

LEGISLATIVE HISTORY OF R.S.59:1-1 to R.S.59:14-4
(New Jersey Tort Claims Act)

L.1972 - chap.45 - S969 - Schiaffo, et al.
Bill had no Statement.
May 1 - Introduced.
May 11 - Passed Senate.
May 18 - Passed Assembly.
June 1 - Signed. (Bill enclosed)

Earlier Bills and Laws.

P.L.1962 - J.R.18 - created a Commission to study the liability of counties and municipalities in tort actions.

P.L.1965 - J.R.7 - reconstituted the above Committee. No hearings or reports of the Committee were found.

P.L.1967 - chap. 20 - (A 478) R.S.52:17B-4.1, required the Attorney General to study government liability to reports. Its report was filed in May 1972 [See below under Reports]

SCR 30 - 1970 - Filed April 30, 1970. Creates a Committee to establish a Court of Claims. No hearings or reports were found.

P.L.1971 - Chap.187 (S2221) - delays Government liability to April 1, 1972.

P.L.1972 - Chap.9 - (S821) - delays Government liability to July 1, 1972.

Other bills which did not pass.

1969 - A608, A821, S538, SCR43.
1970 - A283, A755, ACR105, S112, S850.
1972 - S70, S823, SCR43, SCR49.

Reports

974.90 Attorney General's Task Force on Sovereign Immunity.
R424 Report...May, 1972.
1972b (This report contains much of the prior legislative history).

974.90 N.J. Chief Justice.
R424 Report...July 1, 1975.
1975a

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VF. = NJ -- Government Liability

Governor's Messages

New Jersey Governor, Richard J. Hughes
Seventh Annual Message, 1969 p.61.
Fair settlement of claims against the State.

Same

Line item Veto Message to S813, 1969

New Jersey Governor William T. Cahill
Line item Veto Message to S801, 1970

same. Press Release June 1, 1972

Review Articles "Government Liability"

Lipsig, Harry H. and Wallach, Margaret
Municipal tort liability for failure to provide
police protection.
82 NJLJ 309, June 18, 1959.

Lambert predicts end of governmental tort immunity
in New Jersey.
86 NJLJ 297, May 23, 1963.

Is the doctrine of governmental immunity valid in
our modern society? [editorial]
88 NJLJ 432, August 8, 1963.

Sovereign responsibility [editorial]
89 NJLJ 484, July 28, 1966.

Stern, Robert
Should cities be liable for riot-caused injuries?
90 NJLJ 489, July 27, 1967.

Kirsten, Jack
Liability for damage by reason of mobs and riots in
New Jersey.
90 NJLJ 505, August 3, 1967.

A Survey of Municipal Immunity
3 Seton Hall L.R. 416, Spring 1972

in N.J.

Howell disapproves of insurers taking insureds' Riot
Suit Rights.

90 NJLJ 637, September 28, 1967.

Napontano, Sonia

The status of Sovereign Immunity in New Jersey; a
proposed legislative reform.

91 NJLJ 429, July 4, 1968

91 NJLJ 445, July 11, 1968

91 NJLJ 471, July 18, 1968

91 NJLJ 486, July 25, 1968

Municipal Tort Liability: an emerging standard in New Jersey
1 Rutgers - Camden Law Journal 69 (spring 1969)

Maizys, Donald

Judicial abrogation of sovereign immunity in New Jersey:
a prelude to legislative reform? A move to abolish sovereign
immunity in New Jersey.

2 Seton Hall Law Review 149, Fall 1970.

New Jersey Attorney General Kugler proposes partial end
to governmental immunity. Senate Bill 969, 1972

95 NJLJ 457 May 11, 1972

Laird, Edward ; Hayden, Joseph

"Sovereign Immunity: The Kugler Plan" Senate Bill 969)

95 NJLJ 545 June 8, 1972

Laird, Edward; Hayden, Joseph

Sovereign immunity: The Kugler plan. (New Jersey Tort
Claims Act-Substantive Aspects).

95 NJLJ 605 June 15, 1972 ; 95 NJLJ 634 JUNE 22, 1972

5 Seton Hall LR 284 "Comment: New Jersey Tort Claims Act"

Court Cases

PT and L Construction Company v. Commissioner of Transportation
55 NJ 341 (1970)

Willis v. Department of Conservation and Economic Development
55 NJ 534 (1970)

HP/EH
Encl.

“* * * Hence, although the right of an individual to resign or to refuse public employment is undeniable, yet two or more may not agree to follow a common course to the end that an agency of government shall be unable to function.
* * *”

To reassure the public and to remove all doubt, I urge, in the strongest possible terms, that this Legislature immediately declare *solemnly* and *finally* that the public employees of this State enjoy no right to strike. It is a manifest truth that the public, which is the ultimate employer of all of us, is entitled to uninterrupted service from its governmental employees, especially when one considers such vital public needs as police and fire protection, education, institutional care, and public transportation. We must exert every possible and legally permissible effort in defense of that public right, that is, the right of the government to exist at all. The establishment of PERC is clear proof that there exists an alternative means by which employees in public service can express and achieve their lawful and rightful objectives *without* bringing essential government services to a halt.

Fair Settlement of Claims Against the State

I must point out at this time my concern about the present procedure for processing claims against the State. Only today I found it necessary to use my constitutional powers to line item veto certain contested items in the Supplemental Appropriations Bill.

It seems clear that the present system of considering such claims is not fair to the claimant, to the public agency involved, to the Legislature, or to the State itself. Because of the great demand on each legislator's time, few can be involved in a claims procedure, and even these few find it difficult to devote the time and attention that some of these more complicated issues deserve.

For example, one claim approved by the Legislature which I found necessary to veto today involved nine days of hearings before the Appropriations Subcommittee on Claims, with only two members, and often just one member, regularly in attendance. No finding of component facts was made by the Subcommittee,

aside from its eventual conclusion, and its report to the general Appropriations Committee does not contain any statement of findings of fact such as would justify, for instance, a review by any appellate court.

Unlike other items of legislation, the decision by the Claims Committee is more nearly comparable to the verdict of a court than it is to the adoption of ordinary legislation. For the fulfillment of the Governor's constitutional duty he, in fact, must agree or disagree with the judgment of the Legislature in such regard.

It is hardly possible, as in the case of one item in the present veto, to judge the merits of such a complex issue. I feel that a minimal requirement would be the recitation of factual findings which would enable the executive to understand the reasoning under which the Legislature has approved the whole or a large portion of a substantial, complicated claim. Otherwise, it is virtually impossible to fulfill the executive function of approval or disagreement with the terminal conclusion of the Legislature, as in the case of the veto to which I refer. Under present law I have no choice but to reject the issue, for the executive cannot act capriciously with \$1 million of public money.

As another example of the ineffectiveness of the present system, the claims bill to which I refer passed the Senate by a bare majority of one vote, many Senators abstaining on the issue. It is impossible to tell how the members of the Legislature would have voted on each of the unrelated items of the bill had they the full record and findings before them in the same manner that we would expect of any court or arbitration proceeding.

The courts of this State have been expressing more and more concern over the absolute sovereign immunity which now inheres in the State, no matter how much at fault it may be in any transaction.

I therefore urge you not to let another session go by without establishing an adequate claims procedure. It may be that after investigation you will decide that some type of Court of Claims or reliance upon recognized mediation or arbitration machinery is the best approach.

I pledge my full cooperation to find a just solution which will not put the Legislature or the executive in the position of judging claims on an inadequate basis and which will not use the power of the State to abuse the just claims before it, nor to hastily grant such claims regardless of their merit.

BROADENING POLITICAL PARTICIPATION

The New Jersey Constitution states clearly that "all political power is inherent in the people." Yet certain provisions of our present election law actually have the effect of restraining our citizens from full participation in the election process and thus from exercising the power which is rightfully theirs.

It is therefore time to eliminate shortcomings in our election system in order to ensure the broadest participation of our citizens in the political process. This action is especially important in view of the fact that the last revision of our election law occurred in 1930, in the different world of nearly four decades ago. I ask your prompt action on the following measures:

1. Voting machines should be required in all counties. The inconvenience, abuse, and waste of time, money, and manpower associated with the use of paper ballots are well documented and can no longer be tolerated.

2. Mobile neighborhood registration—a system that can help encourage political participation—should be not merely permitted, as under present law, but required in all counties.

3. Registration rolls should not be closed until three weeks before election day, as is the case in New York, rather than the forty-day period that now obtains here. This change will help attract still wider participation in each and every election.

4. The unsound and unjust double standard that permits our youth to die in battle in defense of our country but denies them the privilege of voting if they are between eighteen and twenty-one should be rectified. Our young citizens today are better educated, more highly motivated, and more generously concerned than ever before, and they should have the right to vote.

1969

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
June 27, 1969. }

SENATE BILL No. 813

To the Senate:

Pursuant to Article V, Section I, paragraph 15 of the Constitution, I am appending to Senate Bill No. 813 at the time of signing it, this statement of the items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

On page 1:

“230-100. DIVISION OF PURCHASE AND PROPERTY

“John McShain, Inc., for Stewart Iron Works, Inc., c/o McCarter and English, 550 Broad Street, Newark, N. J., for losses incurred by Stewart Iron Works, Inc., in the construction of the Youth Reception and Correction Center, Yardville, N. J. \$112,718.19
Plus interest at 3% 3,381.55

Total 116,099.74”

This item is deleted in its entirety.

On page 2:

“610-100. DIVISION OF MAINTENANCE AND EQUIPMENT

“Michael Costa, c/o Mrs. Joyce Costa, 360 Valley road, West Orange, N. J., for injury to his left leg as the result of a fall on property owned by the Department of Transportation, payable from funds appropriated to the department, \$1,550.00.”

This item is deleted in its entirety.

On page 2:

“612-100. CONSTRUCTION OF STATE HIGHWAY SYSTEM

“Brookfield Construction Company, 521 Fifth avenue, New York, N. Y., c/o Thomas C. Mitchell, 11 Patton drive, East Brunswick, N. J., for losses incurred in the construction of Route 80, section 5-S, Bergen County, N. J., to be paid from funds appropriated for the construction of State Highway System \$207,706.45
Plus interest at 3% 6,231.19
Total \$213,937.64

This item is deleted in its entirety.

“P. T. & L. Construction Co., 500 Route 17, Paramus, N. J., for liquidated damages in the construction of Route 80, section 4G in the county of Bergen-Passaic, to be paid from funds appropriated for the construction of State Highway System . . \$110,360.64

“State Paving and Construction Company, for Rickert Nurseries, Landscape Division, c/o George H. Bohlinger, Esquire, 28 West State Street, Trenton, N. J., for losses incurred by Rickert Nurseries, Landscape Division in landscaping Route 29 (Freeway), Trenton, N. J., to be paid from funds appropriated for the construction of State Highway System \$13,495.19
Plus interest at 3% 404.86
Total \$13,900.05

“Yonkers Contracting Co., Inc., 969 Midland Avenue, Yonkers, N. Y., for liquidated damages in the construction of Route 80, section 1B and 2L, to be paid from funds appropriated for the construction of State Highway System \$73,224.80.”

These items are deleted in their entirety.

Senate Bill No. 813 is a supplemental appropriations bill for the fiscal year ending June 30, 1969. If approved, Senate Bill No. 813 would authorize the satisfaction of twenty-two claims filed against the State of New Jersey, some of which have been vigorously opposed and contested by the State administrative agency involved.

I have decided, for the reasons stated herein, to delete entirely the contested claims from Senate Bill No. 813, which I have signed today. I wish to make it absolutely clear that my action is in no way a determination of the merits of these claims. From the record presented to me, it would have been absolutely impossible to make such a determination. Indeed, it is my desire that no prejudice whatsoever should attach to the rights of the claimants to present their claims again, either before a new forum or once again to appropriations subcommittee.

I have previously urged you, in my message of January 14, 1969, concerning Senate Bill No. 892 (1968), to undertake a reformation of existing claims procedures. In that message I suggested that a minimal augmentation of the present procedures — in lieu of a sweeping change in the entire system — should include the following items:

- (1) Equitable ground rules should be established in advance and made readily available to the parties;
- (2) At least a majority of the members of a subcommittee on claims should actually *hear* the claims presented to the subcommittee;
- (3) Subcommittee conclusions should contain complete findings of fact in regard to fault or indebtedness on the part of the State and the extent of compensable losses occasioned thereby, or some similar recitation of the basis upon which a claim is denied or reduced;
- (4) Claimants, state agencies involved, and all members of the Legislature should be served with copies of the report of the claims subcommittee; and
- (5) Each contested claim approved by the subcommittee and the full joint appropriations committee should be presented to the full Legislature as a separate supplemental appropriations bill, so that the vote of each legislator may be recorded with respect to each claim.

As I have said in the past, these reforms are the essential minimum to insure an adequate and equitable consideration of contested claims by the Legislature and by the Governor. At present, information presented to the Legislature prior to consideration of claims is so cursory that a number of legislators have informed me that they did not even realize that any of the claims included were contested.

I am not unaware of the heavy burden that thorough adjudication of these claims would place on the Legislature, particularly on the members of the claims subcommittee, but I do feel that change in this procedure is necessary, in fact, essential. Since the Legislature has not seen fit to act on my suggestions for reform in its own procedure, I am prepared to recommend and support a new approach, namely, that the Legislature consider eliminating the doctrine of sovereign immunity as a bar to claims against the State based on contractual liability. It seems to me that removal of these contractual claims to the courts would guarantee a fair adjudication to both parties and, most importantly, to the citizens of the State.

The courts of this State have carved significant exceptions to previously held rigid notions of sovereign immunity and are increasingly reluctant to accept the doctrine as an absolute bar to litigation against the State. As recently as 1967, Chief Justice Weintraub commented as follows: "Suffice it to say that today courts are disposed to hear an action against the State unless good reason stands in the way." *O'Neill v. State Highway Department*, 50 N. J. 307, 315 (1967). The reason for this disposition of our courts may be found in the potential for unintentional abuse and injustice that inheres in every claim of sovereign immunity as a bar to litigation. Thus, the Appellate Division stated in *Interstate Wrecking Co., Inc. v. Palisades Interstate Park Commission*, 103 N. J. Super. 394, 405 (App. Div., 1968):

"The State should not be able to shield itself from liability arising in an ordinary business transaction with one of its instrumentalities by invoking the immunity doctrine. To do so would mean that anyone doing business with any such instrumentality would be doing so at their peril."

A proposal to abolish the doctrine of sovereign immunity in respect to contractual liability is embodied in Assembly Bill No. 821 introduced into the present session with bi-

partisan support. With a few minor changes I could support this legislation and I would urge the appropriate legislative committee to give it public hearings and serious consideration. If the concept of this bill were adopted, the forum to which claimants and the State would then have recourse would be the courts of our State-honored and time-tested "triers of facts." Neither taxpayer, nor claimant, nor the State would have serious ground to challenge the objectivity of the impartial fact-finding of our courts.

Respectfully,

/s/ RICHARD J. HUGHES,

Governor.

[SEAL]
Attest:

/s/ ALAN J. KARCHER,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
January 19, 1970. }

SENATE BILL No. 297 (1969)

STATEMENT

I am filing Senate Bill No. 297 (1969) in the State Library without my approval.

Under the provisions of Article V, Section I, Paragraph 14 (b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, following the adjournment sine die of the Legislature. In these circumstances there is no provision for a veto but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

Senate Bill No. 297 authorizes any county park commission operating pursuant to R. S. 40:37-96 to 174 in a county of the second class and having a population in excess of 500,000 persons (Union) to sell a tract of parkland not exceeding two acres and no longer usable for park purposes at public sale, whenever such land has been severed from the main body of the park as a result of the construction of a county or state highway.

These same provisions were contained in Assembly Bill No. 1038, which I signed into law on July 1, 1970, as P. L. 1970, c. 126. In view of such action, there is no need for further consideration of Senate Bill No. 743.

Respectfully,

[SEAL] /s/ WILLIAM T. CAHILL,
Attest: Governor.
/s/ JEAN E. MULFORD,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
June 29, 1970. }

SENATE BILL No. 801

To the Senate:

Pursuant to Article V, Section I, Paragraph 15 of the Constitution, I am appending to Senate Bill No. 801 at the time of signing it, this statement of the items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

On page 5:

“612-100. CONSTRUCTION OF STATE HIGHWAY SYSTEM

“Brookfield Construction Company, 521 Fifth Avenue, New York, N. Y., c/o Thomas C. Mitchell, 11 Patton Drive, East Brunswick, N. J., for losses incurred in the construction of Route 80, section 5-S, Bergen County, N. J., to be paid from funds appropriated for the construction of State Highway System

\$213,937.64
6,418.13

Total \$220,355.77”

"P. T. & L. Construction Co.,
 500 Route 17, Paramus, N. J.
 for liquidated damages in the
 construction of Route 80, sec-
 tion 4-G in the County of Ber-
 gen-Passaic, to be paid from
 funds appropriated for the
 Construction of State Highway
 System \$110,360.64
 Plus Interest at 3% 3,310.82

 Total \$113,671.46"

"State Paving and Construction
 Company for Rickert Nur-
 series, Landscape Division, c/o
 George H. Bollinger, Esquire,
 28 W. State Street, Trenton,
 New Jersey, for losses in-
 curred by Rickert Nurseries,
 Landscape Division in land-
 scaping Route 29 (Freeway),
 Trenton, N. J., to be paid from
 funds appropriated for the
 Construction of State Highway
 System \$13,900.05
 Plus Interest at 3% 417.00

 Total \$14,317.05"

"Yonkers Contracting Co., Inc.,
 969 Midland Avenue, Yonkers,
 N. Y., for liquidated damages
 in the construction of Route 80,
 section 1-B and 2-L, to be paid
 from funds appropriated for
 the construction of State High-
 way System \$73,224.80
 Plus Interest at 3% 2,196.74

 Total \$75,421.54"

These items are deleted in their entirety.

Senate Bill No. 801 is a supplemental appropriations bill for the fiscal year ending June 30, 1970. The bill includes authorization for the payment of certain claims filed against

the State of New Jersey. Among these claims are four claims against the State arising from contracts relating to the construction of the State Highway System. These four claims have been contested by the Department of Transportation and have, in the past, been vetoed by former Governor Hughes. I have decided, for the reasons stated herein, to delete entirely the four claims set forth above from Senate Bill No. 801 which I have signed today.

On January 14, 1969 former Governor Hughes disapproved certain contested claims, the payment of which would have been authorized by Senate Bill No. 892 (1968). The basis for disapproving the claims was the failure of the claims procedure to meet a minimum standard of equitable due process for both the claimants and the State. Again on June 27, 1969 Governor Hughes refused to approve certain contested claims set forth in Senate Bill No. 813 (1969) for essentially the same reasons expressed in his veto message of January 14, 1969. The four contested claims which I have disapproved were among those disapproved by the former Governor.

In his veto messages, the former Governor urged the Legislature to undertake reforms in the claims procedure "to insure adequate and equitable consideration of contested claims by the Legislature and by the Governor." I share this concern for some degree of equitable due process in the disposition of claims against the State, not only to insure fair treatment to the claimants but also to preclude any doubt as to the impartiality and objectivity of the disposition of claims from the State's point of view.

The situation with respect to these claims is no different than that presented to the former Governor. These claims were not heard *de novo* by the sub-committee after their disapproval in June 1969. Essentially, the sub-committee relied on the records that had been made before the prior sub-committee, which records are subject to the infirmities enumerated by the former Governor. Thus I am in no different or better position to conclude that these claims should be approved. This action is taken by me without prejudice to the claimants since it is not based on an evaluation of the merits of the claims. Indeed, such an evaluation is not possible on the records presented to me.

Earlier this year the Supreme Court of New Jersey rendered a decision establishing the right of claimants to seek

a judicial determination of contract claims against the State. *P. T. & L. Construction Co. v. Commissioner of Transportation*, 55 N. J. 341 (1970). The Legislature wisely recognized that the State would need time to prepare for the impact of this decision, which has added a new dimension to the Law. Accordingly, the Legislature enacted, and I approved, Chapter 98 of the Laws of 1970, which precludes any person from instituting suit against the State for a cause of action accruing prior to July 1, 1971. During this interim period, however, persons having claims against the State must submit them to the Legislature's claims subcommittee. This includes the same four claimants whose claims I have disapproved today. Therefore, the need for revamping the claims procedure has not abated by virtue of the ruling of the Supreme Court and I urge the Legislature to provide a procedure for these and other claimants which guarantees fair adjudication to both the claimants and the State.

Respectfully,

[SEAL] /s/ WILLIAM T. CAHILL,
Attest: Governor.
/s/ JEAN E. MULFORD,
Acting Secretary to the Governor.

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
November 15, 1971. }

ASSEMBLY BILL No. 25

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 25, with my objections, for reconsideration.

This bill would provide immunity for motion picture projectionists from penalties in connection with the showing of indecent or obscene motion pictures, provided the projectionist has no financial interest in the motion picture theater wherein he is so employed, other than his wages.

The statement affixed to the bill indicates that it "is intended to protect the motion picture projectionist who does

FROM THE OFFICE OF THE GOVERNOR

JUNE 1, 1972

FOR RELEASE:
IMMEDIATE

Governor William T. Cahill today signed into law two bills to implement the abolition of the sovereign immunity of the State and other public bodies in claims for injuries and damages. The bills also provide for the waiver of sovereign immunity by the State in contract matters.

The Governor signed S-969, sponsored by Senator Alfred D. Schiaffo (R., Bergen), which provides the procedure for processing claims against the State. He also signed S-993, also sponsored by Senator Schiaffo, which authorizes the Attorney General to defend State employees in suits arising out of their duties as employees of the State.

This legislation provides for the selected abolition of sovereign immunity in claims matters. Under provision of the legislation, a public body is liable for claims for injury caused by a public employee while performing his duties. The government or other public bodies will be liable to the same extent as a private individual in similar cases.

Immunity will continue, however, in certain areas. No liability will result from:

- (a) High-level discretionary activities.
- (b) The issuance, denial, suspension or revocation of permits, licenses, etc.
- (c) The failure to inspect or negligent inspection of property.
- (d) Actual fraud, malice or willful misconduct of public employees.
- (e) Injuries occurring on unimproved property.
- (f) Other areas of continued immunity are set forth.

Under the provision of the bill, public employees will be indemnified for claims against them arising out of the course of their employment. Such claims must be filed within 90 days after the time of the alleged incident.

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The State is permitted six months in which to review the claim. If there is no settlement, a suit may be instituted within two years. Claims will be tried by a judge without a jury.

No damages will be awarded for pain and suffering except in cases of permanent loss of bodily function, permanent disfigurement or dismemberment where the medical expenses exceed \$1,000. Such benefits will be reduced by the amount of benefits received from collateral sources.

The Attorney General will represent State employees on their request for the defense of matters arising out of the scope of their employment, except in the case of actual fraud, willful misconduct or actual malice of the employee. In criminal proceedings, the Attorney General may represent State employees if he concludes that such representation is in the best interests of the State. The Attorney General shall assume exclusive control over the representation of such State employees.

This legislation will safeguard the rights of citizens who have claims against the State and other public entities while, at the same time, protecting State employees who are sued as a result of their State employment.

SENATE, No. 969

STATE OF NEW JERSEY

INTRODUCED MAY 1, 1972

By Senators SCHIAFFO, LYNCH, CAFIERO, HOLLENBECK,
HAGEDORN, WOODCOCK, WENDEL and TANZMAN

(Without Reference)

AN ACT concerning claims against the State and other public entities relating to tort and contract, making appropriations therefor and establishing a new Title to be known as Title 59 of the New Jersey Statutes, Claims Against Public Entities.

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

SUBTITLE 1. NEW JERSEY TORT CLAIMS ACT

CHAPTER 1. GENERAL

1 59:1-1. Short title. This subtitle shall be known and may be
2 cited as the "New Jersey Tort Claims Act."

1 59:1-2. Legislative declaration. The Legislature recognizes the
2 inherently unfair and inequitable results which occur in the strict
3 application of the traditional doctrine of sovereign immunity. On
4 the other hand the Legislature recognizes that while a private
5 entrepreneur may readily be held liable for negligence within the
6 chosen ambit of his activity, the area within which government
7 has the power to act for the public good is almost without limit
8 and therefore government should not have the duty to do everything
9 that might be done. Consequently, it is hereby declared to be the
10 public policy of this State that public entities shall only be liable
11 for their negligence within the limitations of this act and in ac-
12 cordance with the fair and uniform principles established herein.
13 All of the provisions of this act should be construed with a view
14 to carrying out the above legislative declaration.

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

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

6 "Employment" includes office, position or employment.

7 "Enactment" includes a constitutional provision, statute, ex-
8 ecutive order, ordinance, resolution or regulation.

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

12 "Law" includes enactments and also the decisional law applica-
13 ble within this State as determined and declared from time to time
14 by the courts of this State and of the United States.

15 "Public employee" means an employee of a public entity.

16 "Public entity" includes the State, and any county, municipality,
17 district, public authority, public agency, and any other political
18 subdivision or public body in the State.

19 "State" shall mean the State and any office, department, divi-
20 sion, bureau, board, commission or agency of the State, but shall
21 not include any such entity which is statutorily authorized to sue
22 and be sued.

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

1 59:1-4. Effect upon liability based on contract or right to relief
2 other than damages. Nothing in this act shall affect liability based
3 on contract or the right to obtain relief other than damages against
4 the public entity or one of its employees.

1 59:1-5. Workmen's compensation laws not repealed. Nothing
2 in this act shall be construed to affect, alter or repeal any provi-
3 sion of the workmen's compensation laws of this State.

1 59:1-6. Military and veterans laws not repealed. Nothing in this
2 act shall be construed to affect, alter or repeal any provision of
3 the military and veterans law of this State, except as specifically
4 provided in repealer section 59:12-2 of this subtitle.

1 59:1-7. Effect of assumption of liability by United States. Any
2 waiver of immunity and assumption of liability contained in this
3 act shall not apply in circumstances where liability has been or
4 is hereafter assumed by the United States, to the extent of such
5 assumption of liability.

CHAPTER 2. IMMUNITY AND LIABILITY OF PUBLIC ENTITY

1 59:2-1. Immunity of public entity generally. a. Except as other-
2 wise provided by this act, a public entity is not liable for an injury,
3 whether such injury arises out of an act or omission of the
4 public entity or a public employee or any other person.

5 b. Any liability of a public entity established by this act is sub-
6 ject to any immunity of the public entity and is subject to any de-

7 fenses that would be available to the public entity if it were a
8 private person.

1 59:2-2. Liability of public entity. a. A public entity is liable
2 for injury proximately caused by an act or omission of a public
3 employee within the scope of his employment in the same manner
4 and to the same extent as a private individual under like circum-
5 stances.

6 b. A public entity is not liable for an injury resulting from an
7 act or omission of a public employee where the public employee is
8 not liable.

1 59:2-3. Discretionary activities. a. A public entity is not liable
2 for an injury resulting from the exercise of judgment or discretion
3 vested in the entity;

4 b. A public entity is not liable for legislative or judicial action
5 or inaction, or administrative action or inaction of a legislative or
6 judicial nature;

7 c. A public entity is not liable for the exercise of discretion in
8 determining whether to seek or whether to provide the resources
9 necessary for the purchase of equipment, the construction or
10 maintenance of facilities, the hiring of personnel and, in general,
11 the provision of adequate governmental services;

12 d. A public entity is not liable for the exercise of discretion when,
13 in the face of competing demands, it determines whether and how to
14 utilize or apply existing resources, including those allocated for
15 equipment, facilities and personnel unless a court concludes that
16 the determination of the public entity was palpably unreasonable.
17 Nothing in this section shall exonerate a public entity for negli-
18 gence arising out of acts or omissions of its employees in carrying
19 out their ministerial functions.

1 59:2-4. Adoption or failure to adopt or enforce a law. A public
2 entity is not liable for an injury caused by adopting or failing to
3 adopt a law or by failing to enforce any law.

1 59:2-5. Issuance, denial, suspension or revocation of permit,
2 license, etc. A public entity is not liable for an injury caused by
3 the issuance, denial, suspension or revocation of, or by the failure
4 or refusal to issue, deny, suspend or revoke, any permit, license,
5 certificate, approval, order, or similar authorization where the pub-
6 lic entity or public employee is authorized by law to determine
7 whether or not such authorization should be issued, denied, sus-
8 pended or revoked.

1 59:2-6. Failure to inspect, or negligent inspection of, property.
2 A public entity is not liable for injury caused by its failure to make

3 an inspection, or by reason of making an inadequate or negligent
 4 inspection of any property; provided, however, that nothing in this
 5 section shall exonerate a public entity from liability for negligence
 6 during the course of, but outside the scope of, any inspection con-
 7 ducted by it, nor shall this section exonerate a public entity from
 8 liability for failure to protect against a dangerous condition as
 9 provided in chapter 4.

1 59:2-7. Recreational facilities. A public entity is not liable for
 2 failure to provide supervision of public recreational facilities; pro-
 3 vided, however, that nothing in this section shall exonerate a pub-
 4 lic entity from liability for failure to protect against a dangerous
 5 condition as provided in chapter 4.

1 59:2-8. Public assistance programs—termination of benefits.
 2 A public entity is not liable for injuries caused by the termination or
 3 reduction of benefits under a public assistance program.

1 59:2-9. Slander of title. A public entity is not liable for its acts
 2 or omissions resulting in a slander on the title of any property.

1 59:2-10. Public employee conduct—limitation on entity liability.
 2 A public entity is not liable for the acts or omissions of a public
 3 employee constituting a crime, actual fraud, actual malice, or will-
 4 ful misconduct.

CHAPTER 3. LIABILITY AND IMMUNITY OF PUBLIC EMPLOYEE

1 59:3-1. Generally. a. Except as otherwise provided by this act,
 2 a public employee is liable for injury caused by his act or omission
 3 to the same extent as a private person.

4 b. The liability of a public employee established by this act is
 5 subject to any immunity of a public employee provided by law
 6 and is subject to any defenses that would be available to the public
 7 employee if he were a private person.

1 59:3-2. Discretionary activities. a. A public employee is not
 2 liable for an injury resulting from the exercise of judgment or
 3 discretion vested in him;

4 b. A public employee is not liable for legislative or judicial action
 5 or inaction, or administrative action or inaction of a legislative or
 6 judicial nature;

7 c. A public employee is not liable for the exercise of discretion
 8 in determining whether to seek or whether to provide the resources
 9 necessary for the purchase of equipment, the construction or
 10 maintenance of facilities, the hiring of personnel and, in general,
 11 the provision of adequate governmental services;

12 d. A public employee is not liable for the exercise of discretion
 13 when, in the face of competing demands, he determines whether

14 and how to utilize or apply existing resources, including those
15 allocated for equipment, facilities and personnel unless a court
16 concludes that the determination of the public employee was
17 palpably unreasonable.

18 Nothing in this section shall exonerate a public employee for
19 negligence arising out of his acts or omissions in carrying out his
20 ministerial functions.

1 59:3-3. Execution or enforcement of laws. A public employee is
2 not liable if he acts in good faith in the execution or enforcement
3 of any law. Nothing in this section exonerates a public employee
4 from liability for false arrest or false imprisonment.

1 59:3-4. Acting under unconstitutional, invalid or inapplicable
2 laws. If a public employee acts under the apparent authority of
3 a law that is unconstitutional, invalid or inapplicable, he is not
4 liable for an injury caused thereby except to the extent that he
5 would have been liable had the law been constitutional, valid and
6 applicable.

1 59:3-5. Adoption or failure to adopt or enforce any law. A
2 public employee is not liable for an injury caused by his adoption
3 of or failure to adopt any law or by his failure to enforce any law.

1 59:3-6. Issuance, denial, suspension or revocation of permit,
2 license, etc. A public employee is not liable for an injury caused
3 by his issuance, denial, suspension or revocation of, or by his failure
4 or refusal to issue, deny, suspend or revoke, any permit, license,
5 certificate, approval, order, or similar authorization where he is
6 authorized by law to determine whether or not such authorization
7 should be issued, denied, suspended or revoked.

1 59:3-7. Failure to inspect, or negligent inspection of, property.
2 A public employee is not liable for injury caused by his failure to
3 make an inspection, or by reason of making an inadequate or
4 negligent inspection of any property; provided, however, that
5 nothing in this section shall exonerate a public employee from
6 liability for negligence during the course of, but outside the scope
7 of, any inspection conducted by him, nor shall this section exonerate
8 a public employee from liability for failure to protect against a
9 dangerous condition as provided in chapter 4.

1 59:3-8. Institution or prosecution of judicial or administrative
2 proceeding. A public employee is not liable for injury caused by
3 his instituting or prosecuting any judicial or administrative pro-
4 ceeding within the scope of his employment.

1 59:3-9. Entry upon property. A public employee is not liable
2 for his entry upon any property where such entry is expressly or
3 impliedly authorized by law. Nothing in this section exonerates

4 a public employee from liability for an injury proximately caused
5 subsequent to such entry by his own negligent or wrongful act or
6 omission.

1 59:3-10. Misrepresentation. A public employee acting in the
2 scope of his employment is not liable for an injury caused by his
3 misrepresentation.

1 59:3-11. Recreational facilities. A public employee is not liable
2 for the failure to provide supervision of public recreational facili-
3 ties. Nothing in this section exonerates a public employee for
4 negligence in the supervision of a public recreational facility.

1 59:3-12. Public assistance programs—termination of benefits. A
2 public employee is not liable for damages resulting from the termi-
3 nation or reduction of benefits under a public assistance program.

1 59:3-13. Slander of title. A public employee is not liable for
2 his acts or omissions resulting in a slander on the title of any
3 property.

1 59:3-14. Public employee immunity—exception. a. Nothing in
2 this act shall exonerate a public employee from liability if it is
3 established that his conduct was outside the scope of his employ-
4 ment or constituted a crime, actual fraud, actual malice or willful
5 misconduct.

6 b. Nothing in this act shall exonerate a public employee from
7 the full measure of recovery applicable to a person in the private
8 sector if it is established that his conduct was outside the scope
9 of his employment or constituted a crime, actual fraud, actual
10 malice or willful misconduct.

CHAPTER 4. CONDITIONS OF PUBLIC PROPERTY

LIABILITY OF THE PUBLIC ENTITY

1 59:4-1. Definitions. As used in this chapter:

2 a. "Dangerous condition" means a condition of property that
3 creates a substantial risk of injury when such property is used
4 with due care in a manner in which it is reasonably foreseeable
5 that it will be used.

6 b. "Protect against" includes repairing, remedying or correct-
7 ing a dangerous condition, providing safeguards against a dan-
8 gerous condition, or warning of a dangerous condition.

9 c. "Public property" means real or personal property owned
10 or controlled by the public entity, but does not include easements,
11 encroachments and other property that are located on the property
12 of the public entity but are not owned or controlled by the public
13 entity.

1 59:4-2. Liability generally. A public entity is liable for injury
2 caused by a condition of its property if the plaintiff establishes
3 that the property was in dangerous condition at the time of the
4 injury, that the injury was proximately caused by the dangerous
5 condition, that the dangerous condition created a reasonably fore-
6 seeable risk of the kind of injury which was incurred, and that
6A either:

7 a. a negligent or wrongful act or omission of an employee of
8 the public entity within the scope of his employment created the
9 dangerous condition; or

10 b. a public entity had actual or constructive notice of the dan-
11 gerous condition under section 59:4-3 a sufficient time prior to the
12 injury to have taken measures to protect against the dangerous
13 condition.

14 Nothing in this section shall be construed to impose liability
15 upon a public entity for a dangerous condition of its public prop-
16 erty if the action the entity took to protect against the condition
17 or the failure to take such action was not palpably unreasonable.

1 59:4-3. Actual notice; constructive notice. a. A public entity
2 shall be deemed to have actual notice of a dangerous condition
3 within the meaning of subsection b. of section 59:4-2 if it had
4 actual knowledge of the existence of the condition and knew or
5 should have known of its dangerous character.

6 b. A public entity shall be deemed to have constructive notice
7 of a dangerous condition within the meaning of subsection b. of
8 section 59:4-2 only if the plaintiff establishes that the condition
9 had existed for such a period of time and was of such an obvious
10 nature that the public entity, in the exercise of due care, should
11 have discovered the condition and its dangerous character.

1 59:4-4. Failure to provide emergency warning signals. Subject to
2 section 59:4-2 of this act, a public entity shall be liable for injury
3 proximately caused by its failure to provide emergency signals,
4 signs, markings or other devices if such devices were necessary
5 to warn of a dangerous condition which endangered the safe move-
6 ment of traffic and which would not be reasonably apparent to, and
7 would not have been anticipated by, a person exercising due care.

1 59:4-5. Failure to provide ordinary traffic signals—immunity.
2 Neither a public entity nor a public employee is liable under this
3 chapter for an injury caused by the failure to provide ordinary
4 traffic signals, signs, markings or other similar devices.

1 59:4-6. Plan or design immunity. a. Neither the public entity
2 nor a public employee is liable under this chapter for an injury
3 caused by the plan or design of public property, either in its

4 original construction or any improvement thereto, where such
 5 plan or design has been approved in advance of the construction
 6 or improvement by the Legislature or the governing body of a
 7 public entity or some other body or a public employee exercising
 8 discretionary authority to give such approval or where such plan
 9 or design is prepared in conformity with standards previously
 10 so approved.

1 59:4-7. Weather conditions; effect on use of streets and high-
 2 ways—immunity. Neither a public entity nor a public employee is
 3 liable for an injury caused solely by the effect on the use of streets
 4 and highways of weather conditions.

1 59:4-8. Condition of unimproved public property—immunity.
 2 Neither a public entity nor a public employee is liable for an
 3 injury caused by a condition of any unimproved public property,
 4 including but not limited to any natural condition of any lake,
 5 stream, bay, river or beach.

1 59:4-9. Unimproved and unoccupied portions of certain lands—
 2 immunity. Neither a public entity nor a public employee is liable for
 3 any injury caused by a condition of the unimproved and unoccupied
 4 portions of the tidelands and submerged lands, and the beds of
 5 navigable rivers, streams, lakes, bays, estuaries, inlets and straits
 6 owned by the State.

CHAPTER 5. CORRECTION AND POLICE ACTIVITIES

1 59:5-1. Failure to provide prison, jail or correctional facilities.
 2 Neither a public entity nor a public employee is liable for failure
 3 to provide a prison, jail or penal or correctional facility, or if such
 4 facility is provided, for failure to provide sufficient equipment,
 5 personnel or facilities in a prison or other correction facility.

1 59:5-2. Parole or escape of prisoner; injuries between prisoners.
 2 Neither a public entity nor a public employee is liable for:
 3 a. an injury resulting from the parole or release of a prisoner
 4 or from the terms and conditions of his parole or release or from
 5 the revocation of his parole or release.

6 b. any injury caused by:
 7 (1) an escaping or escaped prisoner;
 8 (2) an escaping or escaped person; or
 9 (3) a person resisting arrest; or
 10 (4) a prisoner to any other prisoner.

1 59:5-3. Suits by prisoners. No action shall be commenced by
 2 or on behalf of a prisoner against a public entity or public employee
 3 until such prisoner shall be released from institutional confinement.
 4 For the purposes of the claims notification requirements and the

5 statute of limitations contained in chapter 8 of this act, a prisoner's
 6 claim shall accrue upon his release from institutional confinement;
 7 provided however that a prisoner may file a notice of claim in
 8 accordance with the procedures set forth in chapter 8 at any time
 9 after an injury and nothing in this act shall bar administrative
 10 review and settlement of that claim prior to his release from
 11 institutional confinement.

1 59:5-4. Failure to provide police protection. Neither a public
 2 entity nor a public employee is liable for failure to provide police
 3 protection service or, if police protection service is provided, for
 4 failure to provide sufficient police protection service.

1 59:5-5. Failure to make arrest or retain person arrested in
 2 custody. Neither a public entity nor a public employee is liable for
 3 injury caused by the failure to make an arrest or by the failure to
 4 retain an arrested person in custody.

CHAPTER 6. MEDICAL, HOSPITAL AND PUBLIC HEALTH ACTIVITIES

1 59:6-1. Definitions. As used in this chapter:

2 "Medical facility" means a hospital, infirmary, clinic, dis-
 3 pensary, mental institution, or similar facility.

4 "Mental institution" means any facility for the care or treat-
 5 ment of persons committed for mental illness.

6 "Mental illness" means mental illness, mental disorder bordering
 7 on mental illness, mental deficiency, epilepsy, dipsomania or
 8 inebriety, sexual psychopathy, or such mental abnormality as to
 9 evidence utter lack of power to control sexual impulses.

10 "Drug dependent persons" means a person who is using a con-
 11 trolled dangerous substance and who is in a state of psychic or
 12 physical dependence, or both, arising from the use of that con-
 13 trolled dangerous substance on a continuous basis. Drug depend-
 14 ence is characterized by behavior or other responses, including but
 15 not limited to, a strong compulsion to take the substance on a
 16 recurring basis in order to experience its psychic effects or to avoid
 17 the discomfort of its absence.

1 59:6-2. Failure to provide medical facilities or mental institu-
 2 tions. Neither a public entity nor a public employee is liable for
 3 failure to provide a medical facility or mental institution, or if
 4 such facility or institution is provided, for the failure to provide
 5 sufficient equipment, personnel or facilities in a mental institution
 6 or medical facility.

1 59:6-3. Prevention of disease or controlling communication of
 2 disease. Neither a public entity nor a public employee is liable for
 3 an injury resulting from the decision to perform or not to perform
 4 any act to promote the public health of the community by pre-

5 venting disease or controlling the communication of disease within
6 the community.

1 59:6-4. Failure to make physical or mental examination or to
2 make adequate physical or mental examination. Except for an ex-
3 amination or diagnosis for the purpose of treatment, neither a
4 public entity nor a public employee is liable for injury caused by
5 the failure to make a physical or mental examination, or to make
6 an adequate physical or mental examination, of any person for
7 the purpose of determining whether such person has a disease or
8 physical or mental condition that would constitute a hazard to the
9 health or safety of himself or others.

1 59:6-5. Diagnosing or failing to diagnose mental illness or drug
2 dependence. a. Neither a public entity nor a public employee is
3 liable for injury resulting from diagnosing or failing to diagnose
4 that a person is afflicted with mental illness or is a drug dependent
5 person or from failing to prescribe for mental illness or drug de-
6 pendence; provided, however, that nothing in this subsection ex-
7 onerates a public entity or a public employee who has undertaken
8 to prescribe for mental illness or drug dependence from liability
9 for injury proximately caused by his negligence or by his wrongful
10 act in so prescribing.

11 b. Nothing in subsection a. exonerates a public entity or a pub-
12 lic employee from liability for injury proximately caused by a
13 negligent or wrongful act or omission in administering any treat-
14 ment prescribed for mental illness or drug dependence.

1 59:6-6. Determinations in accordance with applicable enactments.

2 a. Neither a public entity nor a public employee is liable for any
3 injury resulting from determining in accordance with any appli-
4 cable enactment:

5 (1) whether to confine a person for mental illness or drug de-
6 pendence;

7 (2) the terms and conditions of confinement for mental illness
8 or drug dependence;

9 (3) whether to parole, grant a leave of absence to, or release a
10 person from confinement for mental illness or drug dependence.

1 59:6-7. Escape of person confined; injuries between inmates.
2 Neither a public entity nor a public employee is liable for:

3 a. an injury caused by an escaping or escaped person who has
4 been confined for mental illness or drug dependence;

5 b. an injury caused by any person who has been confined for
6 mental illness or drug dependence upon any other person so con-
7 fined.

CHAPTER 7. ADMINISTRATION OF TAX LAWS

1 59:7-1. "Tax" defined. As used in this chapter, "tax" includes
2 a tax, assessment, fee or charge.

1 59:7-2. Liability of a public entity or public employee generally.
 2 Neither a public entity nor a public employee is liable for an injury
 3 caused by:

4 a. Instituting any judicial or administrative proceeding or action
 5 for or incidental to the assessment or collection of a tax.

6 b. An act or omission in the interpretation or application of any
 7 law relating to a tax.

1 59:7-3. Applicability of chapter. Nothing in this chapter affects
 2 any law relating to refund, rebate, exemption, cancellation, amend-
 3 ment or adjustment of taxes.

CHAPTER 8. CLAIMS AGAINST PUBLIC ENTITIES

1 59:8-1. Date of accrual of cause of action. Accrual shall mean
 2 the date on which the claim accrued and shall not be affected by the
 3 notice provisions contained herein.

1 59:8-2. Local public entity defined. For purposes of this chapter
 2 "local public entity" means a public entity other than the State.

1 59:8-3. Claims for damages against public entities. No action
 2 shall be brought against a public entity under this act unless the
 3 claim upon which it is based shall have been presented in accordance
 4 with the procedure set forth in this chapter.

1 59:8-4. Contents of claim. A claim shall be presented by the
 2 claimant or by a person acting on his behalf and shall include:

3 a. The name and post office address of the claimant;

4 b. The post-office address to which the person presenting the
 5 claim desires notices to be sent;

6 c. The date, place and other circumstances of the occurrence or
 7 transaction which gave rise to the claim asserted;

8 d. A general description of the injury, damage or loss incurred
 9 so far as it may be known at the time of presentation of the claim;

10 e. The name or names of the public entity, employee or employees
 11 causing the injury, damage or loss, if known; and

12 f. The amount claimed as of the date of presentation of the claim,
 13 including the estimated amount of any prospective injury, damage,
 14 or loss, insofar as it may be known at the time of the presentation
 15 of the claim, together with the basis of computation of the amount
 16 claimed.

1 59:8-5. Signature. The claim shall be signed by the claimant or
 2 by some person on his behalf.

1 59:8-6. Claim forms; additional evidence and information;
 2 examinations. A public entity may by rule or regulation adopt
 3 forms specifying information to be contained in claims filed against
 4 it under this act. Such forms shall include the requirements of

5 59:8-4 of this act and may include such additional information or
6 evidence as (1) written reports of a claimant's attending physicians
7 or dentists setting forth the nature and extent of injury and treat-
8 ment, any degree of temporary or permanent disability, the
9 prognosis, period of hospitalization, and any diminished earning
10 capacity; (2) a list of claimant's expert witnesses and any of their
11 reports or statements relating to the claim; (3) itemized bills for
12 medical, dental, and hospital expenses incurred, or itemized
13 receipts of payment for such expenses; (4) documentary evidence
14 showing amounts of income lost; (5) if future treatment is nec-
15 essary, a statement of anticipated expenses for such treatment.

16 In addition, the claimant may be required to submit to a physical
17 or mental examination by a physician employed by the public entity
18 and a claimant may be required to permit a public entity to inspect
19 all appropriate records relating to his claim for liability and
20 damages including, but not limited to, income tax returns, hospital
21 records, medical records and employment records.

22 The Attorney General is hereby authorized to issue rules and
23 regulations on behalf of the State for the purpose of eliciting the
24 types of information referred to in this section and for specifying
25 any additional information which may be reasonably necessary for
26 the administrative disposition of claims under this act.

1 59:8-7. Place for presentation of claim. A claim for damage or
2 injury arising under this act against the State shall be filed either
3 with (1) the Attorney General or (2) the department or agency
4 involved in the alleged wrongful act or omission. A claim for
5 injury or damages arising under this act against a local public
6 entity shall be filed with that entity.

1 59:8-8. Time for presentation of claims. A claim relating to a
2 cause of action for death or for injury to person or to property
3 shall be presented as provided in this chapter not later than the
4 ninetieth day after accrual of the cause of action. After the expira-
5 tion of 6 months from the date notice of claim is received, the
6 claimant may file suit in an appropriate court of law. The claim-
7 ant shall be forever barred from recovering against a public
8 entity if:

9 a. He failed to file his claim with the public entity within 90 days
10 of accrual of his claim except as otherwise provided in section
11 59:8-9; or

12 b. Two years have elapsed since the accrual of the claim; or

13 c. The claimant or his authorized representative entered into a
14 settlement agreement with respect to the claim.

15 Nothing in this section shall prohibit an infant or incompetent
16 person from commencing an action under this act within the time

17 limitations contained herein, after his coming to or being of full
18 age or sane mind.

1 59:8-9. Notice of late claim. A claimant who fails to file notice
2 of his claim within 90 days as provided in section 59:8-8 of this act,
3 may, in the discretion of a judge of the superior court, be permitted
4 to file such notice at any time within 1 year after the accrual of his
5 claim provided that the public entity has not been substantially
6 prejudiced thereby. Application to the court for permission to file
7 a late notice of claim shall be made upon motion based upon affi-
8 davits showing sufficient reasons for his failure to file notice of
9 claim within the period of time prescribed by section 59:8-8 of this
10 act; provided that in no event may any suit against a public entity
11 arising under this act be filed later than 2 years from the time of
12 the accrual of the claim.

1 59:8-10. Presentation of claim. a. A claim shall be presented to
2 the public entity by delivering it to or mailing it certified mail to
3 the office of the Attorney General or the office of the State agency
4 allegedly involved in the action. A claim may be presented to a
5 local public entity by delivering it or mailing it certified mail to
6 the entity.

7 b. A claim or application shall be deemed to have been pre-
8 sented in compliance with this section even though it is not delivered
9 or mailed as provided in this section if it is actually received at an
10 office of the State or local public entity within the time prescribed
11 for presentation thereof.

1 59:8-11. Time of presentation and receipt; proof of mailing. The
2 claim shall be deemed to have been presented and received at the
3 time of the deposit. Proof of mailing may be made in the manner
4 prescribed by the Rules of Court.

CHAPTER 9. CONDITIONS OF SUIT AND JUDGMENT

1 59:9-1. Manner of trial. Tort claims against a public entity or
2 public employee acting within the scope of his employment shall be
3 heard by a judge sitting without a jury in accordance with the rules
4 governing the courts of the State of New Jersey.

1 59:9-2. Interest and limitations on judgments. a. No interest
2 shall accrue prior to the entry of judgment against a public entity
3 or public employee.

4 b. No judgment shall be granted against a public entity or public
5 employee on the basis of strict liability, implied warranty or
6 products liability.

7 c. No punitive or exemplary damages shall be awarded against
8 a public entity.

9 d. No damages shall be awarded against a public entity or public
10 employee for pain and suffering resulting from any injury; pro-

11 vided, however, that this limitation on the recovery of damages for
12 pain and suffering shall not apply in cases of permanent loss of a
13 bodily function, permanent disfigurement or dismemberment where
14 the medical treatment expenses are in excess of \$1,000.00. For
15 purposes of this section medical treatment expenses are defined
16 as the reasonable value of services rendered for necessary surgical,
17 medical and dental treatment of the claimant for such injury,
18 sickness or disease, including prosthetic devices and ambulance,
19 hospital or professional nursing service.

20 e. If a claimant receives or is entitled to receive benefits for
21 the injuries allegedly incurred from a policy or policies of insur-
22 ance or any other source other than a joint tortfeasor, such benefits
23 shall be disclosed to the court and the amount thereof which
24 duplicates any benefit contained in the award shall be deducted
25 from any award against a public entity or public employee re-
26 covered by such claimant; provided, however, that nothing in this
27 provision shall be construed to limit the rights of a beneficiary
28 under a life insurance policy. No insurer or other person shall
29 be entitled to bring an action under a subrogation provision in an
30 insurance contract against a public entity or public employee.

1 59:9-3. Contribution by a public entity or public employee with
2 a joint tortfeasor. Notwithstanding any other law, in any case
3 where a public entity or public employee acting within the scope of
4 his employment is determined to be a joint tortfeasor:

5 a. The public entity or public employee shall be required to con-
6 tribute to a joint tortfeasor only to the extent of the recovery
7 provided for under this act;

8 b. Any payment received by the injured party on account of a
9 settlement or a judgment paid by an alleged tortfeasor shall be
10 reduced pro tanto from the injured party's judgment against any
11 other tortfeasor.

1 59:9-4. Comparative negligence. a. In all actions brought against
2 a public entity or public employee under this act the fact that the
3 person injured may have been guilty of contributory negligence
4 shall not bar a recovery, but the damages, to the extent permitted
5 under this act, shall be diminished in proportion to the amount of
6 negligence attributable to the person injured.

7 b. In any action to which paragraph a. applies, the court shall
8 make findings of fact or the jury shall return a special verdict
9 which shall state:

10 (1) The amount of the damages incurred by each party irrespec-
11 tive of his negligence; and

12 (2) The percentage of negligence attributable to each of the
13 parties.

14 The court shall calculate the monetary damages in accordance
15 with the percentage of negligence attributable to each of the parties
16 and shall enter an appropriate judgment.

1 59:9-5. Discretion to award attorney's fees; limitation. In any
2 action brought against a public entity or a public employee under
3 this act, the court may, in its discretion, award a successful claimant
4 (a) costs ordinarily allowable in the private sector (b) expert
5 witness fees not exceeding a total of \$100.00 and (c) reasonable
6 attorney's fees; provided however that there shall be no such
7 recovery in any case where damages are awarded for pain and
8 suffering.

1 59:9-6. Suits against public employees—judgment or settlement
2 as bar. a. Where a claimant has pursued his remedy against a
3 public entity for a claim arising out of the act or omission of a
4 public employee of a public entity, a judgment or settlement shall
5 be a complete bar to suit against the employee in a claim arising
6 from the same subject matter.

7 b. Where a claimant has pursued his remedy against a public
8 employee for a claim arising out of the act or omission of a public
9 employee of a public entity, a judgment or settlement shall be a
10 complete bar to suit against the entity in a claim arising from the
11 same subject matter.

CHAPTER 10. INDEMNIFICATION

1 59:10-1. Indemnification. If pursuant to the provisions of P. L.
2 c. Senate Bill No. 993 now pending before the
3 Legislature the Attorney General provides for the defense of an
4 employee or former employee, the State shall provide indemnifica-
5 tion for the State employee.

6 Nothing in this section authorizes the State to pay for punitive
7 or exemplary damages or damages resulting from the commission
8 of a crime.

1 59:10-2. Refusal to defend—indemnification. If the Attorney
2 General refuses to provide for the defense of a State employee as
3 required by the provisions of P. L. c. Senate Bill
4 No. 993 now pending before the Legislature, the employee or
5 former employee of the State shall be entitled to indemnification
6 from the State if he establishes that the act or omission upon
7 which the claim or judgment was based occurred within the scope

8 of his employment as an employee of the State and the State fails
9 to establish that he acted or failed to act because of actual fraud,
10 actual malice or willful misconduct.

11 If the State employee establishes that he was entitled to a defense
12 under the provisions of this chapter, the State shall pay or reim-
13 burse him for any bona fide settlement agreements entered into
14 by the employee, and shall pay or reimburse him for any judgments
15 entered against the employee, and shall pay or reimburse him for
16 all costs of defending the action, including reasonable counsel fees
17 and expenses, together with costs of appeal, if any.

18 Nothing in this section authorizes the State to pay for punitive
19 or exemplary damages or damages resulting from the commission
20 of a crime.

1 59:10-3. Public employee's duty to notify and cooperate with
2 Attorney General. A State employee shall not be entitled to
3 indemnification under this act unless within 10 calendar days of the
4 time he is served with any summons, complaint, process, notice,
5 demand or pleading, he delivers the original or a copy thereof to
6 the Attorney General or his designee. Upon such delivery the
7 Attorney General may, pursuant to the provisions of P. L.
8 c. Senate Bill No. 993 now pending before the Legislature,
9 assume exclusive control of the employee's representation and such
10 employee shall cooperate fully with the Attorney General's defense.

1 59:10-4. Local public entities—authority to indemnify. Local
2 public entities are hereby empowered to indemnify local public em-
3 ployees consistent with the provisions of this act.

CHAPTER 11. SETTLEMENT OF CLAIMS

1 59:11-1. Authority to settle claims. a. The State Treasurer
2 shall pay any tort claim or claim for indemnification against the
3 State under this act not exceeding \$7,500.00 which is recommended
4 for payment by the Attorney General or his designee. The State
5 Treasurer shall pay any such claim exceeding \$7,500.00 upon the
6 recommendation of the Attorney General or his designee and the
7 approval of the Director of the Division of Budget and Accounting.

8 b. The State Treasurer shall pay all contract claims against the
9 State upon the recommendation of the Attorney General or his
10 designee with the approval of the appropriate Department or
11 agency head and the Director of the Division of Budget and
12 Accounting. All such claims shall be paid in accordance with the
13 provisions of the New Jersey Contractual Liability Act.

CHAPTER 12. ESTABLISHMENT OF FUND, PROSPECTIVE
APPLICABILITY, REPEALERS

1 59:12-1. Fund established. There is hereby established in the
2 custody of the State Treasurer a fund to be used for the payment
3 of claims against the State arising out of tort. No money shall be
4 withdrawn from such fund unless the claim has been settled ac-
5 cording to law or reduced to final judgment in a court of competent
6 jurisdiction. Whenever any tort claim or claim for indemnification
7 shall have been settled according to law or reduced to final judgment
8 in a court of competent jurisdiction, the same shall be certified by
9 the Attorney General or his designee, to the State Treasurer who
10 shall pay the claim upon the warrant of the Director of the Division
11 of Budget and Accounting out of moneys contained in the fund.
12 Whenever the State Treasurer shall determine that funds are un-
13 available to pay any such claim, he shall certify the amount of such
14 deficiency and the amount so certified shall be appropriated and
15 paid to the claimant in the manner aforesaid.

1 59:12-2. Repealers. All acts and parts of acts inconsistent with
2 this act are, to the extent of such inconsistency, repealed, including
3 without limitation:

4 R. S. 40:9-2;

5 N. J. S. 18A:20-35;

6 N. J. S. 38A:4-9;

7 N. J. S. 38A:4-10;

8 R. S. 53:1-22.

1 59:12-3. Prospective application of act. This act applies only
2 to claims that accrue on or after its effective date. Claims that ac-
3 crued prior to the effective date of this act are not affected by this
4 act but shall continue to be governed by the law applicable thereto
5 prior to the effective date of this act; provided however that this act
6 shall apply to the suit presently pending between Willis and De-
7 partment of Conservation and Economic Development, Superior
8 Court, Docket No. L-9817-66.

SUBTITLE 2. NEW JERSEY CONTRACTUAL LIABILITY ACT

CHAPTER 13. GENERAL PROVISIONS

1 59:13-1. Short title. This subtitle shall be known as the "New
2 Jersey Contractual Liability Act."

1 59:13-2. Definitions. As used in this chapter: "State" shall
2 mean the State and any office, department, division, bureau, board,
3 commission or agency of the State, but shall not include any such
4 entity which is statutorily authorized to sue and be sued.

5 "Contracting agency" shall mean the appropriate agency of the
6 State which is charged by law with the responsibility of awarding
7 contracts.

8 "Accrual of claim" shall mean the date on which the claim arose
9 and shall not be affected by the notice provisions contained herein.

1 59:13-3. Waiver of immunity from liability in contract. The
2 State of New Jersey hereby waives its sovereign immunity from
3 liability arising out of an express contract or a contract implied
4 in fact and consents to have the same determined in accordance
5 with the rules of law applicable to individuals and corporations;
6 provided, however, that there shall be no recovery against the State
7 for punitive or consequential damages arising out of contract nor
8 shall there be any recovery against the State for claims based upon
9 implied warranties or upon contracts implied in law.

1 59:13-4. Jurisdiction in the New Jersey courts. The courts of
2 competent jurisdiction of the State of New Jersey shall have juris-
3 diction over all claims against the State for breach of a contract,
4 either express or implied in fact. Contract claims against the State
5 shall be heard by a judge sitting without a jury. Except as other-
6 wise expressly provided herein, all suits filed against the State
7 under this chapter shall be in accordance with the rules governing
8 the courts of the State of New Jersey.

1 59:13-5. Presentation and consideration of claims. It shall be
2 the responsibility of parties contracting with the State to promptly
3 notify the State in writing of any situation or occurrence which may
4 potentially result in the submission of a claim against the State.
5 Except as otherwise provided in section 6, no notice of claim for
6 breach of contract either express or implied in fact, shall be filed
7 with the contracting agency later than 90 days after the accrual of
8 such claim. A notice of claim shall include the following informa-
9 tion: the name of the claimant, the nature of the claim, specific
10 reasons for making the claim, and the total dollar amount of the
11 claim if known. After the expiration of 90 days from the date the
12 notice of claim is received by the contracting agency, the claimant
13 may file suit in a court of competent jurisdiction of the State of
14 New Jersey.

15 In all contract claims against the State, the claimant shall be
16 forever barred from recovering against the State if:

17 a. he fails to notify the appropriate contracting agency within
18 90 days of accrual of his claim except as otherwise provided in
19 section 6 hereof; or

20 b. he fails to file suit within 2 years of accrual of his claims or
20A within 1 year after completion of the contract giving rise to paid
20B claim, whichever may be later; or

21 c. the claimant accepts personally or through his agent or legal
 22 representative any award, compromise or settlement made by the
 23 State of New Jersey.

1 59:13-6. Notice of late claim. A claimant who fails to file notice
 2 of his claim within 90 days as provided in section 6 of this chapter,
 3 may, in the discretion of a judge of the Superior Court of the State
 4 of New Jersey, be permitted to file such notice at any time within
 5 1 year after the accrual of his claim provided that the State has not
 6 been substantially prejudiced thereby. Application to a judge of
 7 the superior court for permission to file a late notice of claim shall
 8 be made upon motion based upon affidavits setting forth sufficient
 9 reason for the failure to file his notice of claim within the period
 10 of time prescribed by section 6 of this chapter.

1 59:13-7. Arbitration statute unaffected. Nothing in this chapter
 2 shall be construed to prohibit the parties from agreeing to settle
 3 contract disputes by arbitration in accordance with the provisions
 4 of N. J. S. 2A:24-1 et seq.

1 59:13-8. Interest on judgments. No interest shall accrue prior
 2 to the entry of judgment in a court of competent jurisdiction.

1 59:13-9. Payment of claims. Whenever any such claim shall have
 2 been settled according to law or reduced to final judgment in a
 3 court of competent jurisdiction, the same shall be certified by the
 4 Attorney General or his designee, to the State Treasurer who shall
 5 pay the claim upon the warrant of the Director of the Division of
 6 Budget and Accounting out of any funds available to the depart-
 7 ment or other agency against which the claim was made. Whenever
 8 the State Treasurer shall determine that funds are unavailable to
 9 pay any such claim, he shall certify the amount of such deficiency
 10 and the amount so certified shall be appropriated and paid to the
 11 claimant in the manner aforesaid.

1 59:13-10. Claims affected by this chapter. The time limitations
 2 contained in section 5 of this chapter shall not apply to those claims
 3 accruing prior to the effective date of this chapter; provided,
 4 however, that any law suits on such claims must be filed in a court
 5 of competent jurisdiction within 6 months of the effective date of
 6 this chapter or they shall be forever barred.

SUBTITLE 3. REPORTS, SEVERABILITY, APPROPRIATIONS,

EFFECTIVE DATE

CHAPTER 14.

1 59:14-1. Annual reports; report to the Legislature. The Chief
 2 Justice of the Supreme Court and the Attorney General shall each

3 compile annual reports on the operation and effectiveness of this
4 act. At the expiration of 3 years from the date hereof and every 5
5 years thereafter the Chief Justice and the Attorney General shall
6 jointly report to the Governor and the Legislature on the operation
7 of this act and such report shall include any recommendations for
8 changes necessary to improving the administrative or judicial
9 implementation of the act.

1 59:14-2. Severability. If any clause, sentence, subdivision,
2 paragraph, section or part of this act be adjudged to be unconstitu-
3 tional or invalid, such judgment shall not affect, impair or invali-
4 date the remainder thereof, but shall be confined in its operation to
5 the clause, sentence, subdivision, paragraph, section or part thereof
6 directly involved in the case in which said judgment shall have
7 been rendered.

1 59:14-3. Appropriation. a. There is hereby appropriated to the
2 fund established pursuant to section 59:12-1 of this act, the sum of
3 \$750,000.00 for use during the fiscal year ending June 30, 1973.

4 b. There is hereby appropriated to the Division of Law in the
5 Department of Law and Public Safety the sum of \$300,000.00 for
6 use during the fiscal year ending June 30, 1973.

1 59:14-4. Effective date provision. a. Subtitle 1 of this act takes
2 effect on July 1, 1972; provided however the Attorney General is
3 authorized to take such anticipatory action prior to the said effec-
4 tive date as he deems appropriate.

5 b. Subtitle 2 and all other parts of this act shall take effect
6 immediately.