

40A:11-19

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 206
NJSA: 40A:11-19 (Limitation on contractors' remedy for delay)
BILL NO: A2913 (Substituted for S1751)

SPONSOR(S): Arnone and Impreveduto

DATE INTRODUCED: November 9, 2000

COMMITTEE: **ASSEMBLY:** Local Government

SENATE: Education

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 26, 2000

SENATE: June 28, 2001

DATE OF APPROVAL: August 8, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1ST reprint)

(Amendments during passage denoted by superscript numbers)

A2913

SPONSORS STATEMENT: (Begins on page 2 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1751

SPONSORS STATEMENT: (Begins on page 3 of original bill) Yes

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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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

ASSEMBLY, No. 2913

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED NOVEMBER 9, 2000

Sponsored by:

Assemblyman MICHAEL J. ARNONE

District 12 (Monmouth)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

SYNOPSIS

Prohibits limitations on contractor's remedy for delay caused by contracting unit under "Local Public Contracts Law."

CURRENT VERSION OF TEXT

As introduced.



A2913 ARNONE, IMPREVEDUTO

2

1 AN ACT concerning limitations on a contractor's remedy for delayed
2 performance caused by a contracting unit and amending P.L.1971,
3 c.198.

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

7
8 1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to
9 read as follows:

10 19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1
11 et seq.) may include liquidated damages for the violation of any of the
12 terms and conditions thereof or the failure to perform said contract in
13 accordance with its terms and conditions, or the terms and conditions
14 of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other
15 provision of law to the contrary, it shall be void, unenforceable and
16 against public policy for a provision in a contract entered into under
17 P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy
18 for the contracting unit's negligence, bad faith, active interference, or
19 other tortious conduct that delays the contractor's performance, to
20 giving the contractor an extension of time for performance under the
21 contract. For the purposes of this section, "contractor" means a
22 person, his assignees or legal representatives with whom a contract
23 with a contracting unit is made.

24 (cf: P.L.1999, c.440, s.28)

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill would prohibit "no damage for delay" clauses in contracts
32 made with local units under the "Local Public Contracts Law,"
33 P.L.1971, c.198 (C.40A:11-1 et seq.). The bill is modeled on section
34 1 of P.L.1994, c.80 (C.2A:58B-3), which prohibits such clauses in
35 contracts with State agencies.

36 This bill will allow contractors to submit claims of delays caused by
37 the contracting unit to the contracting unit for consideration. The
38 merits of each claim submitted will be evaluated and decided by the
39 contracting unit. The purpose of the bill is to create an incentive for
40 the contracting unit to work cooperatively with the contractor to
41 resolve project issues in a timely manner. Such an incentive will lower
42 the cost of projects by avoiding the additional costs associated with
43 delay-related disputes.

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.

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2913

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 18, 2001

The Assembly Local Government Committee reports favorably Assembly Bill No. 2913 with committee amendments.

As amended by the committee, Assembly Bill No. 2913 would prohibit most "no damage for delay" clauses in contracts made with local units under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S. 18A:18A-1 et seq. The bill is modeled on section 1 of P.L.1994, c.80 (C.2A:58B-3), which prohibits such clauses in contracts with State agencies.

This bill will allow contractors to submit claims of delays caused by the contracting unit to the contracting unit for consideration. The merits of each claim submitted will be evaluated and decided by the contracting unit. The purpose of the bill is to create an incentive for the contracting unit to work cooperatively with the contractor to resolve project issues in a timely manner. Such an incentive will lower the cost of projects by avoiding the additional costs associated with delay-related disputes.

The committee amended the bill to clarify that "no damage for delay" clauses are permitted for reasons that are contemplated by the parties when the contract is executed.

[First Reprint]

ASSEMBLY, No. 2913

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 9, 2000

Sponsored by:

Assemblyman MICHAEL J. ARNONE

District 12 (Monmouth)

Assemblyman ANTHONY IMPREVEDUTO

District 32 (Bergen and Hudson)

Co-Sponsored by:

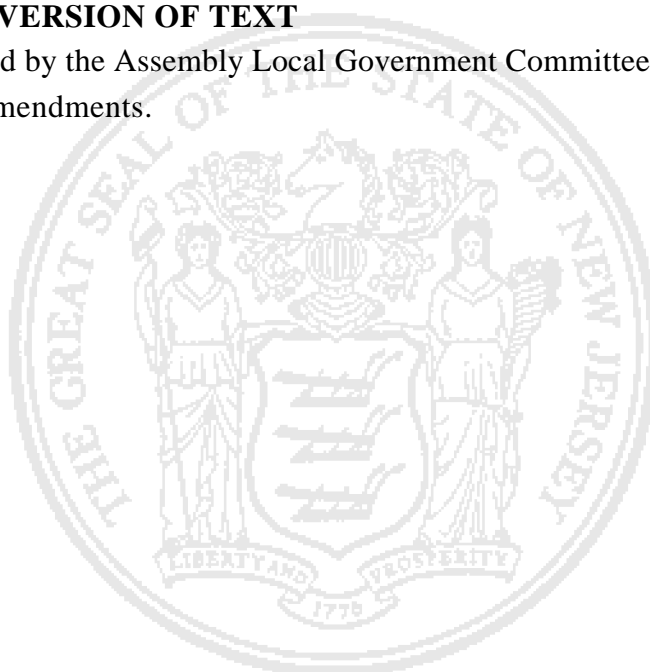
Assemblyman Geist and Senator Palaia

SYNOPSIS

Prohibits limitations on contractor's remedy for delay caused by local government and school contracting units.

CURRENT VERSION OF TEXT

As reported by the Assembly Local Government Committee on January 18, 2001, with amendments.



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

A2913 [1R] ARNONE, IMPREVEDUTO

2

1 AN ACT concerning limitations on a contractor's remedy for delayed
2 performance caused by a contracting unit and amending P.L.1971,
3 c.198 ¹and N.J.S.18A:18A-41¹.

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

7
8 1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to
9 read as follows:

10 19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1
11 et seq.) may include liquidated damages for the violation of any of the
12 terms and conditions thereof or the failure to perform said contract in
13 accordance with its terms and conditions, or the terms and conditions
14 of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other
15 provision of law to the contrary, it shall be void, unenforceable and
16 against public policy for a provision in a contract entered into under
17 P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy
18 for the contracting unit's negligence, bad faith, active interference,
19 ¹[or other]¹ tortious conduct ¹, or other reasons unanticipated by
20 the parties¹ that ¹[delays] delay¹ the contractor's performance, to
21 giving the contractor an extension of time for performance under the
22 contract. For the purposes of this section, "contractor" means a
23 person, his assignees or legal representatives with whom a contract
24 with a contracting unit is made.
25 (cf: P.L.1999, c.440, s.28)

26
27 ¹2. N.J.S.18A:18A-41 is amended to read as follows:
28 18A:18A-41. Liquidated damages. Any contract made pursuant to
29 chapter 18A of Title 18A of the New Jersey Statutes may include
30 liquidated damages for the violation of any of the terms and conditions
31 thereof or the failure to perform said contract in accordance with its
32 terms and conditions, or the terms and conditions of chapter 18A of
33 Title 18A of the New Jersey Statutes. Notwithstanding any other
34 provision of law to the contrary, it shall be void, unenforceable and
35 against public policy for a provision in a contract entered into under
36 Chapter 18A of Title 18A of the New Jersey Statutes to limit a
37 contractor's remedy for the contracting unit's negligence, bad faith,
38 active interference, tortious conduct, or other reasons unanticipated
39 by the parties that delay the contractor's performance, to giving the
40 contractor an extension of time for performance under the contract.
41 For the purposes of this section, "contractor" means a person, his

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 ALG committee amendments adopted January 18, 2001.

1 assignees or legal representatives with whom a contract with a
2 contracting unit is made.¹

3 (cf: P.L.1999, c.440, s.77)

4

5 ¹[2.]3.¹ This act shall take effect immediately.

SENATE EDUCATION COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2913

STATE OF NEW JERSEY

DATED: JUNE 14, 2001

The Senate Education Committee reports favorably Assembly Bill No. 2913 (1R).

This bill would prohibit most "no damage for delay" clauses in contracts made with local units under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S. 18A:18A-1 et seq. The bill is modeled on section 1 of P.L.1994, c.80 (C.2A:58B-3), which prohibits the clauses in contracts with State agencies.

The bill will allow contractors to submit claims of delays caused by the contracting unit to the contracting unit for consideration. The merits of each claim submitted will be evaluated and decided by the contracting unit. The purpose of the bill is to create an incentive for the contracting unit to work cooperatively with the contractor to resolve project issues in a timely manner. Such an incentive will lower the cost of projects by avoiding the additional costs associated with delay-related disputes. It is not the intent of the bill to limit the ability of the contracting unit to impose liquidated damages as provided in the sections of law being amended.

As reported, this bill is identical to S-1751.

SENATE, No. 1751

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JUNE 7, 2001

Sponsored by:

Senator JOSEPH A. PALAIA

District 11 (Monmouth)

SYNOPSIS

Prohibits limitations on contractor's remedy for delay caused by local government and school contracting units.

CURRENT VERSION OF TEXT

As introduced.



S1751 PALAIA

2

1 AN ACT concerning limitations on a contractor's remedy for delayed
2 performance caused by a contracting unit and amending P.L.1971,
3 c.198 and N.J.S.18A:18A-41.

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

7
8 1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to
9 read as follows:

10 19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1
11 et seq.) may include liquidated damages for the violation of any of the
12 terms and conditions thereof or the failure to perform said contract in
13 accordance with its terms and conditions, or the terms and conditions
14 of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other
15 provision of law to the contrary, it shall be void, unenforceable and
16 against public policy for a provision in a contract entered into under
17 P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy
18 for the contracting unit's negligence, bad faith, active interference,
19 tortious conduct, or other reasons unanticipated by the parties that
20 delay the contractor's performance, to giving the contractor an
21 extension of time for performance under the contract. For the
22 purposes of this section, "contractor" means a person, his assignees or
23 legal representatives with whom a contract with a contracting unit is
24 made.

25 (cf: P.L.1999, c.440, s.28)

26
27 2. N.J.S.18A:18A-41 is amended to read as follows:

28 18A:18A-41. Liquidated damages. Any contract made pursuant to
29 chapter 18A of Title 18A of the New Jersey Statutes may include
30 liquidated damages for the violation of any of the terms and conditions
31 thereof or the failure to perform said contract in accordance with its
32 terms and conditions, or the terms and conditions of chapter 18A of
33 Title 18A of the New Jersey Statutes. Notwithstanding any other
34 provision of law to the contrary, it shall be void, unenforceable and
35 against public policy for a provision in a contract entered into under
36 Chapter 18A of Title 18A of the New Jersey Statutes to limit a
37 contractor's remedy for the contracting unit's negligence, bad faith,
38 active interference, tortious conduct, or other reasons unanticipated
39 by the parties that delay the contractor's performance, to giving the
40 contractor an extension of time for performance under the contract.
41 For the purposes of this section, "contractor" means a person, his
42 assignees or legal representatives with whom a contract with a
43 contracting unit is made.

44 (cf: P.L.1999, c.440, s.77)

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 3. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill would prohibit most "no damage for delay" clauses in
7 contracts made with local units under the "Local Public Contracts
8 Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School
9 Contracts Law," N.J.S. 18A:18A-1 et seq. The bill is modeled on
10 section 1 of P.L.1994, c.80 (C.2A:58B-3), which prohibits such
11 clauses in contracts with State agencies.

12 This bill will allow contractors to submit claims of delays caused by
13 the contracting unit to the contracting unit for consideration. The
14 merits of each claim submitted will be evaluated and decided by the
15 contracting unit. The purpose of the bill is to create an incentive for
16 the contracting unit to work cooperatively with the contractor to
17 resolve project issues in a timely manner. Such an incentive will lower
18 the cost of projects by avoiding the additional costs associated with
19 delay-related disputes.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1751

STATE OF NEW JERSEY

DATED: JUNE 14, 2001

The Senate Education Committee reports favorably Senate Bill No. 1751.

This bill would prohibit most "no damage for delay" clauses in contracts made with local units under the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) and the "Public School Contracts Law," N.J.S. 18A:18A-1 et seq. The bill is modeled on section 1 of P.L.1994, c.80 (C.2A:58B-3), which prohibits the clauses in contracts with State agencies.

The bill will allow contractors to submit claims of delays caused by the contracting unit to the contracting unit for consideration. The merits of each claim submitted will be evaluated and decided by the contracting unit. The purpose of the bill is to create an incentive for the contracting unit to work cooperatively with the contractor to resolve project issues in a timely manner. Such an incentive will lower the cost of projects by avoiding the additional costs associated with delay-related disputes. It is not the intent of the bill to limit the ability of the contracting unit to impose liquidated damages as provided in the sections of law being amended.

As reported, this bill is identical to A-2913 1R.

P.L. 2001, CHAPTER 206, *approved August 8, 2001*
Assembly, No. 2913 (*First Reprint*)

1 **AN ACT** concerning limitations on a contractor's remedy for delayed
2 performance caused by a contracting unit and amending P.L.1971,
3 c.198 ¹and N.J.S.18A:18A-41¹.

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

7
8 1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to
9 read as follows:

10 19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1
11 et seq.) may include liquidated damages for the violation of any of the
12 terms and conditions thereof or the failure to perform said contract in
13 accordance with its terms and conditions, or the terms and conditions
14 of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other
15 provision of law to the contrary, it shall be void, unenforceable and
16 against public policy for a provision in a contract entered into under
17 P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy
18 for the contracting unit's negligence, bad faith, active interference,
19 ¹[or other]¹ tortious conduct ¹, or other reasons unanticipated by
20 the parties¹ that ¹[delays] delay¹ the contractor's performance, to
21 giving the contractor an extension of time for performance under the
22 contract. For the purposes of this section, "contractor" means a
23 person, his assignees or legal representatives with whom a contract
24 with a contracting unit is made.

25 (cf: P.L.1999, c.440, s.28)

26

27 ¹2. N.J.S.18A:18A-41 is amended to read as follows:

28 18A:18A-41. Liquidated damages. Any contract made pursuant to
29 chapter 18A of Title 18A of the New Jersey Statutes may include
30 liquidated damages for the violation of any of the terms and conditions
31 thereof or the failure to perform said contract in accordance with its
32 terms and conditions, or the terms and conditions of chapter 18A of
33 Title 18A of the New Jersey Statutes. Notwithstanding any other
34 provision of law to the contrary, it shall be void, unenforceable and
35 against public policy for a provision in a contract entered into under
36 Chapter 18A of Title 18A of the New Jersey Statutes to limit a
37 contractor's remedy for the contracting unit's negligence, bad faith,
38 active interference, tortious conduct, or other reasons unanticipated
39 by the parties that delay the contractor's performance, to giving the
40 contractor an extension of time for performance under the contract.

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 ALG committee amendments adopted January 18, 2001.

1 For the purposes of this section, "contractor" means a person, his
2 assignees or legal representatives with whom a contract with a
3 contracting unit is made.¹

4 (cf: P.L.1999, c.440, s.77)

5

6 ¹[2.]3.¹ This act shall take effect immediately.

7

8

9

10

11 Prohibits limitations on contractor's remedy for delay caused by local
12 government and school contracting units.

CHAPTER 206

AN ACT concerning limitations on a contractor's remedy for delayed performance caused by a contracting unit and amending P.L.1971, c.198 and N.J.S.18A:18A-41.

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

1. Section 19 of P.L.1971, c.198 (C.40A:11-19) is amended to read as follows:

C.40A:11-19 Liquidated damages; void provisions as to contractor's remedies.

19. Any contract made pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.) may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of P.L.1971, c.198 (C.40A:11-1 et seq.). Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under P.L.1971, c.198 (C.40A:11-1 et seq.) to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

2. N.J.S.18A:18A-41 is amended to read as follows:

Liquidated damages; void provisions as to contractor's remedies.

18A:18A-41. Liquidated damages. Any contract made pursuant to chapter 18A of Title 18A of the New Jersey Statutes may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of chapter 18A of Title 18A of the New Jersey Statutes. Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under Chapter 18A of Title 18A of the New Jersey Statutes to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

3. This act shall take effect immediately.

Approved August 8, 2001.

Office of the Governor

PO BOX 004
TRENTON, NJ 08625

NEWS RELEASE

CONTACT: Rae Hutton
609-777-2600

RELEASE: Aug 8, 2001

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

SCS-1833, 839, sponsored by Senators Peter Inverso (R-Mercer/Middlesex), Anthony Bucco (R-Morris) and Diane Allen (R-Burlington/Camden) and Assembly members Rose Heck (R-Bergen) and Kevin O'Toole (R-Essex/Union), allows police and firefighters who transferred to the Police and Firemen's Retirement System (PFRS) under a 1993 law to receive full benefits under PFRS for public safety service rendered prior to the transfer without having to pay the increased cost to the system of providing those benefits.

A-2118, sponsored by Senator Leonard Connors (R-Atlantic/Burlington/Ocean) and Assemblymen John Kelly (R-Bergen/Essex/Passaic) and Kevin O'Toole (R-Essex/Union), increases the number of members of the fire safety commission from 21 to 23. The role of the commission is to assist and advise the Commissioner of Community Affairs in the enforcement of the state's fire safety laws.

A-3050, sponsored by Assemblymen Neil Cohen (D-Union) and Nia Gill (D-Essex), termed "Leonard Cohen's Law," prohibits a licensed hospital from transferring a patient to another health care facility unless the patient is accompanied by a complete discharge summary from the transferring hospital at the time of the transfer.

S-2050, sponsored by Senators Andrew Ciesla (R-Monmouth/Ocean) and Richard Codey (D-Essex) and Assemblyman Alex DeCroce (R-Essex/Morris/Passaic), provides that a court, in its discretion, may award prejudgment interest on the whole or part of a judgment arising out of or relating to claims for the construction or installation of improvements to real property in accordance with principles of equity.

S-1330, sponsored by Senators Robert Littell (R-Sussex/Hunterdon/Morris) and Jack Sinagra (R-Middlesex) and Assembly members Nicholas Felice (R-Bergen/Passaic) and Charlotte Vandervalk (R-Bergen), requires health insurers that provide prescription drug coverage to issue standardized pharmacy identification cards to decrease administrative burdens and to streamline the dispensing of prescription drugs and devices.

A-2913, sponsored by Senator Joseph Palaia (R-Monmouth) and Assembly members Michael Arnone (R-Monmouth) and Anthony Impreveduto (D-Bergen/Hudson), prohibits "no damage for delay" clauses in certain contracts made with local units under the "Local Public Contracts Law" and the "Public Schools Contracts Law."

A-1203, sponsored by Assemblyman Steve Corodemus (R-Monmouth), establishes the World Language Instruction Committee in the Department of Education and provides credit toward

high school graduation requirements for world language courses offered by religious and non-public school organizations.

A-2204, sponsored by Senators Diane Allen (R-Burlington/Camden) and Richard Codey (D-Essex) and Assemblymen Frank Blee (R-Atlantic) and Joseph Charles (D-Hudson), renames the Office of Minority Health in the Department of Health and Senior Services (DHSS) as Office on Minority and Multicultural Health and provides additional responsibilities for the office and appropriates \$1.5 million to the new office to implement the bill.

AJR-35, sponsored by Assemblymen Joseph Azzolina (R-Middlesex/Monmouth) and Samuel Thompson (R-Middlesex/Monmouth), designates the third Monday in April of each year as "Patriots Day" in New Jersey.