

46:3B-7.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 147
NJSA: 46:3B-7.1 (Amends "New Home Warranty Act")
BILL NO: A3081 (Substituted for S2288)

SPONSOR(S): Kelly and O'Toole

DATE INTRODUCED: January 9, 2001

COMMITTEE: **ASSEMBLY:** Housing; Appropriations

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 14, 2001

SENATE: June 28, 2001

DATE OF APPROVAL: July 10, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute (1R) enacted)

(Amendments during passage denoted by superscript numbers)

A3081

SPONSORS STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 3-22-2001
(Housing)

5-17-2001 (Approp.)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S2288

SPONSORS STATEMENT: (Begins on page 4 of original bill) Yes

Bill and Sponsors Statement identical to A3081

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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ASSEMBLY, No. 3081

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 9, 2001

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

SYNOPSIS

Amends "The New Home Warranty and Builders' Registration Act" to prohibit certain transfers from the warranty security fund and require premium adjustments.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning new home warranties and amending P.L.1977,
2 c.467.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as
8 follows:

9 7. a. There is hereby established a new home warranty security
10 fund to be maintained by the State Treasurer and administered by the
11 commissioner. The purpose of the fund is to provide moneys
12 sufficient to pay claims by owners against builders participating in the
13 fund for defects in new homes covered by the new home warranty.
14 The amounts payable by participating builders shall be established and
15 may be changed from time to time, as the experience of the fund shall
16 require, by the commissioner, and shall be sufficient to cover
17 anticipated claims, to provide a reasonable reserve and to cover the
18 costs of administering the fund. Amounts paid by participating
19 builders shall be forwarded to the State Treasurer and shall be
20 accounted for and credited by him to the new home warranty security
21 fund.

22 b. The State Treasurer shall hold, manage and, through the
23 Division of Investment, invest and reinvest moneys in the fund and
24 credit all income earned thereon to the fund in the same manner as
25 provided by law for the investment of pension and retirement funds
26 administered by the State. The department shall keep the State
27 Treasurer advised of anticipated cash demands for payment of claims
28 against the fund. No funds shall be spent, appropriated or transferred
29 from the fund other than for the express purposes of paying claims or
30 costs related to administering the program or the fund. In the event
31 funds are spent, appropriated or transferred from the fund for other
32 purposes in violation of this subsection, the obligation of participating
33 builders to contribute to the fund shall be suspended until such time
34 as the funds are replenished, and if the amount in the fund shall
35 become insufficient thereafter to pay claims or make awards, the
36 payment of claims and making of awards shall be made from the
37 General Fund. The Joint Budget Oversight Committee, or its
38 successor, shall have the authority to investigate complaints of
39 violative fund transfers under this section, and shall order the
40 Commissioner of Community Affairs to suspend collection from
41 participating builders if it determines that the provisions of this
42 subsection have been violated.

43 c. Prior to making a claim against the fund for defects covered by

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

Matter underlined thus is new matter.

1 the warranty, an owner shall notify the builder of such defects and
2 allow a reasonable time period for their repair. If the repairs are not
3 made within a reasonable time or are not satisfactory to the owner, he
4 may file a claim against the fund in the form and manner prescribed by
5 the commissioner. The commissioner shall investigate each claim to
6 determine the validity thereof, and the amount of the award that shall
7 be made thereon, and shall hold a hearing if requested by either party,
8 in accordance with the provisions of the Administrative Procedures
9 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested
10 cases. Reasonable hearing fees shall be assessed against the
11 unsuccessful party. The amount of the award shall be sufficient to
12 cover the reasonable costs necessary to correct any defect or defects
13 covered under the warranty, but the total amount of awards from the
14 fund for any new home shall not exceed the purchase price of the
15 home in the first good faith sale thereof or the fair market value on
16 the home on its completion date if there is no good faith sale. All
17 claims submitted by an owner shall first be reviewed through a
18 conciliation or arbitration procedure by the department, and in the
19 event that the owner is found to be in the right, then the builder shall
20 be required to correct such claims as determined through the
21 conciliation or arbitration procedure. If a builder is unable or willfully
22 refuses to correct such deficiency, then an amount sufficient to cure
23 the problem shall be paid from the fund to the owner. In such cases,
24 the commissioner may then proceed against the builder in accordance
25 with subsection b. of section [6b] 6 of [this act] P.L.1977, c.467
26 (C.46:3B-6). Upon certification from the commissioner of the
27 amount of an award, the State Treasurer shall make payment to the
28 claimant from the fund.

29 d. If at any time the moneys available in the fund are insufficient to
30 satisfy outstanding awards and anticipated awards for the succeeding
31 year, the commissioner shall, by regulation and after public hearing
32 upon reasonable notice to all interested parties, require participating
33 builders to pay additional amounts to replenish the fund. In the event
34 the moneys available in the fund exceed by 15 percent the amount
35 needed to satisfy outstanding awards and anticipated awards for the
36 succeeding years, the amounts of the premiums required from
37 participating builders shall be reduced accordingly. The commissioner
38 may also provide for surcharges against those participating builders
39 who are responsible for a significant number of awards against the
40 fund, and may discontinue the participation in the fund of any builder
41 who is responsible for an excessive number of awards against the fund
42 after a hearing in accordance with the provisions of the Administrative
43 Procedures Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to
44 contested cases. At no time shall the State be required to contribute
45 any moneys to the fund, nor shall the State have any liability to any
46 person having any right to or claim against the fund over and above
47 the amount therein, except in those instances where it is determined

1 by the Joint Budget Oversight Committee that the provisions of
2 subsection b. of this section have been violated concerning amounts
3 spent, appropriated or transferred from the fund.

4 (cf: P.L.1977, c.467, s.7)

5
6 2. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill amends the "The New Home Warranty and Builders'
12 Registration Act," P.L.1977, c.467, to provide that the security fund
13 created under that act may not be used for any other purposes than
14 those expressed in the act. The purpose of the act was to create an
15 insurance fund to pay for warranties provided by builders of new
16 homes in the State. Under the act, participating builders contribute to
17 a fund from which claims are paid to homeowners for warranty
18 defects. Currently, the fund is managed by the State Treasurer, who
19 is advised of claims to be paid by the Commissioner of Community
20 Affairs.

21 In recent years, amounts in the fund which had built up in reserves
22 through premium contributions by participating builders, were
23 determined by the State Treasurer not to be needed to pay claims
24 against the fund, and were transferred to other accounts in State
25 government. There is no provision in the act currently to prevent such
26 transfers, nor is there any provision to require a reduction in the
27 amounts of premiums charged to builders if the reserves of the fund
28 become overabundant.

29 This bill, by amending the act, prohibits spending, appropriating or
30 transferring money from the fund for any purposes other than paying
31 claims or costs related to administering the fund. In the event funds
32 are spent, appropriated or transferred from the fund in violation of
33 these purposes, the bill requires that the collection of premiums from
34 participating builders be suspended until such time as the funds are
35 replenished. If the amounts in the fund become insufficient thereafter,
36 due to the suspension in the collection of premiums, to pay claims or
37 make awards, the requirement to pay claims and make awards under
38 the fund will become an obligation of the State. The Joint Budget
39 Oversight Committee, or its successor, will have the authority to
40 investigate complaints of violative fund transfers and will order the
41 Commissioner of Community Affairs to suspend collection from
42 participating builders if it determines that funds have been transferred
43 in violation of the act.

44 The bill also requires the commissioner to reduce the amount of
45 premiums accordingly if the moneys available in the fund exceed by
46 15 percent the amount needed to satisfy outstanding awards and
47 anticipated awards for the succeeding years.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3081

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MARCH 22, 2001

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

SYNOPSIS

Amends "The New Home Warranty and Builders' Registration Act" to enhance oversight and accountability.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Housing Committee.



1 **AN ACT** concerning new home warranties, establishing a board of
2 trustees to provide increased security, equity and accountability in
3 the administration of the new home warranty security fund, and
4 amending and supplementing P.L.1977, c.467 (C.46:3B-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. (New section) The Legislature finds and declares that:

10 a. New Jersey provides unique protection through "The New
11 Home Warranty and Builders' Registration Act," P.L.1977, c.467
12 (C.46:3B-1), which establishes a program requiring that newly
13 constructed homes conform with certain construction and quality
14 standards and provides buyers of new homes with insurance-backed
15 warranty protection in the event such standards are not met;

16 b. In addition to authorizing warranty coverage through private
17 insurance programs, the act requires that a new home warranty
18 security fund be maintained by the State Treasurer and administered
19 by the commissioner on behalf of the buyers of new homes;

20 c. Moneys payable to the fund are solely for the purpose of paying
21 proven claims, providing reasonable reserves, including appropriate
22 forms of reinsurance, and covering the costs of program
23 administration. Accordingly, program premiums, fees and other
24 charges must be adequate to these purposes;

25 d. Since the premiums, fees and other charges assessed by the fund
26 are solely for the protection of the buyers of new homes enrolled in the
27 program and since such charges bear directly on the affordability of
28 those homes, the fees should be set in an actuarially sound manner,
29 including prudent reinsurance, with provision for the distribution of
30 any accumulated surplus to the buyers of new homes enrolled in the
31 fund; and

32 e. The purposes of the "The New Home Warranty and Builders'
33 Registration Act" shall be furthered through the creation of a Board
34 of Trustees to provide independent oversight over the fund on behalf
35 of those whose homes are covered by it.
36

37 2. (New Section) a. There is hereby established in, but not of, the
38 Department of Community Affairs the "New Home Warranty Security
39 Fund Board of Trustees." The duties of the board shall include, but
40 shall not be limited to, monitoring, reporting and making
41 recommendations to the commissioner on the financial soundness,
42 premium structure, reinsurance adequacy and administrative efficiency
43 of the new home warranty security fund and, when appropriate, 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 distribution of surplus reserves to the owners of enrolled homes. The
2 board shall not make any determination regarding the payment of
3 specific claims by the commissioner pursuant to section 7 of P.L.1977,
4 c.467 (C.46:3B-7).

5 b. The board shall consist of five trustees to be appointed by the
6 commissioner. One trustee shall represent the home buying public;
7 one shall represent the New Jersey Builders Association; one shall be
8 a certified public accountant licensed to practice in New Jersey; one
9 shall be an attorney-at-law who is a member in good standing of the
10 New Jersey bar; and one shall be a representative of the insurance
11 industry.

12 c. Each trustee shall be appointed for a four-year term; however,
13 among the trustees first appointed, one shall be appointed for a term
14 of one year, two shall be appointed for a term of two years, one shall
15 be appointed for a term of three years and one shall be appointed for
16 a term of four years. The trustees shall annually select a chairperson
17 from among themselves. The commissioner may reappoint a trustee.
18 The commissioner may remove a trustee for cause.

19 d. Trustees shall serve without compensation, but may be
20 reimbursed for expenses incurred in the performance of their duties.
21

22 3. (New Section) a. The Board of Trustees shall monitor and
23 annually report to the Legislature on the financial performance of the
24 new home warranty security fund, with particular attention to whether
25 the fund's income from fees, premiums, interest and other sources,
26 together with its reserves and reinsurance, will provide sufficient
27 resources to meet anticipated claims on the fund.

28 b. The board shall commission an independent biennial actuarial
29 analysis of the fund. The initial analysis shall commence June 30,
30 2001.

31 c. Based on its continuing monitoring of the fund's financial
32 performance and the adequacy of the fund relative to anticipated
33 claims, the board shall annually submit to the commissioner
34 recommendations concerning the fund's premiums, fees, investments
35 and reinsurance. Within 90 days of receipt of the recommendations,
36 the commissioner shall formally respond as to the implementation of
37 the recommendations, including an explanation of any deviation from
38 the board's recommendations.

39 d. If, based on the actuarial analysis of the fund, the board
40 determines that the fund's reserves are in excess of what is sufficient
41 to meet anticipated claims, the board shall recommend to the
42 commissioner the amount of fund moneys that should be returned to,
43 and the mode of calculating the distribution of such moneys among,
44 the owners of the enrolled homes.

45 e. The board shall periodically review and make recommendations
46 to the commissioner regarding the administration of the new home

1 warranty program established in the department. Such review and
2 recommendations shall include, but not be limited to, claims
3 processing procedures, standards of construction and quality for the
4 structural elements and components of a new home, and the degrees
5 of noncompliance that shall constitute a defect subject to the warranty
6 coverage.

7

8 4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read
9 as follows:

10 2. As used in this act:

11 a. "Department" means the Department of Community Affairs.

12 b. "Commissioner" means the Commissioner of Community
13 Affairs.

14 c. "Warranty" means the warranty prescribed by the commissioner
15 pursuant to [this act] P.L.1977, c.467, (C.46:3B-1 et seq.).

16 d. "New home" means any dwelling unit not previously occupied,
17 excluding dwelling units constructed solely for lease.

18 e. "Owner" means any person for whom the new home is built or
19 to whom the home is sold for occupation by him or his family as a
20 home and his successors in title to the home or mortgagee in
21 possession. Owner does not mean any development company,
22 association or subsidiary company of the builder or any person or
23 organization to whom the home may be sold or otherwise conveyed by
24 the builder for subsequent resale, letting or other purpose.

25 f. "Builder" means any individual corporation, partnership or other
26 business organizations engaged in the construction of new homes.

27 g. "Major construction defect" means any actual damage to the
28 load bearing portion of the home including damage due to subsidence,
29 expansion or lateral movement of the soil (excluding movement caused
30 by flood or earthquake) which affects its load bearing function and
31 which vitally affects or is imminently likely to vitally affect use of the
32 home for residential purposes.

33 h. "Warranty date" means the first occupation or settlement date,
34 whichever is sooner.

35 i. "Approved claim" means, for the purposes of P.L.1991, c.202
36 (C.46:3B-13 et al.), a claim examined and approved by the
37 commissioner in accordance with section 3 of P.L.1991, c.202
38 (C.46:3B-15).

39 j. "Approved method" means, for the purposes of P.L.1991, c.202
40 (C.46:3B-13 et al.), a method of remediation approved by the
41 commissioner in accordance with section 3 of P.L.1991, c.202
42 (C.46:3B-15).

43 k. "Fund" means[, for the purposes of P.L.1991, c.202
44 (C.46:3B-13 et al.),] the new home warranty security fund established
45 in the department pursuant to section 7 of P.L.1977, c.467
46 (C.46:3B-7).

1 1. "Warranty guarantor" means, for the purposes of P.L.1991,
2 c.202 (C.46:3B-13 et al.), (1) the new home warranty program
3 established in the department pursuant to P.L.1977, c.467 (C.46:3B-1
4 et seq.) or (2) any alternate new home warranty security program
5 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

6 m. "Board" means the Board of Trustees established pursuant to
7 section 2 of P.L. , c. (C.)(pending before the Legislature
8 as this substitute).

9 (cf: P.L.1991, c.202, s.7)

10
11 5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read
12 as follows:

13 7. a. There is hereby established a new home warranty security
14 fund to be maintained by the State Treasurer in a trust account,
15 separate and apart from other funds and administered by the
16 commissioner. The purpose of the fund is (1) to provide moneys
17 sufficient to pay claims by owners against builders participating in the
18 fund for defects in new homes covered by the new home warranty ;
19 and (2) to pay the costs of administering the new home warranty
20 program established in the department, including the costs of obtaining
21 sufficient reinsurance to prudently protect the fund against
22 unanticipated risks and costs incurred by the board in the discharge of
23 its duties. The amounts payable by participating builders shall be
24 established and may be changed from time to time, as the experience
25 of the fund shall require, by the commissioner, and shall be sufficient
26 to cover anticipated claims, to provide a reasonable reserve and to
27 cover the costs of administering the fund. Amounts paid by
28 participating builders shall be forwarded to the State Treasurer and
29 shall be accounted for and credited by him to the new home warranty
30 security fund.

31 b. The State Treasurer shall hold, manage and, through the
32 Division of Investment, invest and reinvest moneys in the fund and
33 credit all income earned thereon to the fund in the same manner as
34 provided by law for the investment of pension and retirement funds
35 administered by the State. The department shall keep the State
36 Treasurer and the board advised of anticipated cash demands for
37 payment of claims against the fund. No funds shall be spent,
38 appropriated or transferred from the fund other than for the express
39 purposes of paying claims or costs related to administering the
40 program or the fund as enumerated in subsections a, c, or e of this
41 section. In the event funds are spent, appropriated or transferred from
42 the fund for other purposes in violation of this subsection, the
43 obligation of participating builders to contribute to the fund shall be
44 suspended until such time as the funds are replenished, and if the
45 amount in the fund shall become insufficient thereafter to pay claims
46 or make awards, the payment of claims and making of awards shall be

1 made from the General Fund. The Joint Budget Oversight Committee,
2 or its successor, shall have the authority to investigate complaints of
3 violative fund transfers under this section, and shall order the
4 Commissioner of Community Affairs to suspend collection from
5 participating builders if it determines that the provisions of this
6 subsection have been violated.

7 c. Prior to making a claim against the fund for defects covered by
8 the warranty, an owner shall notify the builder of such defects and
9 allow a reasonable time period for their repair. If the repairs are not
10 made within a reasonable time or are not satisfactory to the owner, he
11 may file a claim against the fund in the form and manner prescribed by
12 the commissioner. The commissioner shall investigate each claim to
13 determine the validity thereof, and the amount of the award that shall
14 be made thereon, and shall hold a hearing if requested by either party,
15 in accordance with the provisions of the Administrative Procedures
16 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested
17 cases. Reasonable hearing fees shall be assessed against the
18 unsuccessful party. The amount of the award shall be sufficient to
19 cover the reasonable costs necessary to correct any defect or defects
20 covered under the warranty, but the total amount of awards from the
21 fund for any new home shall not exceed the purchase price of the
22 home in the first good faith sale thereof or the fair market value on
23 the home on its completion date if there is no good faith sale. All
24 claims submitted by an owner shall first be reviewed through a
25 conciliation or arbitration procedure by the department, and in the
26 event that the owner is found to be in the right, then the builder shall
27 be required to correct such claims as determined through the
28 conciliation or arbitration procedure. If a builder is unable or willfully
29 refuses to correct such deficiency, then an amount sufficient to cure
30 the problem shall be paid from the fund to the owner. In such cases,
31 the commissioner may then proceed against the builder in accordance
32 with subsection b. of section [6b] 6 of [this act] P.L.1977, c.467
33 (C.46:3B-6). Upon certification from the commissioner of the
34 amount of an award, the State Treasurer shall make payment to the
35 claimant from the fund.

36 d. [If at any time the moneys available in the fund are insufficient
37 to satisfy outstanding awards and anticipated awards for the
38 succeeding year, the commissioner shall, by regulation and after public
39 hearing upon reasonable notice to all interested parties, require
40 participating builders to pay additional amounts to replenish the fund.]
41 (deleted by amendment, P.L. , c.)

42 e. If the board determines that fund reserves and reinsurance may
43 be insufficient to cover anticipated claims, the board shall recommend
44 steps to the commissioner to restore fund resources to sufficiency,
45 which may include increases in premiums and fees, expanded
46 reinsurance and changes in standards and claims adjudication

1 procedures.

2 f. The commissioner may [also] provide for surcharges against
3 those [participating] builders who are responsible for a significant
4 number of awards against the fund[,] and may discontinue the
5 participation in the fund of any builder who is responsible for an
6 excessive number of awards against the fund after a hearing in
7 accordance with the provisions of the Administrative Procedures Act
8 (P.L.1968, c. 410, C. 52:14B-1 et seq.) applicable to contested cases.
9 At no time shall the State be required to contribute any moneys to the
10 fund, nor shall the State have any liability to any person having any
11 right to or claim against the fund over and above the amount therein
12 except in those instances where it is determined by the Joint Budget
13 Oversight Committee that the provisions of subsection b. of this
14 section have been violated concerning amounts spent, appropriated or
15 transferred from the fund.

16 g. The commissioner may order the return of funds to owners of
17 enrolled homes as may be recommended by the board pursuant to
18 section 3 of P.L. , c. (C.) (now before the Legislature as this
19 bill).

20 (cf: P.L.1977, c.467, s.7)

21

22 6. There is appropriated from the General Fund to the new home
23 warranty security fund established pursuant to section 7 of P.L.1977,
24 c.467 (C.46:3B-7), the sum of \$10,000,000.

25

26 7. This act shall take effect immediately.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3081**

STATE OF NEW JERSEY

DATED: MARCH 22, 2001

The Assembly Housing Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3081.

This substitute would amend "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), to provide for independent oversight of the state-administered program that provides buyers of new homes with warranty protection against defects in the construction or quality of the structural elements of their new homes. The substitute is a partial response to the diversion of the resources of the new home warranty security fund which has caused a serious depletion of the fund's insurance reserves.

The substitute would establish a Board of Trustees to monitor and report on the financial performance of the fund. Based on its continuing assessments, the board would make recommendations to the commissioner concerning the fund's revenues, reinsurance and related matters. The board also would monitor and report on the warranty program's performance, including conducting a periodic review of the program's construction standards and claims adjudication procedures. Based on its performance reviews, the board would make recommendations to the commissioner concerning the program's general administrative policies and practices. The board would have no authority, however, to interfere in the determination by the commissioner of specific claim payments.

The board would consist of five members as follows: One trustee would represent the home buying public; one would represent the New Jersey Builders Association; one would be a certified public accountant licensed to practice in New Jersey, one would be an attorney-at-law who is a member in good standing of the New Jersey bar, and one would be a representative of the insurance industry. Each trustee would be appointed for a four-year term; however, among the trustees first appointed, the terms would be staggered.

The substitute makes clear that the resources of the fund are to be used only to pay homeowner claims and to cover the costs of program administration and fund reinsurance. It also charges the Board of Trustees with responsibility for recommending responses should an actuarial analysis indicate that the fund's reserves may not be sufficient

to meet anticipated claims. The substitute requires the State Treasurer to maintain the fund as a trust fund, separate and apart from any other funds.

The substitute also prohibits the spending, appropriating or transferring of money from the fund for any purposes other than paying claims or costs related to administering the fund, including the return of surplus funds to owners of enrolled homes. In the event funds are spent, appropriated or transferred from the fund in violation of these purposes, the substitute requires that the collection of premiums from participating builders be suspended until such time as the funds are replenished. If the amounts in the fund become insufficient thereafter, due to the suspension in the collection of premiums, to pay claims or make awards, the requirement to pay claims and make awards under the fund will become an obligation of the State. The Joint Budget Oversight Committee, or its successor, will have the authority to investigate complaints of violative fund transfers and will order the Commissioner of Community Affairs to suspend collection from participating builders if it determines that funds have been transferred in violation of the act.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 3081**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3081 (ACS) with committee amendments.

Assembly Bill No. 3081 (ACS), as amended, changes "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), to provide for independent oversight of the state-administered program that provides buyers of new homes with warranty protection against defects in the construction or quality of the structural elements of their new homes. The bill is a partial response to the diversion of the resources of the new home warranty security fund which has caused a serious depletion of the fund's insurance reserves.

The bill establishes a Board of Trustees to monitor and report on the financial performance of the fund. Based on its continuing assessments, the board would make recommendations to the commissioner concerning the fund's revenues, reinsurance and related matters. The board also would monitor and report on the warranty program's performance, including conducting a periodic review of the program's construction standards and claims adjudication procedures. Based on its performance reviews, the board would make recommendations to the commissioner concerning the program's general administrative policies and practices. The board would have no authority, however, to interfere in the determination by the commissioner of specific claim payments.

The board would consist of five members as follows: One trustee to represent the home buying public; one to represent the New Jersey Builders Association; one to be a certified public accountant licensed to practice in New Jersey, one to be an attorney-at-law who is a member in good standing of the New Jersey bar, and one to be a representative of the insurance industry. Each trustee would be appointed for a four-year term; however, among the trustees first appointed, the terms would be staggered.

The bill sets criteria for the resources of the fund for homeowner claims and cover the costs of program administration and fund reinsurance.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note. The State Treasurer is required to maintain the new home warranty security fund as a trust fund, separate and apart from any other funds.

The Joint Budget Oversight Committee, or its successor, will have the authority to investigate complaints of violative fund transfers and will order the Commissioner of Community Affairs to suspend collection from participating builders if it determines that funds have been transferred in violation of the act.

COMMITTEE AMENDMENTS:

The amendment deletes the \$10 million General Fund appropriation to the new home warranty security fund.

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3081

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MARCH 22, 2001

Sponsored by:

Assemblyman JOHN V. KELLY

District 36 (Bergen, Essex and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Co-Sponsored by:

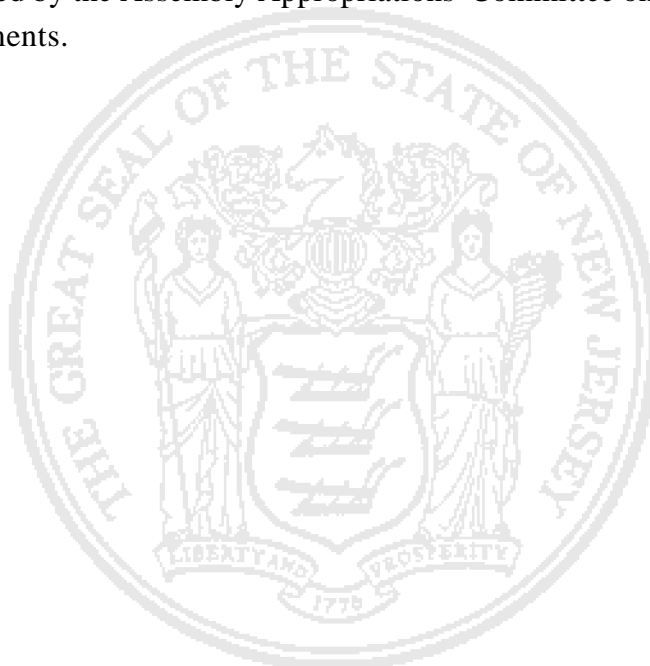
Senators Allen, Bennett, Robertson, Cafiero and Inverso

SYNOPSIS

Amends "The New Home Warranty and Builders' Registration Act" to enhance oversight and accountability.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on May 17, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning new home warranties, establishing a board of trustees to
2 provide increased security, equity and accountability in the administration
3 of the new home warranty security fund, and amending and supplementing
4 P.L.1977, c.467 (C.46:3B-1 et seq.).
5

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

8
9 1. (New section) The Legislature finds and declares that:

10 a. New Jersey provides unique protection through "The New Home
11 Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1), which
12 establishes a program requiring that newly constructed homes conform with
13 certain construction and quality standards and provides buyers of new homes
14 with insurance-backed warranty protection in the event such standards are not
15 met;

16 b. In addition to authorizing warranty coverage through private insurance
17 programs, the act requires that a new home warranty security fund be
18 maintained by the State Treasurer and administered by the commissioner on
19 behalf of the buyers of new homes;

20 c. Moneys payable to the fund are solely for the purpose of paying proven
21 claims, providing reasonable reserves, including appropriate forms of
22 reinsurance, and covering the costs of program administration. Accordingly,
23 program premiums, fees and other charges must be adequate to these purposes;

24 d. Since the premiums, fees and other charges assessed by the fund are
25 solely for the protection of the buyers of new homes enrolled in the program
26 and since such charges bear directly on the affordability of those homes, the
27 fees should be set in an actuarially sound manner, including prudent
28 reinsurance, with provision for the distribution of any accumulated surplus to
29 the buyers of new homes enrolled in the fund; and

30 e. The purposes of the "The New Home Warranty and Builders'
31 Registration Act" shall be furthered through the creation of a Board of Trustees
32 to provide independent oversight over the fund on behalf of those whose homes
33 are covered by it.
34

35 2. (New Section) a. There is hereby established in, but not of, the
36 Department of Community Affairs the "New Home Warranty Security Fund
37 Board of Trustees." The duties of the board shall include, but shall not be
38 limited to, monitoring, reporting and making recommendations to the
39 commissioner on the financial soundness, premium structure, reinsurance
40 adequacy and administrative efficiency of the new home warranty security fund
41 and, when appropriate, the distribution of surplus reserves to the owners of
42 enrolled homes. The board shall not make any determination regarding 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted May 1, 2001.

1 payment of specific claims by the commissioner pursuant to section 7 of
2 P.L.1977, c.467 (C.46:3B-7).

3 b. The board shall consist of five trustees to be appointed by the
4 commissioner. One trustee shall represent the home buying public; one shall
5 represent the New Jersey Builders Association; one shall be a certified public
6 accountant licensed to practice in New Jersey; one shall be an attorney-at-law
7 who is a member in good standing of the New Jersey bar; and one shall be a
8 representative of the insurance industry.

9 c. Each trustee shall be appointed for a four-year term; however, among
10 the trustees first appointed, one shall be appointed for a term of one year, two
11 shall be appointed for a term of two years, one shall be appointed for a term of
12 three years and one shall be appointed for a term of four years. The trustees
13 shall annually select a chairperson from among themselves. The commissioner
14 may reappoint a trustee. The commissioner may remove a trustee for cause.

15 d. Trustees shall serve without compensation, but may be reimbursed for
16 expenses incurred in the performance of their duties.

17

18 3. (New Section) a. The Board of Trustees shall monitor and annually
19 report to the Legislature on the financial performance of the new home
20 warranty security fund, with particular attention to whether the fund's income
21 from fees, premiums, interest and other sources, together with its reserves and
22 reinsurance, will provide sufficient resources to meet anticipated claims on the
23 fund.

24 b. The board shall commission an independent biennial actuarial analysis
25 of the fund. The initial analysis shall commence June 30, 2001.

26 c. Based on its continuing monitoring of the fund's financial performance
27 and the adequacy of the fund relative to anticipated claims, the board shall
28 annually submit to the commissioner recommendations concerning the fund's
29 premiums, fees, investments and reinsurance. Within 90 days of receipt of the
30 recommendations, the commissioner shall formally respond as to the
31 implementation of the recommendations, including an explanation of any
32 deviation from the board's recommendations.

33 d. If, based on the actuarial analysis of the fund, the board determines that
34 the fund's reserves are in excess of what is sufficient to meet anticipated claims,
35 the board shall recommend to the commissioner the amount of fund moneys
36 that should be returned to, and the mode of calculating the distribution of such
37 moneys among, the owners of the enrolled homes.

38 e. The board shall periodically review and make recommendations to the
39 commissioner regarding the administration of the new home warranty program
40 established in the department. Such review and recommendations shall include,
41 but not be limited to, claims processing procedures, standards of construction
42 and quality for the structural elements and components of a new home, and the
43 degrees of noncompliance that shall constitute a defect subject to the warranty
44 coverage.

45

46 4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read as follows:

1 2. As used in this act:

2 a. "Department" means the Department of Community Affairs.

3 b. "Commissioner" means the Commissioner of Community Affairs.

4 c. "Warranty" means the warranty prescribed by the commissioner pursuant
5 to [this act] P.L.1977, c.467, (C.46:3B-1 et seq.).

6 d. "New home" means any dwelling unit not previously occupied, excluding
7 dwelling units constructed solely for lease.

8 e. "Owner" means any person for whom the new home is built or to whom
9 the home is sold for occupation by him or his family as a home and his
10 successors in title to the home or mortgagee in possession. Owner does not
11 mean any development company, association or subsidiary company of the
12 builder or any person or organization to whom the home may be sold or
13 otherwise conveyed by the builder for subsequent resale, letting or other
14 purpose.

15 f. "Builder" means any individual corporation, partnership or other business
16 organizations engaged in the construction of new homes.

17 g. "Major construction defect" means any actual damage to the load
18 bearing portion of the home including damage due to subsidence, expansion or
19 lateral movement of the soil (excluding movement caused by flood or
20 earthquake) which affects its load bearing function and which vitally affects or
21 is imminently likely to vitally affect use of the home for residential purposes.

22 h. "Warranty date" means the first occupation or settlement date,
23 whichever is sooner.

24 i. "Approved claim" means, for the purposes of P.L.1991, c.202
25 (C.46:3B-13 et al.), a claim examined and approved by the commissioner in
26 accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

27 j. "Approved method" means, for the purposes of P.L.1991, c.202
28 (C.46:3B-13 et al.), a method of remediation approved by the commissioner in
29 accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

30 k. "Fund" means[, for the purposes of P.L.1991, c.202 (C.46:3B-13 et
31 al.),] the new home warranty security fund established in the department
32 pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7).

33 l. "Warranty guarantor" means, for the purposes of P.L.1991, c.202
34 (C.46:3B-13 et al.), (1) the new home warranty program established in the
35 department pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.) or (2) any
36 alternate new home warranty security program approved pursuant to section
37 8 of P.L.1977, c.467 (C.46:3B-8).

38 m. "Board" means the Board of Trustees established pursuant to section
39 2 of P.L. , c. (C.)(pending before the Legislature as this substitute).
40 (cf: P.L.1991, c.202, s.7)

41

42 5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as follows:

43 7. a. There is hereby established a new home warranty security fund to be
44 maintained by the State Treasurer in a trust account, separate and apart from
45 other funds and administered by the commissioner. The purpose of the fund is
46 (1) to provide moneys sufficient to pay claims by owners against builders

1 participating in the fund for defects in new homes covered by the new home
2 warranty ; and (2) to pay the costs of administering the new home warranty
3 program established in the department, including the costs of obtaining
4 sufficient reinsurance to prudently protect the fund against unanticipated risks
5 and costs incurred by the board in the discharge of its duties. The amounts
6 payable by participating builders shall be established and may be changed from
7 time to time, as the experience of the fund shall require, by the commissioner,
8 and shall be sufficient to cover anticipated claims, to provide a reasonable
9 reserve and to cover the costs of administering the fund. Amounts paid by
10 participating builders shall be forwarded to the State Treasurer and shall be
11 accounted for and credited by him to the new home warranty security fund.

12 b. The State Treasurer shall hold, manage and, through the Division of
13 Investment, invest and reinvest moneys in the fund and credit all income earned
14 thereon to the fund in the same manner as provided by law for the investment
15 of pension and retirement funds administered by the State. The department
16 shall keep the State Treasurer and the board advised of anticipated cash
17 demands for payment of claims against the fund. No funds shall be spent,
18 appropriated or transferred from the fund other than for the express purposes
19 of paying claims or costs related to administering the program or the fund as
20 enumerated in subsections a, c, or e of this section. In the event funds are
21 spent, appropriated or transferred from the fund for other purposes in violation
22 of this subsection, the obligation of participating builders to contribute to the
23 fund shall be suspended until such time as the funds are replenished, and if the
24 amount in the fund shall become insufficient thereafter to pay claims or make
25 awards, the payment of claims and making of awards shall be made from the
26 General Fund. The Joint Budget Oversight Committee, or its successor, shall
27 have the authority to investigate complaints of violative fund transfers under
28 this section, and shall order the Commissioner of Community Affairs to suspend
29 collection from participating builders if it determines that the provisions of this
30 subsection have been violated.

31 c. Prior to making a claim against the fund for defects covered by the
32 warranty, an owner shall notify the builder of such defects and allow a
33 reasonable time period for their repair. If the repairs are not made within a
34 reasonable time or are not satisfactory to the owner, he may file a claim against
35 the fund in the form and manner prescribed by the commissioner. The
36 commissioner shall investigate each claim to determine the validity thereof, and
37 the amount of the award that shall be made thereon, and shall hold a hearing if
38 requested by either party, in accordance with the provisions of the
39 Administrative Procedures Act (P.L.1968, c.410, C.52:14B-1 et seq.)
40 applicable to contested cases. Reasonable hearing fees shall be assessed against
41 the unsuccessful party. The amount of the award shall be sufficient to cover
42 the reasonable costs necessary to correct any defect or defects covered under
43 the warranty, but the total amount of awards from the fund for any new home
44 shall not exceed the purchase price of the home in the first good faith sale
45 thereof or the fair market value on the home on its completion date if there is
46 no good faith sale. All claims submitted by an owner shall first be reviewed

1 through a conciliation or arbitration procedure by the department, and in the
2 event that the owner is found to be in the right, then the builder shall be
3 required to correct such claims as determined through the conciliation or
4 arbitration procedure. If a builder is unable or willfully refuses to correct such
5 deficiency, then an amount sufficient to cure the problem shall be paid from the
6 fund to the owner. In such cases, the commissioner may then proceed against
7 the builder in accordance with subsection b. of section [6b] 6 of [this act]
8 P.L.1977, c.467 (C.46:3B-6). Upon certification from the commissioner of the
9 amount of an award, the State Treasurer shall make payment to the claimant
10 from the fund.

11 d. [If at any time the moneys available in the fund are insufficient to satisfy
12 outstanding awards and anticipated awards for the succeeding year, the
13 commissioner shall, by regulation and after public hearing upon reasonable
14 notice to all interested parties, require participating builders to pay additional
15 amounts to replenish the fund.] (deleted by amendment, P.L. , c.)

16 e. If the board determines that fund reserves and reinsurance may be
17 insufficient to cover anticipated claims, the board shall recommend steps to the
18 commissioner to restore fund resources to sufficiency, which may include
19 increases in premiums and fees, expanded reinsurance and changes in standards
20 and claims adjudication procedures.

21 f. The commissioner may [also] provide for surcharges against those
22 [participating] builders who are responsible for a significant number of awards
23 against the fund[,] and may discontinue the participation in the fund of any
24 builder who is responsible for an excessive number of awards against the fund
25 after a hearing in accordance with the provisions of the Administrative
26 Procedures Act (P.L.1968, c. 410, C. 52:14B-1 et seq.) applicable to contested
27 cases. At no time shall the State be required to contribute any moneys to the
28 fund, nor shall the State have any liability to any person having any right to or
29 claim against the fund over and above the amount therein
30 except in those instances where it is determined by the Joint Budget Oversight
31 Committee that the provisions of subsection b. of this section have been
32 violated concerning amounts spent, appropriated or transferred from the fund.

33 g. The commissioner may order the return of funds to owners of enrolled
34 homes as may be recommended by the board pursuant to section 3 of P.L. ,
35 c. (C.) (now before the Legislature as this bill).
36 (cf: P.L.1977, c.467, s.7)

37
38 ¹[6. There is appropriated from the General Fund to the new home
39 warranty security fund established pursuant to section 7 of P.L.1977, c.467
40 (C.46:3B-7), the sum of \$10,000,000.]¹

41
42 ¹[7.] 6.¹ This act shall take effect immediately.

SENATE, No. 2288

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 29, 2001

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

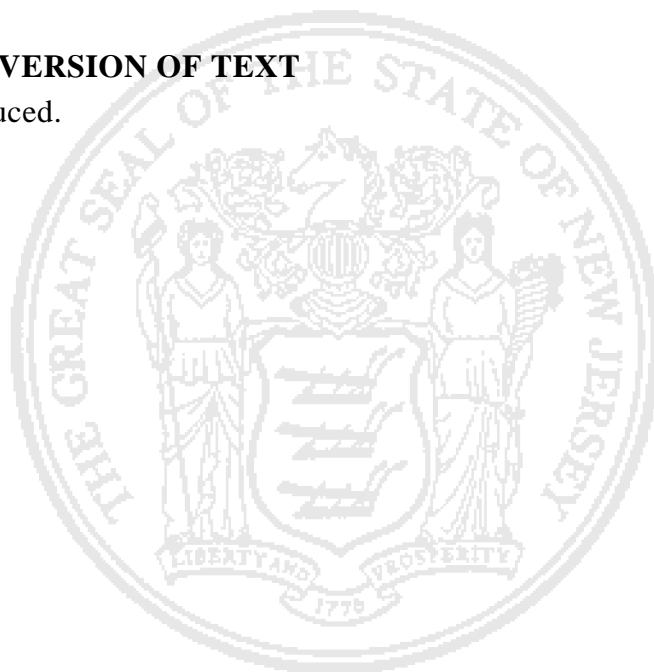
Senators Robertson and Cafiero

SYNOPSIS

Amends "The New Home Warranty and Builders' Registration Act" to prohibit certain transfers from the warranty security fund and require premium adjustments.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning new home warranties and amending P.L.1977,
2 c.467.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as
8 follows:

9 7. a. There is hereby established a new home warranty security
10 fund to be maintained by the State Treasurer and administered by the
11 commissioner. The purpose of the fund is to provide moneys
12 sufficient to pay claims by owners against builders participating in the
13 fund for defects in new homes covered by the new home warranty.
14 The amounts payable by participating builders shall be established and
15 may be changed from time to time, as the experience of the fund shall
16 require, by the commissioner, and shall be sufficient to cover
17 anticipated claims, to provide a reasonable reserve and to cover the
18 costs of administering the fund. Amounts paid by participating
19 builders shall be forwarded to the State Treasurer and shall be
20 accounted for and credited by him to the new home warranty security
21 fund.

22 b. The State Treasurer shall hold, manage and, through the
23 Division of Investment, invest and reinvest moneys in the fund and
24 credit all income earned thereon to the fund in the same manner as
25 provided by law for the investment of pension and retirement funds
26 administered by the State. The department shall keep the State
27 Treasurer advised of anticipated cash demands for payment of claims
28 against the fund. No funds shall be spent, appropriated or transferred
29 from the fund other than for the express purposes of paying claims or
30 costs related to administering the program or the fund. In the event
31 funds are spent, appropriated or transferred from the fund for other
32 purposes in violation of this subsection, the obligation of participating
33 builders to contribute to the fund shall be suspended until such time
34 as the funds are replenished, and if the amount in the fund shall
35 become insufficient thereafter to pay claims or make awards, the
36 payment of claims and making of awards shall be made from the
37 General Fund. The Joint Budget Oversight Committee, or its
38 successor, shall have the authority to investigate complaints of
39 violative fund transfers under this section, and shall order the
40 Commissioner of Community Affairs to suspend collection from
41 participating builders if it determines that the provisions of this
42 subsection have been violated.

43 c. Prior to making a claim against the fund for defects covered by

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 the warranty, an owner shall notify the builder of such defects and
2 allow a reasonable time period for their repair. If the repairs are not
3 made within a reasonable time or are not satisfactory to the owner, he
4 may file a claim against the fund in the form and manner prescribed by
5 the commissioner. The commissioner shall investigate each claim to
6 determine the validity thereof, and the amount of the award that shall
7 be made thereon, and shall hold a hearing if requested by either party,
8 in accordance with the provisions of the Administrative Procedures
9 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested
10 cases. Reasonable hearing fees shall be assessed against the
11 unsuccessful party. The amount of the award shall be sufficient to
12 cover the reasonable costs necessary to correct any defect or defects
13 covered under the warranty, but the total amount of awards from the
14 fund for any new home shall not exceed the purchase price of the
15 home in the first good faith sale thereof or the fair market value on
16 the home on its completion date if there is no good faith sale. All
17 claims submitted by an owner shall first be reviewed through a
18 conciliation or arbitration procedure by the department, and in the
19 event that the owner is found to be in the right, then the builder shall
20 be required to correct such claims as determined through the
21 conciliation or arbitration procedure. If a builder is unable or willfully
22 refuses to correct such deficiency, then an amount sufficient to cure
23 the problem shall be paid from the fund to the owner. In such cases,
24 the commissioner may then proceed against the builder in accordance
25 with subsection b. of section [6b] 6 of [this act] P.L.1977, c.467
26 (C.46:3B-6). Upon certification from the commissioner of the
27 amount of an award, the State Treasurer shall make payment to the
28 claimant from the fund.

29 d. If at any time the moneys available in the fund are insufficient to
30 satisfy outstanding awards and anticipated awards for the succeeding
31 year, the commissioner shall, by regulation and after public hearing
32 upon reasonable notice to all interested parties, require participating
33 builders to pay additional amounts to replenish the fund. In the event
34 the moneys available in the fund exceed by 15 percent the amount
35 needed to satisfy outstanding awards and anticipated awards for the
36 succeeding years, the amounts of the premiums required from
37 participating builders shall be reduced accordingly. The commissioner
38 may also provide for surcharges against those participating builders
39 who are responsible for a significant number of awards against the
40 fund, and may discontinue the participation in the fund of any builder
41 who is responsible for an excessive number of awards against the fund
42 after a hearing in accordance with the provisions of the Administrative
43 Procedures Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to
44 contested cases. At no time shall the State be required to contribute
45 any moneys to the fund, nor shall the State have any liability to any
46 person having any right to or claim against the fund over and above

1 the amount therein, except in those instances where it is determined
2 by the Joint Budget Oversight Committee that the provisions of
3 subsection b. of this section have been violated concerning amounts
4 spent, appropriated or transferred from the fund.

5 (cf: P.L.1977, c.467, s.7)

6
7 2. This act shall take effect immediately.

8
9
10 STATEMENT

11
12 This bill amends the "The New Home Warranty and Builders'
13 Registration Act," P.L.1977, c.467, to provide that the security fund
14 created under that act may not be used for any other purposes than
15 those expressed in the act. The purpose of the act was to create an
16 insurance fund to pay for warranties provided by builders of new
17 homes in the State. Under the act, participating builders contribute to
18 a fund from which claims are paid to homeowners for warranty
19 defects. Currently, the fund is managed by the State Treasurer, who
20 is advised of claims to be paid by the Commissioner of Community
21 Affairs.

22 In recent years, amounts in the fund which had built up in reserves
23 through premium contributions by participating builders, were
24 determined by the State Treasurer not to be needed to pay claims
25 against the fund, and were transferred to other accounts in State
26 government. There is no provision in the act currently to prevent such
27 transfers, nor is there any provision to require a reduction in the
28 amounts of premiums charged to builders if the reserves of the fund
29 become overabundant.

30 This bill, by amending the act, prohibits spending, appropriating or
31 transferring money from the fund for any purposes other than paying
32 claims or costs related to administering the fund. In the event funds
33 are spent, appropriated or transferred from the fund in violation of
34 these purposes, the bill requires that the collection of premiums from
35 participating builders be suspended until such time as the funds are
36 replenished. If the amounts in the fund become insufficient thereafter,
37 due to the suspension in the collection of premiums, to pay claims or
38 make awards, the requirement to pay claims and make awards under
39 the fund will become an obligation of the State. The Joint Budget
40 Oversight Committee, or its successor, will have the authority to
41 investigate complaints of violative fund transfers and will order the
42 Commissioner of Community Affairs to suspend collection from
43 participating builders if it determines that funds have been transferred
44 in violation of the act.

45 The bill also requires the commissioner to reduce the amount of
46 premiums accordingly if the moneys available in the fund exceed by

S2288 ALLEN, BENNETT

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- 1 15 percent the amount needed to satisfy outstanding awards and
- 2 anticipated awards for the succeeding years.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2288

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED MAY 24, 2001

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

Senators Robertson, Cafiero and Inverso

SYNOPSIS

Amends "The New Home Warranty and Builders' Registration Act" to enhance oversight and accountability.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Community and Urban Affairs Committee.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning new home warranties, establishing a board of
2 trustees to provide increased security, equity and accountability in
3 the administration of the new home warranty security fund, and
4 amending and supplementing P.L.1977, c.467 (C.46:3B-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. (New section) The Legislature finds and declares that:

10 a. New Jersey provides unique protection through "The New
11 Home Warranty and Builders' Registration Act," P.L.1977, c.467
12 (C.46:3B-1), which establishes a program requiring that newly
13 constructed homes conform with certain construction and quality
14 standards and provides buyers of new homes with insurance-backed
15 warranty protection in the event such standards are not met;

16 b. In addition to authorizing warranty coverage through private
17 insurance programs, the act requires that a new home warranty
18 security fund be maintained by the State Treasurer and administered
19 by the commissioner on behalf of the buyers of new homes;

20 c. Moneys payable to the fund are solely for the purpose of paying
21 proven claims, providing reasonable reserves, including appropriate
22 forms of reinsurance, and covering the costs of program
23 administration. Accordingly, program premiums, fees and other
24 charges must be adequate to these purposes;

25 d. Since the premiums, fees and other charges assessed by the fund
26 are solely for the protection of the buyers of new homes enrolled in the
27 program and since such charges bear directly on the affordability of
28 those homes, the fees should be set in an actuarially sound manner,
29 including prudent reinsurance, with provision for the distribution of
30 any accumulated surplus to the buyers of new homes enrolled in the
31 fund; and

32 e. The purposes of the "The New Home Warranty and Builders'
33 Registration Act" shall be furthered through the creation of a Board
34 of Trustees to provide independent oversight over the fund on behalf
35 of those whose homes are covered by it.
36

37 2. (New Section) a. There is hereby established in, but not of, the
38 Department of Community Affairs the "New Home Warranty Security
39 Fund Board of Trustees." The duties of the board shall include, but
40 shall not be limited to, monitoring, reporting and making
41 recommendations to the commissioner on the financial soundness,
42 premium structure, reinsurance adequacy and administrative efficiency
43 of the new home warranty security fund and, when appropriate, the

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

Matter underlined thus is new matter.

1 distribution of surplus reserves to the owners of enrolled homes. The
2 board shall not make any determination regarding the payment of
3 specific claims by the commissioner pursuant to section 7 of P.L.1977,
4 c.467 (C.46:3B-7).

5 b. The board shall consist of five trustees to be appointed by the
6 commissioner. One trustee shall represent the home buying public;
7 one shall represent the New Jersey Builders Association; one shall be
8 a certified public accountant licensed to practice in New Jersey; one
9 shall be an attorney-at-law who is a member in good standing of the
10 New Jersey bar; and one shall be a representative of the insurance
11 industry.

12 c. Each trustee shall be appointed for a four-year term; however,
13 among the trustees first appointed, one shall be appointed for a term
14 of one year, two shall be appointed for a term of two years, one shall
15 be appointed for a term of three years and one shall be appointed for
16 a term of four years. The trustees shall annually select a chairperson
17 from among themselves. The commissioner may reappoint a trustee.
18 The commissioner may remove a trustee for cause.

19 d. Trustees shall serve without compensation, but may be
20 reimbursed for expenses incurred in the performance of their duties.
21

22 3. (New Section) a. The Board of Trustees shall monitor and
23 annually report to the Legislature on the financial performance of the
24 new home warranty security fund, with particular attention to whether
25 the fund's income from fees, premiums, interest and other sources,
26 together with its reserves and reinsurance, will provide sufficient
27 resources to meet anticipated claims on the fund.

28 b. The board shall commission an independent biennial actuarial
29 analysis of the fund. The initial analysis shall commence June 30,
30 2001.

31 c. Based on its continuing monitoring of the fund's financial
32 performance and the adequacy of the fund relative to anticipated
33 claims, the board shall annually submit to the commissioner
34 recommendations concerning the fund's premiums, fees, investments
35 and reinsurance. Within 90 days of receipt of the recommendations,
36 the commissioner shall formally respond as to the implementation of
37 the recommendations, including an explanation of any deviation from
38 the board's recommendations.

39 d. If, based on the actuarial analysis of the fund, the board
40 determines that the fund's reserves are in excess of what is sufficient
41 to meet anticipated claims, the board shall recommend to the
42 commissioner the amount of fund moneys that should be returned to,
43 and the mode of calculating the distribution of such moneys among,
44 the owners of the enrolled homes.

45 e. The board shall periodically review and make recommendations
46 to the commissioner regarding the administration of the new home

1 warranty program established in the department. Such review and
2 recommendations shall include, but not be limited to, claims
3 processing procedures, standards of construction and quality for the
4 structural elements and components of a new home, and the degrees
5 of noncompliance that shall constitute a defect subject to the warranty
6 coverage.

7
8 4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read
9 as follows:

10 2. As used in this act:

11 a. "Department" means the Department of Community Affairs.

12 b. "Commissioner" means the Commissioner of Community
13 Affairs.

14 c. "Warranty" means the warranty prescribed by the commissioner
15 pursuant to [this act] P.L.1977, c.467, (C.46:3B-1 et seq.).

16 d. "New home" means any dwelling unit not previously occupied,
17 excluding dwelling units constructed solely for lease.

18 e. "Owner" means any person for whom the new home is built or
19 to whom the home is sold for occupation by him or his family as a
20 home and his successors in title to the home or mortgagee in
21 possession. Owner does not mean any development company,
22 association or subsidiary company of the builder or any person or
23 organization to whom the home may be sold or otherwise conveyed by
24 the builder for subsequent resale, letting or other purpose.

25 f. "Builder" means any individual corporation, partnership or other
26 business organizations engaged in the construction of new homes.

27 g. "Major construction defect" means any actual damage to the
28 load bearing portion of the home including damage due to subsidence,
29 expansion or lateral movement of the soil (excluding movement caused
30 by flood or earthquake) which affects its load bearing function and
31 which vitally affects or is imminently likely to vitally affect use of the
32 home for residential purposes.

33 h. "Warranty date" means the first occupation or settlement date,
34 whichever is sooner.

35 i. "Approved claim" means, for the purposes of P.L.1991, c.202
36 (C.46:3B-13 et al.), a claim examined and approved by the
37 commissioner in accordance with section 3 of P.L.1991, c.202
38 (C.46:3B-15).

39 j. "Approved method" means, for the purposes of P.L.1991, c.202
40 (C.46:3B-13 et al.), a method of remediation approved by the
41 commissioner in accordance with section 3 of P.L.1991, c.202
42 (C.46:3B-15).

43 k. "Fund" means[, for the purposes of P.L.1991, c.202
44 (C.46:3B-13 et al.),] the new home warranty security fund established
45 in the department pursuant to section 7 of P.L.1977, c.467
46 (C.46:3B-7).

1 1. "Warranty guarantor" means, for the purposes of P.L.1991,
2 c.202 (C.46:3B-13 et al.), (1) the new home warranty program
3 established in the department pursuant to P.L.1977, c.467 (C.46:3B-1
4 et seq.) or (2) any alternate new home warranty security program
5 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

6 m. "Board" means the Board of Trustees established pursuant to
7 section 2 of P.L. , c. (C.)(pending before the Legislature
8 as this substitute).

9 (cf: P.L.1991, c.202, s.7)

10
11 5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read
12 as follows:

13 7. a. There is hereby established a new home warranty security
14 fund to be maintained by the State Treasurer in a trust account,
15 separate and apart from other funds and administered by the
16 commissioner. The purpose of the fund is (1) to provide moneys
17 sufficient to pay claims by owners against builders participating in the
18 fund for defects in new homes covered by the new home warranty ;
19 and (2) to pay the costs of administering the new home warranty
20 program established in the department, including the costs of obtaining
21 sufficient reinsurance to prudently protect the fund against
22 unanticipated risks and costs incurred by the board in the discharge of
23 its duties. The amounts payable by participating builders shall be
24 established and may be changed from time to time, as the experience
25 of the fund shall require, by the commissioner, and shall be sufficient
26 to cover anticipated claims, to provide a reasonable reserve and to
27 cover the costs of administering the fund. Amounts paid by
28 participating builders shall be forwarded to the State Treasurer and
29 shall be accounted for and credited by him to the new home warranty
30 security fund.

31 b. The State Treasurer shall hold, manage and, through the
32 Division of Investment, invest and reinvest moneys in the fund and
33 credit all income earned thereon to the fund in the same manner as
34 provided by law for the investment of pension and retirement funds
35 administered by the State. The department shall keep the State
36 Treasurer and the board advised of anticipated cash demands for
37 payment of claims against the fund. No funds shall be spent,
38 appropriated or transferred from the fund other than for the express
39 purposes of paying claims or costs related to administering the
40 program or the fund as enumerated in subsections a, c, or e of this
41 section. In the event funds are spent, appropriated or transferred from
42 the fund for other purposes in violation of this subsection, the
43 obligation of participating builders to contribute to the fund shall be
44 suspended until such time as the funds are replenished, and if the
45 amount in the fund shall become insufficient thereafter to pay claims
46 or make awards, the payment of claims and making of awards shall be

1 made from the General Fund. The Joint Budget Oversight Committee,
2 or its successor, shall have the authority to investigate complaints of
3 violative fund transfers under this section, and shall order the
4 Commissioner of Community Affairs to suspend collection from
5 participating builders if it determines that the provisions of this
6 subsection have been violated.

7 c. Prior to making a claim against the fund for defects covered by
8 the warranty, an owner shall notify the builder of such defects and
9 allow a reasonable time period for their repair. If the repairs are not
10 made within a reasonable time or are not satisfactory to the owner, he
11 may file a claim against the fund in the form and manner prescribed by
12 the commissioner. The commissioner shall investigate each claim to
13 determine the validity thereof, and the amount of the award that shall
14 be made thereon, and shall hold a hearing if requested by either party,
15 in accordance with the provisions of the Administrative Procedures
16 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested
17 cases. Reasonable hearing fees shall be assessed against the
18 unsuccessful party. The amount of the award shall be sufficient to
19 cover the reasonable costs necessary to correct any defect or defects
20 covered under the warranty, but the total amount of awards from the
21 fund for any new home shall not exceed the purchase price of the
22 home in the first good faith sale thereof or the fair market value on
23 the home on its completion date if there is no good faith sale. All
24 claims submitted by an owner shall first be reviewed through a
25 conciliation or arbitration procedure by the department, and in the
26 event that the owner is found to be in the right, then the builder shall
27 be required to correct such claims as determined through the
28 conciliation or arbitration procedure. If a builder is unable or willfully
29 refuses to correct such deficiency, then an amount sufficient to cure
30 the problem shall be paid from the fund to the owner. In such cases,
31 the commissioner may then proceed against the builder in accordance
32 with subsection b. of section [6b] 6 of [this act] P.L.1977, c.467
33 (C.46:3B-6). Upon certification from the commissioner of the
34 amount of an award, the State Treasurer shall make payment to the
35 claimant from the fund.

36 d. [If at any time the moneys available in the fund are insufficient
37 to satisfy outstanding awards and anticipated awards for the
38 succeeding year, the commissioner shall, by regulation and after public
39 hearing upon reasonable notice to all interested parties, require
40 participating builders to pay additional amounts to replenish the fund.]
41 (deleted by amendment, P.L. , c.)

42 e. If the board determines that fund reserves and reinsurance may
43 be insufficient to cover anticipated claims, the board shall recommend
44 steps to the commissioner to restore fund resources to sufficiency,
45 which may include increases in premiums and fees, expanded
46 reinsurance and changes in standards and claims adjudication
47 procedures.

1 f. The commissioner may [also] provide for surcharges against
2 those [participating] builders who are responsible for a significant
3 number of awards against the fund[,] and may discontinue the
4 participation in the fund of any builder who is responsible for an
5 excessive number of awards against the fund after a hearing in
6 accordance with the provisions of the Administrative Procedures Act
7 (P.L.1968, c. 410, C. 52:14B-1 et seq.) applicable to contested cases.
8 At no time shall the State be required to contribute any moneys to the
9 fund, nor shall the State have any liability to any person having any
10 right to or claim against the fund over and above the amount therein
11 except in those instances where it is determined by the Joint Budget
12 Oversight Committee that the provisions of subsection b. of this
13 section have been violated concerning amounts spent, appropriated or
14 transferred from the fund.

15 g. The commissioner may order the return of funds to owners of
16 enrolled homes as may be recommended by the board pursuant to
17 section 3 of P.L. , c. (C.) (now before the Legislature as this
18 bill).
19 (cf: P.L.1977, c.467, s.7)

20

21 6. This act shall take effect immediately.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2288**

STATE OF NEW JERSEY

DATED: MAY 24, 2001

The Senate Community and Urban Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2288.

The substitute would amend and supplement "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.), to provide for independent oversight of the state-administered program that provides buyers of new homes with warranty protection against defects in the construction or quality of the structural elements of their new homes. The substitute would prohibit funds from being spent, appropriated or transferred from the fund other than for the express purposes of paying claims or costs related to administering the program or the fund as a partial response to the diversion of the resources of the new home warranty security fund which has caused a serious depletion of the fund's insurance reserves.

Specifically, the substitute provides that any diversion of funds from the fund would suspend the obligation of participating builders to contribute to the fund until such time as the funds are replenished. If the diversion of funds results in the fund becoming insufficient to pay claims or make awards, the payment of claims and making of awards would come from the General Fund. The substitute would grant the Joint Budget Oversight Committee, or its successor, the authority to investigate complaints of violative fund transfers, and to order the Commissioner of Community Affairs to suspend collection from participating builders if it determines that the provisions of this substitute have been violated.

The substitute would establish a board of trustees to monitor and report on the financial performance of the fund. Based on its continuing assessments, the board would make recommendations to the commissioner concerning the fund's revenues, reinsurance and related matters. The board also would monitor and report on the warranty program's performance, including conducting a periodic review of the program's construction standards and claims adjudication procedures. Based on its performance reviews, the board would make recommendations to the commissioner concerning the program's general administrative policies and practices. The board would have no authority, however, to interfere in the determination by the

commissioner of specific claim payments.

The board would consist of five members as follows: One trustee to represent the home buying public; one to represent the New Jersey Builders Association; one to be a certified public accountant licensed to practice in New Jersey, one to be an attorney-at-law who is a member in good standing of the New Jersey bar, and one to be a representative of the insurance industry. Each trustee would be appointed for a four-year term; however, among the trustees first appointed, the terms would be staggered.

The substitute would make this bill identical to Assembly Bill No.3081 ACS (1R).

P.L. 2001, CHAPTER 147, *approved July 10, 2001*
Assembly Committee Substitute (*First Reprint*) for
Assembly, No. 3081

1 **AN ACT** concerning new home warranties, establishing a board of
2 trustees to provide increased security, equity and accountability in
3 the administration of the new home warranty security fund, and
4 amending and supplementing P.L.1977, c.467 (C.46:3B-1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 1. (New section) The Legislature finds and declares that:

10 a. New Jersey provides unique protection through "The New
11 Home Warranty and Builders' Registration Act," P.L.1977, c.467
12 (C.46:3B-1), which establishes a program requiring that newly
13 constructed homes conform with certain construction and quality
14 standards and provides buyers of new homes with insurance-backed
15 warranty protection in the event such standards are not met;

16 b. In addition to authorizing warranty coverage through private
17 insurance programs, the act requires that a new home warranty
18 security fund be maintained by the State Treasurer and administered
19 by the commissioner on behalf of the buyers of new homes;

20 c. Moneys payable to the fund are solely for the purpose of paying
21 proven claims, providing reasonable reserves, including appropriate
22 forms of reinsurance, and covering the costs of program
23 administration. Accordingly, program premiums, fees and other
24 charges must be adequate to these purposes;

25 d. Since the premiums, fees and other charges assessed by the fund
26 are solely for the protection of the buyers of new homes enrolled in the
27 program and since such charges bear directly on the affordability of
28 those homes, the fees should be set in an actuarially sound manner,
29 including prudent reinsurance, with provision for the distribution of
30 any accumulated surplus to the buyers of new homes enrolled in the
31 fund; and

32 e. The purposes of the "The New Home Warranty and Builders'
33 Registration Act" shall be furthered through the creation of a Board
34 of Trustees to provide independent oversight over the fund on behalf
35 of those whose homes are covered by it.
36

37 2. (New Section) a. There is hereby established in, but not of, 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted May 1, 2001.

1 Department of Community Affairs the "New Home Warranty Security
2 Fund Board of Trustees." The duties of the board shall include, but
3 shall not be limited to, monitoring, reporting and making
4 recommendations to the commissioner on the financial soundness,
5 premium structure, reinsurance adequacy and administrative efficiency
6 of the new home warranty security fund and, when appropriate, the
7 distribution of surplus reserves to the owners of enrolled homes. The
8 board shall not make any determination regarding the payment of
9 specific claims by the commissioner pursuant to section 7 of P.L.1977,
10 c.467 (C.46:3B-7).

11 b. The board shall consist of five trustees to be appointed by the
12 commissioner. One trustee shall represent the home buying public;
13 one shall represent the New Jersey Builders Association; one shall be
14 a certified public accountant licensed to practice in New Jersey; one
15 shall be an attorney-at-law who is a member in good standing of the
16 New Jersey bar; and one shall be a representative of the insurance
17 industry.

18 c. Each trustee shall be appointed for a four-year term; however,
19 among the trustees first appointed, one shall be appointed for a term
20 of one year, two shall be appointed for a term of two years, one shall
21 be appointed for a term of three years and one shall be appointed for
22 a term of four years. The trustees shall annually select a chairperson
23 from among themselves. The commissioner may reappoint a trustee.
24 The commissioner may remove a trustee for cause.

25 d. Trustees shall serve without compensation, but may be
26 reimbursed for expenses incurred in the performance of their duties.
27

28 3. (New Section) a. The Board of Trustees shall monitor and
29 annually report to the Legislature on the financial performance of the
30 new home warranty security fund, with particular attention to whether
31 the fund's income from fees, premiums, interest and other sources,
32 together with its reserves and reinsurance, will provide sufficient
33 resources to meet anticipated claims on the fund.

34 b. The board shall commission an independent biennial actuarial
35 analysis of the fund. The initial analysis shall commence June 30,
36 2001.

37 c. Based on its continuing monitoring of the fund's financial
38 performance and the adequacy of the fund relative to anticipated
39 claims, the board shall annually submit to the commissioner
40 recommendations concerning the fund's premiums, fees, investments
41 and reinsurance. Within 90 days of receipt of the recommendations,
42 the commissioner shall formally respond as to the implementation of
43 the recommendations, including an explanation of any deviation from
44 the board's recommendations.

45 d. If, based on the actuarial analysis of the fund, the board
46 determines that the fund's reserves are in excess of what is sufficient

1 to meet anticipated claims, the board shall recommend to the
2 commissioner the amount of fund moneys that should be returned to,
3 and the mode of calculating the distribution of such moneys among,
4 the owners of the enrolled homes.

5 e. The board shall periodically review and make recommendations
6 to the commissioner regarding the administration of the new home
7 warranty program established in the department. Such review and
8 recommendations shall include, but not be limited to, claims
9 processing procedures, standards of construction and quality for the
10 structural elements and components of a new home, and the degrees
11 of noncompliance that shall constitute a defect subject to the warranty
12 coverage.

13
14 4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read
15 as follows:

16 2. As used in this act:

17 a. "Department" means the Department of Community Affairs.

18 b. "Commissioner" means the Commissioner of Community
19 Affairs.

20 c. "Warranty" means the warranty prescribed by the commissioner
21 pursuant to [this act] P.L.1977, c.467, (C.46:3B-1 et seq.).

22 d. "New home" means any dwelling unit not previously occupied,
23 excluding dwelling units constructed solely for lease.

24 e. "Owner" means any person for whom the new home is built or
25 to whom the home is sold for occupation by him or his family as a
26 home and his successors in title to the home or mortgagee in
27 possession. Owner does not mean any development company,
28 association or subsidiary company of the builder or any person or
29 organization to whom the home may be sold or otherwise conveyed by
30 the builder for subsequent resale, letting or other purpose.

31 f. "Builder" means any individual corporation, partnership or other
32 business organizations engaged in the construction of new homes.

33 g. "Major construction defect" means any actual damage to the
34 load bearing portion of the home including damage due to subsidence,
35 expansion or lateral movement of the soil (excluding movement caused
36 by flood or earthquake) which affects its load bearing function and
37 which vitally affects or is imminently likely to vitally affect use of the
38 home for residential purposes.

39 h. "Warranty date" means the first occupation or settlement date,
40 whichever is sooner.

41 i. "Approved claim" means, for the purposes of P.L.1991, c.202
42 (C.46:3B-13 et al.), a claim examined and approved by the
43 commissioner in accordance with section 3 of P.L.1991, c.202
44 (C.46:3B-15).

45 j. "Approved method" means, for the purposes of P.L.1991, c.202
46 (C.46:3B-13 et al.), a method of remediation approved by the

1 commissioner in accordance with section 3 of P.L.1991, c.202
2 (C.46:3B-15).

3 k. "Fund" means[, for the purposes of P.L.1991, c.202
4 (C.46:3B-13 et al.),] the new home warranty security fund established
5 in the department pursuant to section 7 of P.L.1977, c.467
6 (C.46:3B-7).

7 l. "Warranty guarantor" means, for the purposes of P.L.1991,
8 c.202 (C.46:3B-13 et al.), (1) the new home warranty program
9 established in the department pursuant to P.L.1977, c.467 (C.46:3B-1
10 et seq.) or (2) any alternate new home warranty security program
11 approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

12 m. "Board" means the Board of Trustees established pursuant to
13 section 2 of P.L. , c. (C.)(pending before the Legislature
14 as this substitute).

15 (cf: P.L.1991, c.202, s.7)

16

17 5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read
18 as follows:

19 7. a. There is hereby established a new home warranty security
20 fund to be maintained by the State Treasurer in a trust account,
21 separate and apart from other funds and administered by the
22 commissioner. The purpose of the fund is (1) to provide moneys
23 sufficient to pay claims by owners against builders participating in the
24 fund for defects in new homes covered by the new home warranty ;
25 and (2) to pay the costs of administering the new home warranty
26 program established in the department, including the costs of obtaining
27 sufficient reinsurance to prudently protect the fund against
28 unanticipated risks and costs incurred by the board in the discharge of
29 its duties. The amounts payable by participating builders shall be
30 established and may be changed from time to time, as the experience
31 of the fund shall require, by the commissioner, and shall be sufficient
32 to cover anticipated claims, to provide a reasonable reserve and to
33 cover the costs of administering the fund. Amounts paid by
34 participating builders shall be forwarded to the State Treasurer and
35 shall be accounted for and credited by him to the new home warranty
36 security fund.

37 b. The State Treasurer shall hold, manage and, through the
38 Division of Investment, invest and reinvest moneys in the fund and
39 credit all income earned thereon to the fund in the same manner as
40 provided by law for the investment of pension and retirement funds
41 administered by the State. The department shall keep the State
42 Treasurer and the board advised of anticipated cash demands for
43 payment of claims against the fund. No funds shall be spent,
44 appropriated or transferred from the fund other than for the express
45 purposes of paying claims or costs related to administering the
46 program or the fund as enumerated in subsections a, c, or e of this

1 section. In the event funds are spent, appropriated or transferred from
2 the fund for other purposes in violation of this subsection, the
3 obligation of participating builders to contribute to the fund shall be
4 suspended until such time as the funds are replenished, and if the
5 amount in the fund shall become insufficient thereafter to pay claims
6 or make awards, the payment of claims and making of awards shall be
7 made from the General Fund. The Joint Budget Oversight Committee,
8 or its successor, shall have the authority to investigate complaints of
9 violative fund transfers under this section, and shall order the
10 Commissioner of Community Affairs to suspend collection from
11 participating builders if it determines that the provisions of this
12 subsection have been violated.

13 c. Prior to making a claim against the fund for defects covered by
14 the warranty, an owner shall notify the builder of such defects and
15 allow a reasonable time period for their repair. If the repairs are not
16 made within a reasonable time or are not satisfactory to the owner, he
17 may file a claim against the fund in the form and manner prescribed by
18 the commissioner. The commissioner shall investigate each claim to
19 determine the validity thereof, and the amount of the award that shall
20 be made thereon, and shall hold a hearing if requested by either party,
21 in accordance with the provisions of the Administrative Procedures
22 Act (P.L.1968, c.410, C.52:14B-1 et seq.) applicable to contested
23 cases. Reasonable hearing fees shall be assessed against the
24 unsuccessful party. The amount of the award shall be sufficient to
25 cover the reasonable costs necessary to correct any defect or defects
26 covered under the warranty, but the total amount of awards from the
27 fund for any new home shall not exceed the purchase price of the
28 home in the first good faith sale thereof or the fair market value on
29 the home on its completion date if there is no good faith sale. All
30 claims submitted by an owner shall first be reviewed through a
31 conciliation or arbitration procedure by the department, and in the
32 event that the owner is found to be in the right, then the builder shall
33 be required to correct such claims as determined through the
34 conciliation or arbitration procedure. If a builder is unable or willfully
35 refuses to correct such deficiency, then an amount sufficient to cure
36 the problem shall be paid from the fund to the owner. In such cases,
37 the commissioner may then proceed against the builder in accordance
38 with subsection b. of section [6b] 6 of [this act] P.L.1977, c.467
39 (C.46:3B-6). Upon certification from the commissioner of the
40 amount of an award, the State Treasurer shall make payment to the
41 claimant from the fund.

42 d. **[If at any time the moneys available in the fund are insufficient**
43 **to satisfy outstanding awards and anticipated awards for the**
44 **succeeding year, the commissioner shall, by regulation and after public**
45 **hearing upon reasonable notice to all interested parties, require**
46 **participating builders to pay additional amounts to replenish the fund.]**

1 ~~(deleted by amendment, P.L. , c.)~~

2 e. If the board determines that fund reserves and reinsurance may
3 be insufficient to cover anticipated claims, the board shall recommend
4 steps to the commissioner to restore fund resources to sufficiency,
5 which may include increases in premiums and fees, expanded
6 reinsurance and changes in standards and claims adjudication
7 procedures.

8 f. The commissioner may [also] provide for surcharges against
9 those [participating] builders who are responsible for a significant
10 number of awards against the fund[,] and may discontinue the
11 participation in the fund of any builder who is responsible for an
12 excessive number of awards against the fund after a hearing in
13 accordance with the provisions of the Administrative Procedures Act
14 (P.L.1968, c. 410, C. 52:14B-1 et seq.) applicable to contested cases.
15 At no time shall the State be required to contribute any moneys to the
16 fund, nor shall the State have any liability to any person having any
17 right to or claim against the fund over and above the amount therein
18 except in those instances where it is determined by the Joint Budget
19 Oversight Committee that the provisions of subsection b. of this
20 section have been violated concerning amounts spent, appropriated or
21 transferred from the fund.

22 g. The commissioner may order the return of funds to owners of
23 enrolled homes as may be recommended by the board pursuant to
24 section 3 of P.L. , c. (C.) (now before the Legislature as this
25 bill).

26 (cf: P.L.1977, c.467, s.7)

27

28 ¹[6. There is appropriated from the General Fund to the new
29 home warranty security fund established pursuant to section 7 of
30 P.L.1977, c.467 (C.46:3B-7), the sum of \$10,000,000.]¹

31

32 ¹[7.] 6.¹ This act shall take effect immediately.

33

34

35

36

37 Amends "The New Home Warranty and Builders' Registration Act" to
38 enhance oversight and accountability.

CHAPTER 147

AN ACT concerning new home warranties, establishing a board of trustees to provide increased security, equity and accountability in the administration of the new home warranty security fund, and amending and supplementing P.L.1977, c.467 (C.46:3B-1 et seq.).

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

C.46:3B-7.1 Findings, declarations relative to new home warranties.

1. The Legislature finds and declares that:

a. New Jersey provides unique protection through "The New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1), which establishes a program requiring that newly constructed homes conform with certain construction and quality standards and provides buyers of new homes with insurance-backed warranty protection in the event such standards are not met;

b. In addition to authorizing warranty coverage through private insurance programs, the act requires that a new home warranty security fund be maintained by the State Treasurer and administered by the commissioner on behalf of the buyers of new homes;

c. Moneys payable to the fund are solely for the purpose of paying proven claims, providing reasonable reserves, including appropriate forms of reinsurance, and covering the costs of program administration. Accordingly, program premiums, fees and other charges must be adequate to these purposes;

d. Since the premiums, fees and other charges assessed by the fund are solely for the protection of the buyers of new homes enrolled in the program and since such charges bear directly on the affordability of those homes, the fees should be set in an actuarially sound manner, including prudent reinsurance, with provision for the distribution of any accumulated surplus to the buyers of new homes enrolled in the fund; and

e. The purposes of the "The New Home Warranty and Builders' Registration Act" shall be furthered through the creation of a Board of Trustees to provide independent oversight over the fund on behalf of those whose homes are covered by it.

C.46:3B-7.2 "New Home Warranty Security Fund Board of Trustees."

2. a. There is hereby established in, but not of, the Department of Community Affairs the "New Home Warranty Security Fund Board of Trustees." The duties of the board shall include, but shall not be limited to, monitoring, reporting and making recommendations to the commissioner on the financial soundness, premium structure, reinsurance adequacy and administrative efficiency of the new home warranty security fund and, when appropriate, the distribution of surplus reserves to the owners of enrolled homes. The board shall not make any determination regarding the payment of specific claims by the commissioner pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7).

b. The board shall consist of five trustees to be appointed by the commissioner. One trustee shall represent the home buying public; one shall represent the New Jersey Builders Association; one shall be a certified public accountant licensed to practice in New Jersey; one shall be an attorney-at-law who is a member in good standing of the New Jersey bar; and one shall be a representative of the insurance industry.

c. Each trustee shall be appointed for a four-year term; however, among the trustees first appointed, one shall be appointed for a term of one year, two shall be appointed for a term of two years, one shall be appointed for a term of three years and one shall be appointed for a term of four years. The trustees shall annually select a chairperson from among themselves. The commissioner may reappoint a trustee. The commissioner may remove a trustee for cause.

d. Trustees shall serve without compensation, but may be reimbursed for expenses incurred in the performance of their duties.

C.46:3B-7.3 Functions, duties of board.

3. a. The Board of Trustees shall monitor and annually report to the Legislature on the financial performance of the new home warranty security fund, with particular attention to whether the fund's income from fees, premiums, interest and other sources, together with its reserves and reinsurance, will provide sufficient resources to meet anticipated claims on the fund.

b. The board shall commission an independent biennial actuarial analysis of the fund. The

initial analysis shall commence June 30, 2001.

c. Based on its continuing monitoring of the fund's financial performance and the adequacy of the fund relative to anticipated claims, the board shall annually submit to the commissioner recommendations concerning the fund's premiums, fees, investments and reinsurance. Within 90 days of receipt of the recommendations, the commissioner shall formally respond as to the implementation of the recommendations, including an explanation of any deviation from the board's recommendations.

d. If, based on the actuarial analysis of the fund, the board determines that the fund's reserves are in excess of what is sufficient to meet anticipated claims, the board shall recommend to the commissioner the amount of fund moneys that should be returned to, and the mode of calculating the distribution of such moneys among, the owners of the enrolled homes.

e. The board shall periodically review and make recommendations to the commissioner regarding the administration of the new home warranty program established in the department. Such review and recommendations shall include, but not be limited to, claims processing procedures, standards of construction and quality for the structural elements and components of a new home, and the degrees of noncompliance that shall constitute a defect subject to the warranty coverage.

4. Section 2 of P.L.1977, c.467 (C.46:3B-2) is amended to read as follows:

C.46:3B-2 Definitions relative to new home warranties.

2. As used in this act:

a. "Department" means the Department of Community Affairs.

b. "Commissioner" means the Commissioner of Community Affairs.

c. "Warranty" means the warranty prescribed by the commissioner pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.).

d. "New home" means any dwelling unit not previously occupied, excluding dwelling units constructed solely for lease.

e. "Owner" means any person for whom the new home is built or to whom the home is sold for occupation by him or his family as a home and his successors in title to the home or mortgagee in possession. Owner does not mean any development company, association or subsidiary company of the builder or any person or organization to whom the home may be sold or otherwise conveyed by the builder for subsequent resale, letting or other purpose.

f. "Builder" means any individual corporation, partnership or other business organizations engaged in the construction of new homes.

g. "Major construction defect" means any actual damage to the load bearing portion of the home including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load bearing function and which vitally affects or is imminently likely to vitally affect use of the home for residential purposes.

h. "Warranty date" means the first occupation or settlement date, whichever is sooner.

i. "Approved claim" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), a claim examined and approved by the commissioner in accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

j. "Approved method" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), a method of remediation approved by the commissioner in accordance with section 3 of P.L.1991, c.202 (C.46:3B-15).

k. "Fund" means the new home warranty security fund established in the department pursuant to section 7 of P.L.1977, c.467 (C.46:3B-7).

l. "Warranty guarantor" means, for the purposes of P.L.1991, c.202 (C.46:3B-13 et al.), (1) the new home warranty program established in the department pursuant to P.L.1977, c.467 (C.46:3B-1 et seq.) or (2) any alternate new home warranty security program approved pursuant to section 8 of P.L.1977, c.467 (C.46:3B-8).

m. "Board" means the Board of Trustees established pursuant to section 2 of P.L.2001, c.147 (C.46:3B-7.2).

5. Section 7 of P.L.1977, c.467 (C.46:3B-7) is amended to read as follows:

C.46:3B-7 New home warranty security fund.

7. a. There is hereby established a new home warranty security fund to be maintained by the State Treasurer in a trust account, separate and apart from other funds and administered by the commissioner. The purpose of the fund is (1) to provide moneys sufficient to pay claims by owners against builders participating in the fund for defects in new homes covered by the new home warranty; and (2) to pay the costs of administering the new home warranty program established in the department, including the costs of obtaining sufficient reinsurance to prudently protect the fund against unanticipated risks and costs incurred by the board in the discharge of its duties. The amounts payable by participating builders shall be established and may be changed from time to time, as the experience of the fund shall require, by the commissioner, and shall be sufficient to cover anticipated claims, to provide a reasonable reserve and to cover the costs of administering the fund. Amounts paid by participating builders shall be forwarded to the State Treasurer and shall be accounted for and credited by him to the new home warranty security fund.

b. The State Treasurer shall hold, manage and, through the Division of Investment, invest and reinvest moneys in the fund and credit all income earned thereon to the fund in the same manner as provided by law for the investment of pension and retirement funds administered by the State. The department shall keep the State Treasurer and the board advised of anticipated cash demands for payment of claims against the fund. No funds shall be spent, appropriated or transferred from the fund other than for the express purposes of paying claims or costs related to administering the program or the fund as enumerated in subsections a, c, or e of this section. In the event funds are spent, appropriated or transferred from the fund for other purposes in violation of this subsection, the obligation of participating builders to contribute to the fund shall be suspended until such time as the funds are replenished, and if the amount in the fund shall become insufficient thereafter to pay claims or make awards, the payment of claims and making of awards shall be made from the General Fund. The Joint Budget Oversight Committee, or its successor, shall have the authority to investigate complaints of violative fund transfers under this section, and shall order the Commissioner of Community Affairs to suspend collection from participating builders if it determines that the provisions of this subsection have been violated.

c. Prior to making a claim against the fund for defects covered by the warranty, an owner shall notify the builder of such defects and allow a reasonable time period for their repair. If the repairs are not made within a reasonable time or are not satisfactory to the owner, he may file a claim against the fund in the form and manner prescribed by the commissioner. The commissioner shall investigate each claim to determine the validity thereof, and the amount of the award that shall be made thereon, and shall hold a hearing if requested by either party, in accordance with the provisions of the "Administrative Procedures Act", P.L.1968, c.410 (C.52:14B-1 et seq.) applicable to contested cases. Reasonable hearing fees shall be assessed against the unsuccessful party. The amount of the award shall be sufficient to cover the reasonable costs necessary to correct any defect or defects covered under the warranty, but the total amount of awards from the fund for any new home shall not exceed the purchase price of the home in the first good faith sale thereof or the fair market value on the home on its completion date if there is no good faith sale. All claims submitted by an owner shall first be reviewed through a conciliation or arbitration procedure by the department, and in the event that the owner is found to be in the right, then the builder shall be required to correct such claims as determined through the conciliation or arbitration procedure. If a builder is unable or willfully refuses to correct such deficiency, then an amount sufficient to cure the problem shall be paid from the fund to the owner. In such cases, the commissioner may then proceed against the builder in accordance with subsection b. of section 6 of P.L.1977, c.467 (C.46:3B-6). Upon certification from the commissioner of the amount of an award, the State Treasurer shall make payment to the claimant from the fund.

d. (Deleted by amendment, P.L.2001, c.147).

e. If the board determines that fund reserves and reinsurance may be insufficient to cover

anticipated claims, the board shall recommend steps to the commissioner to restore fund resources to sufficiency, which may include increases in premiums and fees, expanded reinsurance and changes in standards and claims adjudication procedures.

f. The commissioner may provide for surcharges against those builders who are responsible for a significant number of awards against the fund and may discontinue the participation in the fund of any builder who is responsible for an excessive number of awards against the fund after a hearing in accordance with the provisions of the "Administrative Procedure Act", P.L.1968, c. 410 (C.52:14B-1 et seq.) applicable to contested cases. At no time shall the State be required to contribute any moneys to the fund, nor shall the State have any liability to any person having any right to or claim against the fund over and above the amount therein except in those instances where it is determined by the Joint Budget Oversight Committee that the provisions of subsection b. of this section have been violated concerning amounts spent, appropriated or transferred from the fund.

g. The commissioner may order the return of funds to owners of enrolled homes as may be recommended by the board pursuant to section 3 of P.L.2001, c.147 (C.46:3B-7.3).

6. This act shall take effect immediately.

Approved July 10, 2001.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Tom Wilson
609-777-2600

RELEASE: July 10 , 2001

Acting Governor Donald T. DiFrancesco signed the following legislation today:

A-3081, sponsored by Senate Majority Leader John Bennett (R-Monmouth) and Senator Diane Allen (R-Burlington/Camden) and Assemblymen John Kelly (R-Bergen/Essex/Passaic) and Kevin O'Toole (R-Essex/Union), provides for oversight of "The Home Warranty and Builders' Relocation Act," a state administered program that provides buyers of new homes with warranty protection against defects in the construction or quality of the structural elements of their new home.

The bill also establishes a Board of Trustees to monitor and report on the financial performance of the fund.

S-1679, sponsored by Senator Ronald Rice (D-Essex) and Assemblyman Guy Talarico (R-Bergen), clarifies that the five-day grace period granted on the payment of rent to senior citizen lessees who are receiving Social Security Old Age Pension, Railroad Retirement Pensions or other governmental pension does not include Saturdays, Sundays or holidays. The bill also extends application of the grace period to lessees who are disabled.

S-2155, sponsored by Senators Walter Kavanaugh (R-Morris/Somerset) and John Lynch (D-Middlesex/Somerset/Union), permits judges of the former county court, county juvenile and domestic relations court and county district court who resigned in good standing to perform marriages.

A-1152, sponsored by Senator Norman Robertson (R-Essex/Passaic) and Assemblymen Scott Garrett (R-Sussex/Hunterdon/Morris) and Guy Gregg (R-Sussex/Hunterdon/Morris), clarifies that a trust established for the care of a pet is valid in this state.

A-2267, sponsored by Senator Gerald Cardinale (R-Bergen) and Assemblymen Kip Bateman (R-Morris/Somerset) and Rudy Garcia (D-Hudson), clarifies that the provisions of the "Spill Compensation and Control Act," concerning underground storage tanks applies to one or more storage tanks.

A-2934, sponsored by Senator Andrew Ciesla (R-Monmouth/Ocean) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and David Wolfe (R-Monmouth/Ocean), authorizes a school district to enter into a 10-year lease-purchase agreement for the acquisition of school buses.

A-3098, sponsored by Senator Anthony Bucco (R-Morris) and Assemblymen Richard Merkt (R-Morris) and David Wolfe (R-Monmouth/Ocean), expands the meaning of

public library under the Public Library Project Grant Program to include association libraries, thereby allowing them to apply for funds under the program.

A-3536, sponsored by Senator Peter Inverso (R-Mercer/Middlesex) and Assemblymen James Holzapfel (R-Monmouth/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), modifies the requirements to be eligible to take the public accountant certification examination such as, allowing applicants to take the licensure examination prior to completing the 150 semester hours of education if they apply before July 1, 2005 and have a baccalaureate degree and providing that certified public accountants must pass a registered municipal accountant's examination to qualify as a registered municipal accountant to undertake the work of auditing the financial statements of municipalities and counties.