

R.S. 58:10-23.1

July 9, 1973

LEGISLATIVE NOTES ON R.S.58:10-23.1 et seq.
(New Jersey Water Quality Improvement Act)

L.1971 - Chap.173 - S928

Sept.21 - Introduced by Wallwork and others.

Apr. 1 - Passed in Senate, amended.

May 10 - Passed in Assembly, amended.

May 10 - Assembly amendment passed in Senate.

June 1 - Approved, chapter 173. 1971.

Amended during passage ~~XXXXXXXXXXXXXXXXXXXX~~

No Statement.

Hearings and Reports:

974.90 New Jersey. Legislature. Senate. Committee
W329 on Air and Water Pollution and Public
1971 Health.
 Public hearing on Senate bills nos.
 817, 822, 823, 824, 928, 1967 (Water Pollution)
 1971

JH/EH
Encl.

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SENATE, No. 928

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 21, 1970

By Senators WALLWORK, WALDOR, DICKINSON and TANZMAN

Referred to Committee on Air and Water Pollution and Public Health

AN ACT concerning the prevention and abatement of pollution of the waters of this State resulting from the discharge therein of petroleum products*, *debris** and hazardous substances, and amending R. S. 23:5-28, 23:9-36 and 23:9-52.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Water Quality Improvement Act of ***[1970]*** *1971*."

1 2. The Legislature finds and declares that the discharge ***[into**
2 the waters of this State]* of petroleum products*, *debris** and of
3 hazardous substances into the waters of this State is inimical to the
4 best ***[interest]*** **interests** of the people *and constitutes a threat
5 to the environment*. The Legislature intends by the passage of this
5A bill to exercise the police powers of this State through the Depart-
6 ment of Environmental Protection by conferring upon said depart-
7 ment the power to deal with damage caused by the unlawful dis-
8 charge of said substances by requiring the prompt containment and
9 removal of such pollution and substances.

1 3. For the purposes of this act, unless the context clearly requires
2 a different meaning, the following words shall have the following
3 meaning:

4 a. "Petroleum products" shall mean oil or petroleum of any
5 kind and in any form including, but not limited to, oil, petroleum,
6 fuel oil, sludge, oil refuse, oil mixed with other wastes *and* crude
7 oils ***[and all other liquid hydrocarbons, regardless of specific**
7A **gravity]***.

8 b. "Hazardous substances" shall mean and include such elements
9 and compounds which, when discharged in any quantity into
10 ***[or]*** *,* upon *or in a manner which allows flow and runoff into*
11 the waters of this State or adjoining shorelines, presents ***[an**

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

12 imminent and substantial] * *a serious** danger to the public health
 13 or welfare, including but not limited to, damage to *the environ-*
 14 *ment*,* fish, shellfish, wildlife, vegetation, shorelines, stream banks,
 14A and beaches.

14B c. "Discharge" shall mean, but is not limited to, any spilling,
 15 leaking, pumping, pouring, emitting, emptying or dumping.

16 d. "Remove" or removal shall mean and include the removal of
 17 the petroleum products*, *debris** or hazardous substances from the
 18 water and shorelines or the taking of such other actions as may be
 19 necessary to minimize or mitigate damage to the public health or
 20 welfare, including, but not limited to, fish, shellfish, wildlife, and
 21 public and private property, shorelines, and beaches.

22 e. "Waters" shall mean the lakes, streams, rivers, inlets, tidal
 23 bays, and the coastal waters of New Jersey.

24 f. "Department" shall mean the Department of Environmental
 25 Protection.

26 g. "Person" shall mean and include an individual, firm, corpora-
 27 tion, association or a partnership*, *public or private**.

28 h. "Act of God" shall mean and include an act occasioned by an
 29 unanticipated grave natural disaster.

30 **i. "Debris" shall mean and include all forms of solid waste*
 31 *and liquid waste of any composition whatsoever.**

1 4. The discharge of hazardous substances*, *debris** and petro-
 2 leum products into*, *or in a manner which allows flow or runoff into**
 3 or upon the waters of this State and the banks or shores of said
 4 waters is prohibited.

1 5. Any person responsible for discharging petroleum products*,
 2 *debris** or hazardous substances in the manner prohibited by section
 3 4 shall immediately undertake to remove such discharge to the de-
 4 partment's satisfaction. ***[Notwithstanding the above,]*** *If the*
 5 *person responsible fails immediately to undertake to remove the*
 6 *discharge to the department's satisfaction,** the department may
 7 undertake the removal of such discharge and may retain agents and
 8 contractors for such purpose who shall operate under the direction
 9 of the department. The department may authorize a third person,
 10 affected by such an unlawful discharge, to expend funds to remove
 11 said discharge at the expense of the person responsible for same.

1 **6. Any person responsible for discharging petroleum products,*
 2 *debris or hazardous substances in the manner prohibited by section*
 3 *4, as soon as he has knowledge of a discharge, shall immediately*
 4 *notify the department. Any such person who fails to notify the*
 5 *department immediately shall be liable to a penalty of not more than*
 6 *\$3,000.00 for each offense, to be collected in a summary proceeding*

7 *under the Penalty Enforcement Law N. J. S. 2A:58-1 et seq. or in*
 8 *any case in a court of competent jurisdiction wherein injunctive*
 9 *relief has been requested. The Superior Court, County Court, and*
 10 *County District Court shall have jurisdiction to enforce said Penalty*
 11 *Enforcement Law. If the violation is of a continuing nature, each*
 12 *day during which it continues shall constitute an additional, sepa-*
 13 *rate and distinct offense. The department is hereby authorized and*
 14 *empowered to compromise and settle any claim for a penalty arising*
 15 *under this section in such amount in the discretion of the department*
 16 *as may appear appropriate and equitable under all the circum-*
 17 *stances.**

1 ***[6.]*** *7.* Any person who has discharged any petroleum prod-
 2 ucts*, *debris** or hazardous substances into the waters of this State
 3 and is therefore responsible for removing same from said waters
 4 *and* shall be liable ***[**for any damage up to \$5,000,000.00. Such a
 5 person shall be liable **]*** for moneys expended for the removal of said
 6 discharges by (a) himself, (b) the department, and (c) third per-
 7 sons so authorized by the department, but not to an extent greater
 8 than ***[\$5,000,000.00]*** *\$14,000,000.00, except that where the depart-
 9 ment can show such discharge was the result of willful negligence or
 10 willful misconduct within the privity and knowledge of the person
 11 responsible, such person shall be liable for the full amount of the
 12 costs. Nothing herein shall be deemed to exclude or impair any
 13 other liability imposed by law.*

1 ***[7.]*** *8.* If any person violates any of the provisions of this
 2 act, the department may institute a civil action in the Superior
 3 Court for injunctive relief to prohibit and prevent such violation or
 4 violations and said court may proceed in a summary manner. The
 5 department may also bring an action in the Superior Court against
 6 any person in violation of this act to recover any moneys expended
 7 by it or any moneys expended by third persons which the depart-
 8 ment so authorized.

1 ***[8.]*** *9.* No ordinances or regulations of any county or munici-
 2 pality and no provisions of any other State law or regulation,
 3 ***[**where not **]*** *which shall be more stringent than* ***[**inconsistent
 4 with **]*** this act, shall be superseded by this act. No existing civil or
 5 criminal remedy for any wrongful act shall be excluded or impaired
 6 by this act.

1 ***[9.]*** *10.* No person shall be liable for the removal of any dis-
 2 charge of petroleum products*, *debris** or hazardous substances
 3 which occur as a result of (a) an act of war or (b) an act of God*,
 4 *however this shall not relieve such person from the obligation of*
 5 *mitigating damages to the extent practicable*.*

1 ***[10.]*** *11.* R. S. 23:5-28 is amended to read as follows:

2 23:5-28. No person shall put or place into, turn into, drain into,
 3 or place where it can run, flow, wash or be emptied into, or where it
 4 can find its way into any of the fresh or tidal waters within the juris-
 5 diction of this State any *petroleum products, *debris,* hazardous,*
 6 *deleterious, destructive or poisonous substances of any kind; pro-*
 7 *vided, however, that the **use of chemical by any State, county or*
 7A *municipal government agency in any program of mosquito or other*
 7B *pest control or the use of chemical by any person on agricultural,*
 7C *horticultural or forestry corps, or in connection with livestock, or*
 7D *aquatic weed control or structural pest and rodent control, in a*
 7E *manner approved by the State Department of Environmental Pro-*
 7F *tection or** ***[use of chemicals by any state, county or***
 8 *municipal governmental agency in any program of mosquito*
 8A *or other pest control or the use of chemicals by any per-*
 8B *son on agricultural, horticultural or forestry corps, or in*
 8C *connection with livestock, or aquatic weed control or structural*
 9 *pest and rodent control, in a manner prescribed by the United*
 10 *States Department of Agriculture, the State Department of Agri-*
 11 *culture, or the College of Agriculture, Rutgers, the State Uni-*
 12 *versity, or]* discharges from facilities for the treatment, or the dis-*
 13 *posal of sewage or other wastes in a manner which conforms to*
 14 *rules and regulations promulgated by the State Department of*
 15 ****[Health]*** *Environmental Protection*, shall not constitute a*
 16 *violation of this section. In case of pollution of said waters by *any**
 17 *substances ***[known to be]*** injurious to fish, birds or mammals, it*
 18 *shall not be necessary to show that the substances have actually*
 19 *caused the death of any of these organisms. A person violating this*
 20 *section shall be liable to a penalty of ***[\$500.00 for the first offense,***
 21 *and \$1,000.00 for any subsequent offense]* *not more than*
 22 *****[\$3,000.00]**** **\$6,000.00** for each offense, to be collected in a*
 23 *summary proceeding under the Penalty Enforcement Law (N. J. S.*
 24 *2A:58-1 et seq.), and in any case before a court of competent juris-*
 25 *isdiction wherein injunctive relief has been requested. The Superior*
 26 *Court, County Court, and county district court shall have jurisdic-*
 27 *tion to enforce said Penalty Enforcement Law. If the violation is*
 28 *of a continuing nature, each day during which it continues shall*
 29 *constitute an additional, separate and distinct offense. The depart-*
 30 *ment is hereby authorized and empowered to compromise and settle*
 31 *any claim for a penalty arising under this section in such amount*
 32 *in the discretion of the department as may appear appropriate and*
 33 *equitable under all of the circumstances. The department may in-*
 34 *stitute a civil action in a court of competent jurisdiction for in-*

35 *injunctive relief to prohibit and prevent any person from violating*
 36 *the provisions of this section and said court may proceed in the*
 37 *action in a summary manner.**

1 ***[11.]*** *12.* R. S. 23:9-36 is amended to read as follows:

2 23:9-36. No person shall put or place in the waters mentioned
 3 in section 23:9-22 of this Title, any explosive or poisonous sub-
 4 stances whatsoever, or any drug or any poison bait for the pur-
 5 pose of catching, taking, killing or injuring the fish, and no per-
 6 son shall put or place into, turn into, drain into, or place where
 7 it can run, flow, wash or be emptied into, or where it can find
 8 its way into said waters within the jurisdiction of this State *any*
 9 *petroleum products, debris, hazardous, deleterious, destructive or*
 10 *poisonous substances of any kind; provided, however, that the*
 10A ***use of chemical by any State, county or municipal government*
 10B *agency in any program of mosquito or other pest control or the*
 10C *use of chemical by any person on agricultural, horticultural or*
 10D *forestry crops, or in connection with livestock, or aquatic weed con-*
 10E *trol or structural pest and rodent control, in a manner approved*
 10F *by the State Department of Environmental Protection, or***
 11 **[use of chemicals by any State, county or municipal govern-*
 12 *mental agency in any program of mosquito or other pest control*
 13 *or the use of chemicals by any person on agricultural, horticultural*
 14 *or forestry crops, or in connection with livestock, or aquatic weed*
 15 *control or structural pest and rodent control, in a manner pre-*
 16 *scribed by the United States Department of Agriculture, the State*
 17 *Department of Agriculture, or the College of Agriculture, Rutgers,*
 18 *the State University, or]* discharges from facilities for the treat-*
 19 *ment, or the disposal of sewage or other wastes in a manner which*
 20 *conforms to rules and regulations promulgated by the State De-*
 21 *partment of ***[Health]*** *Environmental Protection**, shall not con-*
 22 *stitute a violation of this section. In the case of the pollution of said*
 23 *waters by *any* substances ***[known to be]*** injurious to fish, birds*
 24 *or mammals, it shall not be necessary to prove that such substances*
 25 *have actually caused the death of any of these organisms. Any per-*
 26 *son violating any of the provisions of this section shall be subject to*
 27 *a fine of ***[\$500.00 for the first offense and \$1,000.00 for any sub-***
 28 *sequent offense]* *not more than ****[\$3,000.00]**** **\$6,000.00****
 29 *for each offense, to be collected in a summary proceed-*
 30 *ing under the Penalty Enforcement Law (N. J. S. 2A:58-1*
 31 *et seq.), and in any case before a court of competent*
 31A *jurisdiction wherein injunctive relief has been requested.*
 32 *The Superior Court, County Court, and county district court shall*
 33 *have jurisdiction to enforce said Penalty Enforcement Law. If the*

34 violation is of a continuing nature, each day during which it con-
 35 tinues shall constitute an additional, separate and distinct offense.
 36 The department is hereby authorized and empowered to compromise
 37 and settle any claim for a penalty arising under this section in such
 38 amount in the discretion of the department as may appear appro-
 39 priate and equitable under all of the circumstances. The department
 40 may institute a civil action in a court of competent jurisdiction for
 41 injunctive relief to prohibit and prevent any person from violating
 42 the provisions of this section and said court may proceed in the
 43 action in a summary manner*.

1 *~~12.~~* ~~13.~~* R. S. 23:9-52 is amended to read as follows:

2 23:9-52. No person shall put or place, in the waters mentioned
 3 in section 23:9-39 of this Title, any explosive or poisonous sub-
 4 stances, drug or poison bait for the purpose of catching, taking,
 5 killing or injuring the fish, and no person shall put or place into,
 6 turn into, drain into, or place where it can run, flow, wash or
 7 be emptied into, or where it can find its way into said waters
 8 within the jurisdiction of this State any *petroleum products*,
 9 **debris,* hazardous*, deleterious, destructive or poisonous sub-
 10 stances of any kind; provided, however, that the ***use of chemical*
 10A *by any State, county or municipal government agency in any pro-*
 10B *gram of mosquito or other pest control or the use of chemical by*
 10C *any person on agricultural, horticultural or forestry crops, or in*
 10D *connection with livestock, or aquatic weed control or struc-*
 10E *tural pest and rodent control, in a manner approved by*
 10F *the State Department of Environmental Protection, or*** ~~use of~~
 11 chemicals by any state, county or municipal governmental
 11A agency in any program of mosquito or other pest control or the use
 11B of chemicals by any person on agricultural, horticultural or
 12 forestry crops, or in connection with livestock, or aquatic weed
 13 control or structural pest and rodent control, in a manner pre-
 14 scribed by the United States Department of Agriculture, the State
 15 Department of Agriculture, or the College of Agriculture, Rutgers,
 16 The State University, or] ** discharges from facilities for the treat-*
 17 *ment, or the disposal of sewage or other wastes in a manner which*
 18 *conforms to rules and regulations promulgated by the State De-*
 19 *partment of* ~~Health~~ ** Environmental Protection**, shall not con-
 20 stitute a violation of this section. In the case of the pollution of said
 21 waters by **any** substances ~~known to be~~ ** injurious to fish, birds*
 22 *or mammals, it shall not be necessary to prove that these substances*
 23 *have actually caused the death of any of these organisms. A person*
 24 *violating this section shall be subject to a fine of* ~~\$500.00 for the~~
 25 *first offense and \$1,000.00 for any subsequent offense* ~~not more~~

26 than ****[\$3,000.00]**** ****\$6,000.00**** for each offense, to be
27 collected in a summary proceeding under the Penalty En-
28 forcement Law (N. J. S. 2A:58-1 et seq.), and in any
29 case before a court of competent jurisdiction wherein in-
29A junctive relief has been requested. The Superior Court,
30 County Court, and county district court shall have jurisdiction to
31 enforce said Penalty Enforcement Law. If the violation is of a
32 continuing nature, each day during which it continues shall con-
33 stitute an additional, separate and distinct offense. The department
34 is hereby authorized and empowered to compromise and settle any
35 claim for a penalty arising under this section in such amount in the
36 discretion of the department as may appear appropriate and equit-
37 able under all of the circumstances. The department may institute
38 a civil action in a court of competent jurisdiction for injunctive re-
39 lief to prohibit and prevent any person from violating the provi-
40 sions of this section and said court may proceed in the action in a
41 summary manner*.

1 ***[13.]*** *14.* This act shall take effect immediately.

FROM THE OFFICE OF THE GOVERNOR

JUNE 1, 1971

FOR RELEASE:
IMMEDIATE

5-928

Governor William T. Cahill today signed into law five bills to control the discharge of petroleum products into the State's waterways and the disposal of waste from New Jersey into the ocean, regulate the use of pesticides, and provide financial assistance for certain sewerage projects.

In addition the Governor signed Senate Joint Resolution 2006 directing the Department of Environmental Protection to develop a comprehensive proposal to achieve federal designation of the Passaic River as a model river basin.

In signing the five bills, Cahill said that the measures will give the State additional authority to protect and improve the quality of our environment. He pointed out that these bills, together with the Wetlands Act and the Department of Environmental Protection Act, represent a major step in preserving our natural resources for future generations.

Under Assembly Bill 2417, sponsored by James Cafiero (R., Cumberland), the State will have the authority to regulate and control the loading and handling of waste materials within the State that are destined for disposal at sea. The Governor said that more than 75 percent of the waste disposed of off the east coast is dumped within twelve miles of the Jersey shore. "The Clean Ocean Act is the result of this administration's deep concern to control indiscriminate dumping of waste materials which pollute the State's coastal waters and has an adverse effect on New Jersey shore areas," Cahill said.

Under Assembly Bill 2457, sponsored by Assemblyman Kenneth Wilson (R., Essex), \$14 million from the water conservation fund of 1968 is appropriated for loans to local governmental units for the design of sewerage projects. In addition, the bill also appropriates \$17.1 million for grants to local governments for the design and construction of new sewerage treatment facilities. The State will finance 25 percent of the cost of approved sewerage projects which qualify for federal assistance.

Noting the indiscriminate use of pesticides which has potentially serious effects on plant and animal life, the Governor signed Assembly Bill 1386 which provides for regulation and control of these toxic chemicals. Under the bill, sponsored by Assemblywoman Josephine S. Margetts (R., Morris), the Department of Environmental Protection will also under take a study of the effects and implications of various types of pesticides.

Also signed into law was Senate Bill 928, sponsored by Senator James Wallwork (R., Essex), which provides for the prevention and abatement of pollution of waterways within the State from the discharge of petroleum products and other hazardous substances including compounds and debris. The bill also provides that violators can be subject to a \$3,000 fine for failure to notify the State of any discharge. In addition, the individual or company responsible for discharge into the State's waterways is required to pay for the clean up.

A companion bill S0967, also sponsored by Senator Wallwork, which prohibits the dumping of petroleum products in the Delaware River was also signed into law.

PARTIAL 7

STATEMENT OF GOVERNOR WILLIAM T. CAHILL

ON SIGNING A-2417, A-1386, A-2457, S-928, S-967 AND SJR-2006

JUNE 1, 1971

Today, I am signing into law five important measures which, taken in conjunction with past legislation, form a veritable Environmental Bill of Rights for the people of the State of New Jersey. These laws join the Department of Environmental Protection Act, the Wetlands Act, the Air Pollution Control Act, the Water Conservation Bond Act, and other important recent legislation in making this state a leader in the effort to improve the quality of our environment. Senate Joint Resolution No. 2006 is also being signed.

The laws I sign today are the "Clean Ocean Act", the "Pesticides Control Act of 1971"; the "New Jersey Water Quality Improvement Act of 1971"; A-2457, which appropriates \$17.1 million from the Water Conservation Fund for the design and construction of new sewage treatment facilities; and S-967, which prohibits the dumping of petroleum products, hazardous substances or debris in the Delaware River.

I want to publicly take this opportunity to commend not only the sponsors of all these bills, but all the members of the legislature for the support these bills received. Their passage is another measure of the successful achievement of what I consider the most productive legislature in the history of this State. These bills deal with crucial areas of environmental concern, and they will give the State the necessary regulatory authority to fulfill its mandate to protect and enhance all parts of the environment and the quality of life.

The subject of the Clean Ocean Act (A-2417) has been a close personal concern of mine since almost the first day of this Administration. In February, 1970, it became necessary for me to proclaim a state of emergency when there was a strike against the tugboat operators who hauled the sludge from

our sewage treatment plants to sea. It seemed to me at the time, and even more so now that I have studied the matter further, that the ocean dumping of sewage sludge and polluted dredge spoil a scant 12 miles from our coastline and beaches is a primitive, insensitive, and completely unacceptable method of waste disposal. In fact, it is not waste disposal at all, it is no more than waste relocation.

The practice of dumping the discarded materials of our society in the sea is unacceptable for three reasons. First, it is destructive of the marine eco-system on which all life eventually depends, as demonstrated by studies conducted by the Sandy Hook Marine Laboratory for the U. S. Army Corps of Engineers. Second, current ocean dumping practices represent an imminent danger to our surf waters and beaches. All the facts concerning the relation of ocean disposal to growing pollution of these beach areas are not in yet, but if we wait for complete answers it may be too late. We must act now.

The third reason for our opposition to ocean dumping is that it is a classic case of resource mismanagement. We must realize that we can no longer throw our wastes away because there is no "away". We must to the extent possible return the wastes to nature's cycle of use. Regulations under this act will be designed to encourage this change.

The Act gives the Department of Environmental Protection the authority to regulate the loading within the state of any vessel intended for disposal/wastes at sea. Their purpose will be to protect our irreplaceable beaches by requiring dumping further from shore than the present 12 miles and in deeper water as well, until ocean dumping can be phased out. They will also be designed to stimulate construction of waste treatment facilities as a longer replacement for ocean dumping.

A second important act which gives the State new authority in an area of great environmental concern is the "Pesticides Act of 1971". This fulfills a promise made in my Annual Message. A term commonly used to describe pesticides is "economic poisons", but they can be environmental poisons as well. Pesticides are hazardous substances which have been applied in the environment to accomplish necessary objectives. There have been benefits from their use, including the protection of the public against disease and aiding the production of crops.

There has been a growing awareness, however, of the hazards inherent in the continued uncontrolled use of toxic chemicals in the environment. We have seen the extinction or threatened extinction of whole species because of unwise over-reliance on pesticides to the neglect of natural controls and other methods. We have learned that various organisms concentrate the toxic components of pesticides, and that these concentrations are passed along to man with potentially harmful results.

The "Pesticide Control Act of 1971" (A-1386) establishes a framework for the regulation of pesticides designed to protect all forms of life in the State from the hazards of these chemical agents. The policy of the State will be to mandate the application of the least harmful product for any intended use, and to encourage the development of biological control agents wherever practical as an alternative.

The third bill in this package is A-2457 which appropriates \$17.1 million from the Water Conservation Bond Fund for loans and grants for the design and construction of sewage treatment facilities.

This fund was established by an act of the Legislature and by the vote of the people expressed in a public referendum in 1969. The mandate is clear: Clean up the waters of the State by the construction of modern, effective, regional sewage treatment plants.

This new appropriation from the fund indicates that many local governments have taken the initiative required to realize these mandated objectives. It is also sadly apparent that many other local officials are not acting quickly enough. Because of rising construction costs, any delay means that the monies in the fund will be insufficient to finance the entire program.

Two other bills that I sign today concern the problem of pollution and relate to the increasing problem of oil spills. S-928, designated the New Jersey Water Quality Improvement Act of 1971, sponsored by Senator Wallwork (R., Essex), provides for the prevention and abatement of pollution of the waters of the State resulting from the discharge of petroleum products and hazardous substances. S-967, sponsored by Senator Wallwork (R. Essex) is aimed at preventing the pollution of the Delaware River.

SJR-2006, sets forth the policy of the State relative to the enhancement and improvement of the Passaic River and requests the federal government to designate this river as eligible for model river funds. I also called for the Passaic River to be designated a model river in my January 12, 1971 Annual Message.

I want to again commend the sponsors of this legislation and the members of the legislature for the support these measures received. Their foresight and the concern shown with improving the environment of the State and the quality of life is another measure of the successful achievement of what I consider the most productive legislature in the history of New Jersey.
