  
14 no longer required or that another person should be appointed to serve  
15 as guardian, he shall apply to the Superior Court for an order  
16 modifying or terminating the letters of guardianship. Where someone  
17 other than the commissioner is serving as guardian, notice shall be  
18 provided to that person.

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

22 c. The Public [Defender] Advocate, the incompetent person, or  
23 someone acting in his behalf may institute a similar action for judicial  
24 review at any time.

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

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

31  
32 63. Section 3 of P.L.1976, c.120 (C.30:13-3) is amended to read  
33 as follows:

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

35 a. Maintaining a complete record of all funds, personal property  
36 and possessions of a nursing home resident from any source  
37 whatsoever, which have been deposited for safekeeping with the  
38 nursing home for use by the resident. This record shall contain a  
39 listing of all deposits and withdrawals transacted, and these shall be  
40 substantiated by receipts given to the resident or his guardian. A  
41 nursing home shall provide to each resident or his guardian a quarterly  
42 statement which shall account for all of such resident's property on  
43 deposit at the beginning of the accounting period, all deposits and  
44 withdrawals transacted during the period, and the property on deposit  
45 at the end of the period. The resident or his guardian shall be allowed  
46 daily access to his property on deposit during specific periods

1 established by the nursing home for such transactions at a reasonable  
2 hour. A nursing home may, at its own discretion, place a limitation as  
3 to dollar value and size of any personal property accepted for  
4 safekeeping.

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

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

15 d. Ensuring that discrimination based upon age, race, religion, sex  
16 or nationality with respect to participation in recreational activities,  
17 meals or other social functions is prohibited. However, the  
18 participation of a resident in recreational activities, meals or other  
19 social functions may be restricted or prohibited if recommended by a  
20 resident's attending physician in writing and consented to by the  
21 resident.

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

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

33 g. Permitting citizens, with the consent of the resident being  
34 visited, legal services programs, employees of the [Office of the Public  
35 Defender, employees of the private entity designated by the Governor  
36 as the State's mental health protection and advocacy agency pursuant  
37 to section 22 of P.L.1994, c.58 (C.52:27E-68)] Department of the  
38 Public Advocate, and employees and volunteers of the Office of the  
39 Nursing Home Ombudsman Program in the Department of Community  
40 Affairs, whose purposes include rendering assistance without charge  
41 to nursing home residents, full and free access to the nursing home in  
42 order to visit with and make personal, social and legal services  
43 available to all residents and to assist and advise residents in the  
44 assertion of their rights with respect to the nursing home, involved  
45 governmental agencies and the judicial system.

46 (1) Such access shall be permitted by the nursing home at a

1 reasonable hour.

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

4 (3) All persons entering a nursing home pursuant to this section  
5 shall promptly notify the person in charge of their presence. They  
6 shall, upon request, produce identification to substantiate their  
7 identity. No such person shall enter the immediate living area of any  
8 resident without first identifying himself and then receiving permission  
9 from the resident to enter. The rights of other residents present in the  
10 room shall be respected. A resident shall have the right to terminate  
11 a visit by a person having access to his living area pursuant to this  
12 section at any time. Any communication whatsoever between a  
13 resident and such person shall be confidential in nature, unless the  
14 resident authorizes the release of such communication in writing.

15 h. Ensuring compliance with all applicable State and Federal  
16 statutes and rules and regulations.

17 i. Ensuring that every resident, prior to or at the time of  
18 admission and during his stay, shall receive a written statement of the  
19 services provided by the nursing home, including those required to be  
20 offered by the nursing home on an as-needed basis, and of related  
21 charges, including any charges for services not covered under Title  
22 XVIII and Title XIX of the Social Security Act, as amended, or not  
23 covered by the nursing home's basic per diem rate. This statement  
24 shall further include the payment, fee, deposit and refund policy of the  
25 nursing home.

26 (cf: P.L.1994, c.58, s.50)

27

28 64. Section 4 of P.L.1992, c.111 (C.30:4C-69) is amended to  
29 read as follows:

30 4. The Commissioner of Human Services shall develop an  
31 interdepartmental plan for the implementation of an individualized,  
32 appropriate child and family driven care system for children with  
33 special emotional needs and for the reduction of inappropriate use of  
34 out-of-home placements of these children. The plan shall first address  
35 children ready to be returned from institutions such as the Arthur  
36 Brisbane Child Treatment Center and other in-State and out-of-State  
37 residential facilities, and those at imminent risk of extended  
38 out-of-home placement. The commissioner shall consult with  
39 appropriate representatives from the State departments of Education,  
40 Corrections, Health, Community Affairs and the [Office of the Public  
41 Defender, the private entity designated by the Governor as the State's  
42 mental health protection and advocacy agency pursuant to section 22  
43 of P.L.1994, c.58 (C.52:27E-68)] Public Advocate, the Statewide  
44 Children's Coordinating Council in the Department of Human Services,  
45 the Administrative Office of the Courts, and Statewide family

1 advocacy groups, in the development of the plan.

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

3

4 65. N.J.S.2C:48-1 is amended to read as follows:

5 2C:48-1. Composition. There is hereby created a Criminal  
6 Disposition Commission, consisting of 12 members consisting of two  
7 members of the Senate, no more than one of whom shall be of the  
8 same political party, appointed by the President of the Senate; two  
9 members of the General Assembly, no more than one of whom shall be  
10 of the same political party, appointed by the Speaker of the General  
11 Assembly; the Chief Justice of the Supreme Court or his designee, the  
12 Attorney General or his designee, the Public [Defender] Advocate or  
13 his designee, the Chairman of the State Parole Board or his designee,  
14 the Commissioner of the Department of Corrections or his designee,  
15 the President of the New Jersey Prosecutors Association or his  
16 designee and two public members to be appointed by the Governor.  
17 The legislative members shall serve for terms coextensive with their  
18 respective terms as a member of the House of the Legislature from  
19 which they are appointed and the two public members shall serve for  
20 a term of three years except that one of the initial appointments shall  
21 be for a term of one year. Members shall be eligible for reappointment  
22 to the commission, and vacancies in the commission shall be filled in  
23 the same manner as the original appointment, but for the unexpired  
24 term only. The members of the commission shall serve without  
25 compensation, but shall only be reimbursed for necessary expenses  
26 actually incurred in the performance of their duties under this chapter.  
27 The commission shall choose a chairman from among its members.  
28 (cf: P.L.1994, c.58, s.38)

29

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

32 1. As used in this act, unless the specific context indicates  
33 otherwise:

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

45 b. "Child" means any child alleged to have been abused or  
46 neglected.

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

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

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

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

1 Office of the Public Defender.

2 e. "Attorney" means an attorney admitted to the practice of law  
3 in this State who shall be privately retained; or, in the instance of an  
4 indigent parent or guardian, an attorney from the [Office of the Public  
5 Defender] Department of the Public Advocate or an attorney  
6 appointed by the court who shall be appointed in order to avoid  
7 conflict between the interests of the child and the parent or guardian  
8 in regard to representation. The Public Advocate may, by regulation,  
9 provide that certain classes of cases be handled by the Office of the  
10 Public Defender.

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

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

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

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

24

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

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

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

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

37

38 68. Section 12 of P.L.1975, c.231 (C.10:4-17) is amended to read  
39 as follows:

40 12. Any person who knowingly violates any of the foregoing  
41 sections of this act shall be fined \$100.00 for the first offense and no  
42 less than \$100.00 nor more than \$500.00 for any subsequent offense,  
43 recoverable by the State by a summary proceeding under "the penalty  
44 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court shall  
45 have jurisdiction to enforce said penalty upon complaint of the  
46 Attorney General or the county prosecutor, but the Attorney General

1 or county prosecutor may refer the matter to the Public Advocate.  
2 Whenever a member of a public body believes that a meeting of such  
3 body is being held in violation of the provisions of this act, he shall  
4 immediately state this at the meeting together with specific reasons for  
5 his belief which shall be recorded in the minutes of that meeting.  
6 Whenever such a member's objections to the holding of such meeting  
7 are overruled by the majority of those present, such a member may  
8 continue to participate at such meeting without penalty provided he  
9 has complied with the duties imposed upon him by this section.

10 (cf: P.L.1994, c.58, s.41)

11

12 69. Section 13 of P.L.1987, c.333 (C.13:1E-189) is amended to  
13 read as follows:

14 13. a. A person proposing to own or operate a regional low-level  
15 radioactive waste disposal facility shall submit a disclosure statement  
16 pursuant to, and shall be otherwise subject to, within the limits of  
17 federal law, the provisions of P.L.1983, c.392 (C.13:1E-126 et al.).

18 b. The owner or operator of the regional low-level radioactive  
19 waste disposal facility who has received a license pursuant to federal  
20 law shall enter into negotiations with the host municipality concerning  
21 such issues as the two parties have identified as potential conflicts.  
22 These negotiations shall be mediated by a representative of the Office  
23 of Dispute [Settlement in the Office of the Public Defender]  
24 Resolution in the Department of the Public Advocate in a manner  
25 consistent with the practices and procedures of the Office of Dispute  
26 [Settlement] Resolution.

27 c. The owner or operator of the regional low-level radioactive  
28 waste disposal facility who has received a license pursuant to federal  
29 law may construct and operate that facility without regard to any local  
30 zoning ordinance, and the use shall not be required to be submitted to  
31 or approved by any county or municipal governing body, zoning, or  
32 planning board or other agency, except as otherwise expressly  
33 provided herein. The board, department, county, or municipality shall  
34 conduct inspections during construction.

35 (cf: P.L.1994, c.58, s.42)

36

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

39 14. a. With regard to all property and casualty lines, a filer may,  
40 from time to time, alter, supplement, or amend its rates, rating  
41 systems, or any part thereof, by filing with the commissioner copies of  
42 such alterations, supplements, or amendments, together with a  
43 statement of the reason or reasons for such alteration, supplement, or  
44 amendment, in a manner and with such information as may be required  
45 by the commissioner. If such alteration, supplement, or amendment  
46 shall have the effect of increasing or decreasing rates, the

1 commissioner shall determine whether the rates as altered thereby are  
2 reasonable, adequate, and not unfairly discriminatory. If the  
3 commissioner shall determine that the rates as so altered are not  
4 unreasonably high, or inadequate, or unfairly discriminatory, he shall  
5 make an order approving them. If he shall find that the rates as altered  
6 are unreasonable, inadequate, or unfairly discriminatory, he shall issue  
7 an order disapproving such alteration, supplement or amendment.

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

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

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

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

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

44 (4) The commissioner may promulgate rules and regulations (a)  
45 to establish standards for the submission of proposed filings,  
46 amendments, additions, deletions and alterations to the rating system

1 of filers, which may include forms to be submitted by each filer; and  
2 (b) making such other provisions as he deems necessary for effective  
3 implementation of this act.

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

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

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

21

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

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

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

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

1 average, plus three percentage points.

2 b. For the purposes of this section, "Statewide average rate  
3 change" means the total Statewide premium for all coverages  
4 combined at the rates in effect at the time of the filing for each rate  
5 level.

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

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

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

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

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

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

46 72. Section 8 of P.L.1992, c.161 (C.17B:27A-9) is amended to

1 read as follows:

2 8. a. The board shall make application to the Hospital Rate  
3 Setting Commission on behalf of all carriers for approval of discounted  
4 or reduced rates of payment to hospitals for health care services  
5 provided under an individual health benefits plan provided pursuant to  
6 this act.

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

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

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

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

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

41 f. Notwithstanding the provisions of P.L.1992, c.161  
42 (C.17B:27A-2 et seq.) to the contrary, the schedule of rates filed  
43 pursuant to this section by a carrier which insured at least 50% of the  
44 community-rated individually insured persons on the effective date of  
45 P.L.1992, c.161 (C.17B:27A-2 et seq.) shall not be required to  
46 produce a loss ratio which when combined with the carrier's

1 administrative costs and investment income results in self-sustaining  
2 rates prior to January 1, 1996, for individual policies or contracts  
3 issued prior to August 1, 1993. The carrier shall, not later than 30  
4 days after the effective date of P.L.1994, c.102 (C.17B:27A-4 et al.),  
5 file with the board for approval, a plan to achieve this objective.  
6 (cf: P.L.1994, c.102, s.2)

7

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

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

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

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

45 Members of the commission shall serve for three-year terms or  
46 until a successor is appointed. However, the term of every member

1 initially appointed shall expire on December 31, 1988.

2 Vacancies in the membership of the commission shall be filled in  
3 the same manner as original appointments were made, and the term of  
4 any person reappointed or appointed to fill a vacancy shall only run for  
5 the balance of the three-year term that had commenced when the  
6 reappointment was made or the vacancy occurred. Members shall  
7 serve without compensation but shall be reimbursed for the reasonable  
8 travel and other out-of-pocket expenses incurred in the performance  
9 of their duties.

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

11

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

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

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

1	Military and Veterans' Affairs Department	
2	Adjutant General .....	\$115,000
3	Personnel Department	
4	Commissioner of Personnel .....	\$115,000
5	<u>Public Advocate Department</u>	
6	<u>Public Advocate.....</u>	<u>\$115,000</u>
7	State Department	
8	Secretary of State .....	\$115,000
9	Transportation Department	
10	Commissioner of Transportation .....	\$115,000
11	Treasury Department	
12	State Treasurer .....	\$115,000
13	Members, Board of Public Utilities .....	\$115,000
14	(cf: P.L.1994, c.58, s.53)	

15  
16       75. Section 2 of P.L.1989, c.330 (C.52:27D-29.31) is amended  
17 to read as follows:

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

30       A chairman of the task force shall be elected from among the  
31 members. The task force shall meet at least monthly to conduct its  
32 work and at such other times as designated by the chairman.

33 (cf: P.L.1994, c.58, s.54)

34  
35       76. Section 1 of P.L.1991, J.R.2 (C.52:9DD-1) is amended to  
36 read as follows:

37       1. There is created a 21-member Commission on Racism, Racial  
38 Violence and Religious Violence to be appointed as follows: two shall  
39 be members of the Senate appointed by the President thereof, who  
40 shall not be of the same political party; two shall be members of the  
41 General Assembly appointed by the Speaker thereof, who shall not be  
42 of the same political party; the Attorney General or his designee; the  
43 Public [Defender] Advocate or his designee; and 15 public members  
44 to be appointed by the Governor. The public members shall be  
45 representative of the ethnic, racial and religious diversity of the State's  
46 population and shall include representatives from the following

1 groups: the National Association for the Advancement of Colored  
2 People, the Puerto Rican Congress, the Anti-Defamation League of  
3 B'Nai B'Rith, the New Jersey Black Issues Convention, the New Jersey  
4 Chapter of the National Rainbow Coalition, and the American Civil  
5 Liberties Union.

6 (cf: P.L.1994, c.58, s.55)

7

8 77. Section 12 of P.L.1980, c.125 (C.56:12-12) is amended to  
9 read as follows:

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

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

18

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

21 1. Whenever any small water company is found, after notice and  
22 public hearing, to have failed to comply, within a specified time, with  
23 any order of the Department of Environmental Protection concerning  
24 the availability of water, the potability of water and the provision of  
25 water at adequate volume and pressure, which the department is  
26 authorized to enforce pursuant to Title 58 of the Revised Statutes, the  
27 department and the Board of Public Utilities shall, after notice to  
28 capable proximate public or private water companies, municipal  
29 utilities authorities established pursuant to P.L.1957, c.183  
30 (C.40:14B-1 et seq.), municipalities or any other suitable  
31 governmental entities wherein the small water company provides  
32 service, and the Department of the Public Advocate, conduct a joint  
33 public hearing to determine: the actions that may be taken and the  
34 expenditures that may be required, including acquisition costs, to make  
35 all improvements necessary to assure the availability of water, the  
36 potability of water and the provision thereof at adequate volume and  
37 pressure, including, but not necessarily limited to, the acquisition of  
38 the small water company by the most suitable public or private entity.  
39 As used in this act, "small water company" means any company,  
40 purveyor or entity, other than a governmental agency, that provides  
41 water for human consumption and which regularly serves less than  
42 1,000 customer connections.

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

44

45 79. Section 5 of P.L.1985, c.37 (C.58:26-5) is amended to read  
46 as follows:

1           5. A contracting unit which intends to enter into a contract with  
2 a private vendor for the provision of water supply services pursuant to  
3 the provisions of this act shall notify, at least 60 days prior to issuing  
4 a request for qualifications from interested vendors pursuant to section  
5 6 of this act, the division, the department [and], the Board of Public  
6 Utilities and the Department of the Public Advocate of its intention,  
7 and shall publish notice of its intention in at least one newspaper of  
8 general circulation in the jurisdiction which would be served under the  
9 terms of the proposed contract.

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

11  
12           80. Section 11 of P.L.1985, c.37 (C.58:26-11) is amended to read  
13 as follows:

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

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

24  
25           81. Section 12 of P.L.1985, c.37 (C.58:26-12) is amended to read  
26 as follows:

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

1 a written transcript of this record be printed and made available to the  
2 public within 30 days of the close of the public hearing. After the  
3 public hearing the contracting unit and the vendor may agree to make  
4 changes to the proposed contract, and shall transmit the proposed  
5 contract, a copy of the printed transcript of the public hearing, and a  
6 statement summarizing the major issues raised at the public hearing  
7 and the response of the contracting unit to these issues, to the division,  
8 the department, the Board of Public Utilities, and the Department of  
9 the Public Advocate, and to all persons who attended the public  
10 hearing.

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

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

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

23

24 82. Section 5 of P.L.1985, c.72 (C.58:27-5) is amended to read  
25 as follows:

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

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

36

37 83. Section 11 of P.L.1985, c.72 (C.58:27-11) is amended to read  
38 as follows:

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

1 Advocate.

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

3

4 84. Section 12 of P.L.1985, c.72 (C.58:27-12) is amended to read  
5 as follows:

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

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

46

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

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

5  
6 85. N.J.S.59:1-3 is amended to read as follows:

7 59:1-3. Definitions. As used in this subtitle:

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

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

16 "Enactment" includes a constitutional provision, statute, executive  
17 order, ordinance, resolution or regulation.

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

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

24 "Public employee" means an employee of a public entity and  
25 includes a person participating, under the supervision of the Palisades  
26 Interstate Park Commission, in a volunteer program in that part of the  
27 Palisades Interstate Park located in New Jersey.

28 "Public entity" includes the State, and any county, municipality,  
29 district, public authority, public agency, and any other political  
30 subdivision or public body in the State.

31 "State" shall mean the State and any office, department, division,  
32 bureau, board, commission or agency of the State, but shall not  
33 include any such entity which is statutorily authorized, to sue and be  
34 sued. "State" also means the Palisades Interstate Park Commission, but  
35 only with respect to employees, property and activities within the State  
36 of New Jersey.

37 "Statute" means an act adopted by the Legislature of this State or  
38 by the Congress of the United States.

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

40  
41 86. The following are repealed:

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

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

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

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

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

4

5       87. This act shall take effect on the 90th day following enactment.

6

7

8

STATEMENT

9

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

14       Under this bill, all functions, powers and duties of the  
15 Department would be restored.

16

17

18

19

20       \_\_\_\_\_

Re-establishes the Department of the Public Advocate.