

[FIRST REPRINT]

SENATE, No. 2178

STATE OF NEW JERSEY

INTRODUCED JUNE 19, 1995

By Senator LITTELL

1 AN ACT establishing a special purpose funding mechanism for the
2 Department of Insurance, amending R.S.45:15-29 and
3 supplementing Title 17 of the Revised Statutes.

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

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

8 (1) The Department of Insurance has a statutory obligation to
9 protect the interests of New Jersey's insurance consumers and to
10 regulate and oversee the operations of the insurance industry.
11 The special needs of the department relative to the monitoring of
12 the financial condition of insurers and health maintenance
13 organizations is recognized by the Legislature as being unique
14 from its other responsibilities.

15 (2) In order to maintain an adequate level of financial oversight
16 and perform all lawful duties in this regard, it is necessary to
17 establish a special purpose funding mechanism for the
18 department's special needs.

19 (3) A special purpose funding source is a clear indication of the
20 commitment that the State of New Jersey has made to the
21 special needs of the department relative to its administrative
22 activities related to the financial regulation, supervision and
23 monitoring of insurers and health maintenance organizations. A
24 special purpose funding source will assist in maintenance of New
25 Jersey's accreditation by the National Association of Insurance
26 Commissioners (NAIC). Accreditation under the NAIC Financial
27 Regulation and Standards Program is an indication of the
28 department's ability to implement and enforce strong financial
29 solvency standards.

30 b. The Legislature therefore intends for the actual incurred
31 expenses of the Department of Insurance for all services related
32 to the department's financial regulation, supervision and
33 monitoring of insurers and health maintenance organizations to
34 be apportioned among insurers and health maintenance
35 organizations doing business in our State.

36 c. The Legislature also finds that establishing a dedicated
37 funding mechanism for the operations of the New Jersey Real
38 Estate Commission is in the public's interest.

39 2. (New section) a. The Director of the Division of Budget
40 and Accounting in the Department of the Treasury shall, on or
41 before August 15 in each year, ascertain and certify to the
42 Commissioner of Insurance by category the total amount of

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 22, 1995.

1 expenses incurred by the State in connection with the
2 administration of the special functions of the Department of
3 Insurance relative to the financial regulation, supervision and
4 monitoring of insurers and health maintenance organizations
5 during the preceding fiscal year. Those expenses shall include, in
6 addition to the direct cost of personal service, the cost of
7 maintenance and operation, the cost of employee benefits and the
8 workers' compensation paid for and on account of personnel,
9 rentals for space occupied in State-owned or State-leased
10 buildings and all other direct and indirect costs of the
11 administration of those functions of the department, as well as
12 any amounts remaining uncollected from the special purpose
13 apportionment of the previous fiscal year. Certification made
14 pursuant to this subsection shall be made by the director in
15 consideration of revenues paid by insurers and health
16 maintenance organizations pursuant to all other special purpose
17 assessments made pursuant to applicable law in effect on the
18 effective date of this act.

19 b. (1) Upon receipt of the certification made by the Director
20 of the Division of Budget and Accounting pursuant to subsection
21 a. of this section, but no later than September 1 in each year
22 following the close of the previous fiscal year, the commissioner
23 shall issue, in accordance with the provisions of this section, a
24 special purpose apportionment for the amount of the expenses
25 incurred by, or on behalf of, the department for those special
26 purposes recognized in this act.

27 (2) Special purpose apportionments made pursuant to this
28 section shall be distributed among all of the companies engaged
29 in business pursuant to subtitle 3 of Title 17 of the Revised
30 Statutes (R.S.17:17-1 et seq.), subtitle 3 of Title 17B of the New
31 Jersey Statutes (N.J.S.17B:17-1 et seq.), and P.L.1973, c.337
32 (C.26:2J-1 et seq.), in this State in the proportion that the net
33 written premiums received by each of them for such insurance
34 written or renewed on risks, in this State during the calendar year
35 immediately preceding, bears to the sum total of all such net
36 written premiums received by all companies writing that
37 insurance or coverage within the State during that calendar year,
38 as reported.

39 "Net written premiums received" means gross ¹direct¹
40 premiums written, less return premiums thereon and dividends
41 credited or paid to policyholders as reported on the company's
42 annual financial statement. For the purpose of calculating the
43 apportionment amount for companies engaged in business
44 pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), "net written
45 premiums received" means ¹direct¹ premiums as reported on the
46 annual financial statement submitted pursuant to section 9 of
47 P.L.1973, c.337 (C.26:2J-9).

48 c. For the purposes of this section, no company shall be
49 required to pay a special purpose apportionment which exceeds
50 .10 percent of its net written premiums received during the
51 calendar year immediately preceding.

52 d. The commissioner shall certify the amount of the special
53 purpose apportionment issued to each company. Each company
54 shall remit the amount so certified and apportioned to it to the

1 department in accordance with the procedures established in this
2 act. Amounts collected by the department shall be used for
3 reimbursement to the State for expenses incurred in connection
4 with the special functions of the Department of Insurance
5 relative to the financial regulation, supervision and monitoring of
6 insurers and health maintenance organizations.

7 3. (New section) Within 15 days after the date of mailing a
8 statement of special purpose apportionment as provided in this
9 act, a company may file its objections to its apportionment with
10 the commissioner. Upon receiving those objections, the
11 commissioner shall either: amend the statement as warranted,
12 consistent with sections 5 and 9 of this act; or schedule and send
13 a notice of a hearing on the objections, which hearing shall be
14 held not less than 30 nor more than 60 days after the date of the
15 notice.

16 4. (New section) If upon receiving the objections, or after the
17 hearing, the commissioner finds any part of the special purpose
18 apportionment against the objecting company excessive,
19 erroneous, unlawful or invalid, he shall transmit to the objector,
20 by registered mail, his findings and an amended statement of
21 special purpose apportionment in accordance with those findings,
22 which shall have the same force and effect as an original
23 statement of special purpose apportionment. If the commissioner
24 finds the entire statement of special purpose apportionment
25 unlawful or invalid, he shall notify the objector, by registered
26 mail, of that determination, and the original statement of special
27 purpose apportionment shall be null and void. If the
28 commissioner finds that the statement as rendered is neither
29 excessive, erroneous, unlawful or invalid, in whole or in part, he
30 shall transmit notice thereof to the objector by registered mail.

31 5. (New section) If a statement of special purpose
32 apportionment against which objections are filed is not paid in
33 full within 30 days after the date of mailing to the objector of
34 notice of a finding that the objections have been disallowed; or if
35 an amended statement of special purpose apportionment is not
36 paid within 30 days of the date a copy thereof is mailed by
37 registered mail to the objector, the commissioner shall give
38 notice of the delinquency to the State Treasurer and to the
39 objector, and the State Treasurer shall proceed to make the
40 collection.

41 6. (New section) No action for recovery of an amount paid
42 under this act shall be maintained in any court unless objections
43 have been filed with the commissioner. In an action for recovery
44 of any payments, plaintiff may raise any relevant issue of law,
45 but the commissioner's findings of fact shall be presumptive
46 evidence of the facts therein stated.

47 7. (New section) No action or proceeding shall be maintained
48 in any court for the purpose of restraining or delaying the
49 collection or payment of a statement of special purpose
50 apportionment rendered in accordance with the provisions of this
51 act. A company against which a statement of special purpose
52 apportionment is rendered shall pay the amount thereof, and
53 after the payment may in the manner provided by this act at any
54 time within two years from the date of the payment, bring an

1 action at law against the State to recover the amount paid, with
2 legal interest thereon from the date of payment, upon the ground
3 that the special purpose apportionment was excessive, erroneous,
4 unlawful or invalid, in whole or in part.

5 8. (New section) The procedure provided in this act for
6 determining the lawfulness of statements of special purpose
7 apportionment and the recovery of payments made pursuant to
8 those statements of special purpose apportionment shall be
9 exclusive of all other remedies and procedures.

10 9. (New section) If any company to which a statement of
11 special purpose apportionment as provided in this act has been
12 mailed fails or refuses to pay the amount within 30 days, or fails
13 to file with the commissioner objections to the statement of
14 special purpose apportionment as provided in this act, the
15 commissioner shall transmit to the State Treasurer a certified
16 copy of both the statement of special purpose apportionment and
17 the notice of the neglect or refusal of the company to pay the
18 amount thereof, and at the same time shall mail by registered
19 mail to the company a copy of the items transmitted to the State
20 Treasurer.

21 10. (New section) Within 10 days after receipt of the notice
22 and certified copy of the statement of special purpose
23 apportionment, the State Treasurer shall proceed to collect the
24 amount stated to be due, with legal interest, by seizure and sale
25 of any goods or chattels, including stocks, securities, bank
26 accounts, evidences of debt and accounts receivable belonging to
27 the company anywhere within the State.

28 11. (New section) As an additional remedy, the State
29 Treasurer may issue a certificate to the Clerk of the Superior
30 Court, that a company is indebted under this act in an amount
31 stated in the certificate. The clerk shall immediately enter upon
32 his record of docketed judgements the name of the company, and
33 of the State, the amount of debt so certified, and the date of the
34 entry. The entry shall have the same force and effect as the
35 entry of a docketed judgement in the office of the clerk, and the
36 State Treasurer shall have all the remedies and may take all of
37 the proceedings for the collection thereof which may be had or
38 taken upon the recovery of a judgement in an action, but without
39 prejudice to the company's right of appeal.

40 12. (New section) a. Notwithstanding any law or regulation to
41 the contrary, a company paying the amounts apportioned to it in
42 statements of special purpose apportionment made pursuant to
43 section 2 of this act shall be exempt from all fees or charges
44 imposed by the Department of Insurance pursuant to any other
45 provision of law or regulation.

46 b. Nothing in this section shall be construed to exempt a
47 company from paying any other special purpose assessment made
48 pursuant to any applicable law in effect on the effective date of
49 this act.

50 c. Notwithstanding the provisions of subsection a. of this
51 section, any fee imposed by the Department of Insurance for the
52 periodic examination of domestic insurers pursuant to section 3
53 of P.L.1993, c.236 (C.17:23-22) shall remain in effect.

54 d. Nothing in this section shall exempt a company from paying

1 any fine or penalty imposed by the commissioner for a violation
2 of a statute or regulation.

3 13. (New section) The total amount assessable to companies in
4 any fiscal year for all special purpose assessments made pursuant
5 to applicable law as of the effective date of this act, including
6 the special purpose apportionment established by this act, shall
7 not increase, as a percentage, more than the percentage increase
8 in the combined¹ net written premiums received, as defined in
9 subsection b. of section 2 of this act, by all companies¹ for the
10 previous year.

11 14. (New section) The State Treasurer and the Commissioner
12 of Insurance may adopt rules and regulations, pursuant to the
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14b-1 et
14 seq.), to effectuate the purposes of this act.

15 15. R.S.45:15-29 is amended to read as follows:

16 45:15-29. a. All [fees,] fines and penalties received by the
17 commission pursuant to the provisions of this article shall be paid
18 by it into the State treasury monthly. The payments shall be
19 made on or before the tenth day of each month following their
20 receipt, and at the time of payment a statement thereof shall be
21 filed with the [state comptroller] Director of the Division of
22 Budget and Accounting.

23 b. All expenses incurred by the commission shall be paid from
24 [the general fund of the State, upon warrants of the state
25 comptroller, upon vouchers or warrants therefor duly approved by
26 the commission, but, in no case shall the expenditures of the
27 commission for any fiscal year exceed the revenues derived by it
28 under this article. The state treasurer shall advance to the
29 commission funds sufficient in amount to cover expenses incurred
30 by the commission during the month of July in each year from the
31 appropriation made to the commission, which funds shall be paid
32 on warrant of the comptroller after certification by the
33 commission that its receipts for said period are equal to or in
34 excess of the amount to be advanced] fees collected by the
35 commission pursuant to the provisions of article I of chapter 15
36 of Title 45 of the Revised Statutes. Monies collected annually
37 pursuant to this subsection shall be dedicated to the commission
38 for the purposes of funding its incurred expenses for the current
39 fiscal year, which expenses shall include, in addition to the direct
40 cost of personal service, the cost of maintenance and operation,
41 the cost of employee benefits and the workers' compensation
42 paid for and on account of personnel, rentals for space occupied
43 in State-owned or State-leased buildings and all other direct and
44 indirect costs of the administration thereof.

45 (cf: R.S.45:15-29)

46 16. This act shall take effect on July 1, 1995.

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51 Establishes a special purpose funding mechanism for the
52 Department of Insurance.

1 13. (New section) The total amount assessable to companies in
2 any fiscal year for all special purpose assessments made pursuant
3 to applicable law as of the effective date of this act, including
4 the special purpose apportionment established by this act, shall
5 not increase, as a percentage, more than the percentage increase
6 in net written premiums received, as defined in subsection b. of
7 section 2 of this act, for the previous year.

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41 indirect costs of the administration thereof.

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46 STATEMENT

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48 This bill establishes a special purpose funding mechanism for
49 the special needs of the Department of Insurance associated with
50 its monitoring of the financial condition of insurers and health
51 maintenance organizations. Under the provisions of this bill,
52 State funds actually expended by, or on behalf of, the
53 Department of Insurance shall be apportioned to certain insurers
54 and health maintenance organizations for the purpose of

1 reimbursing the State for all special purpose costs.

2 With respect to the operations of the New Jersey Real Estate
3 Commission, this legislation amends current law by placing the
4 commission on a dedicated funding system.

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9 Establishes a special purpose funding mechanism for the
10 Department of Insurance.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2178

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 1995

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2178 with amendments.

Senate Bill No. 2178, as amended, establishes a special purpose funding mechanism for the special needs of the Department of Insurance associated with its monitoring of the financial condition of insurers and health maintenance organizations. Under the provisions of this bill direct and indirect costs associated with those functions of the department shall be apportioned to insurers and health maintenance organizations.

With respect to the operations of the New Jersey Real Estate Commission, this legislation amends current law by placing the commission on a dedicated funding system.

As amended and reported, this bill is identical to Assembly Bill No. 3017 ACA of 1995 (Bagger) as amended and reported by the Assembly Appropriations Committee.

COMMITTEE AMENDMENTS

The committee amended the bill to revise the definition of "net written premiums received" to mean gross direct premiums written and to clarify that the cap on special purpose assessments is limited to the percentage increase in the combined net written premiums received by all companies for the previous year.

FISCAL IMPACT

The Department of Insurance estimates that the fees and assessments in this bill will generate \$12.8 million in revenue for Fiscal Year 1996 based on an assessment of 0.0006 percent per premium dollar given total premiums of \$22.9 billion (1994).