



**VETO MESSAGE:**

Yes

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

"Law makers to beef up bill on paying cops' legal fees," 1-11-00, The Record, p. A9.

"Bill will pay State Police cleared of wrong doing," 1-15-00, The Press, p. A8.

"NJ to pay legal bills of cleared troopers", 1-15-00, The Record, p. A3.

Title 53.  
Chapter 1.  
Article 10. (New)  
Legal Defense and  
Reinstatement  
§§1-2  
C.53:1-30  
to 53:1-31  
§3  
Note

P.L. 1999, CHAPTER 359, *approved January 14, 2000*  
Assembly, No. 829 (*Second Reprint*)

1 AN ACT concerning the State Police and supplementing chapter 1 of  
2 Title 53 of the Revised Statutes.

3

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

6

7 1. Whenever a member or officer of the Division of State Police is  
8 a defendant in an action or legal proceeding arising out of <sup>2</sup>[or  
9 incidental to the performance of his duties] and directly related to the  
10 lawful exercise of police powers in the furtherance of official duties<sup>2</sup>,  
11 the Attorney General shall provide that member or officer with  
12 necessary means for the defense of the action or proceeding, but not  
13 for his defense in a disciplinary or criminal proceeding instituted  
14 against <sup>2</sup>[him] the member or officer<sup>2</sup>. If a disciplinary or criminal  
15 proceeding is dismissed or finally determined in favor of the member  
16 or officer, <sup>2</sup>[he] the member or officer<sup>2</sup> shall be reimbursed for the  
17 <sup>2</sup>[expense] reasonable expenses<sup>2</sup> of his defense. <sup>2</sup>Nothing in this  
18 section shall be construed to limit the Attorney General's authority  
19 under section 3 of P.L.1972, c.48 (C.59:10A-3) to provide for the  
20 defense of a member or officer of the Division of State Police in any  
21 action or legal proceeding, if the Attorney General concludes that such  
22 representation is in the best interest of the State.<sup>2</sup>

23

24 2. Whenever a member or officer of the Division of State Police is  
25 charged under the laws of this State, another state, or the United  
26 States, and has been suspended without pay as a result of an action or  
27 legal proceeding <sup>2</sup>[arising out of or incidental to the performance of  
28 his duties, or otherwise]<sup>2</sup>, and is found not guilty at trial, or the  
29 charges are dismissed, or the prosecution is terminated, that member  
30 or officer shall be reinstated to his position and shall recover all pay  
31 withheld during the period of suspension subject to any disciplinary  
32 proceedings <sup>2</sup>[of] or<sup>2</sup> administrative action.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAP committee amendments adopted June 15, 1998.

<sup>2</sup> Assembly amendments adopted in accordance with Governor's recommendations January 6, 2000.

1       3. This act shall take effect immediately <sup>1</sup>and shall apply  
2 retroactively to a member or officer of the Division of State Police  
3 who has been subject to a disciplinary or criminal proceeding instituted  
4 against the officer or member and as to whom the disciplinary or  
5 criminal proceeding has been dismissed or finally determined in favor  
6 of the member or officer on or after January 1, 1990<sup>1 2</sup>, but shall not  
7 be construed to authorize reimbursement to or reinstatement of  
8 members or officers whose applicable claims for relief have previously  
9 been settled or adjudicated on or before the date of enactment<sup>2</sup>.

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14 Provides for the legal defense of State troopers and officers;  
15 authorizes the reinstatement and recovery of wages in certain cases.

# ASSEMBLY, No. 829

## STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

**Sponsored by:**

**Assemblyman ANTHONY IMPREVEDUTO**

**District 32 (Bergen and Hudson)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Provides for the legal defense of State troopers and officers; authorizes the reinstatement and recovery of wages in certain cases.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the State Police and supplementing chapter 1 of  
2 Title 53 of the Revised Statutes.

3

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

6

7 1. Whenever a member or officer of the Division of State Police is  
8 a defendant in an action or legal proceeding arising out of or incidental  
9 to the performance of his duties, the Attorney General shall provide  
10 that member or officer with necessary means for the defense of the  
11 action or proceeding, but not for his defense in a disciplinary or  
12 criminal proceeding instituted against him. If a disciplinary or criminal  
13 proceeding is dismissed or finally determined in favor of the member  
14 or officer, he shall be reimbursed for the expense of his defense.

15

16 2. Whenever a member or officer of the Division of State Police is  
17 charged under the laws of this State, another state, or the United  
18 States, and has been suspended without pay as a result of an action or  
19 legal proceeding arising out of or incidental to the performance of his  
20 duties, or otherwise, and is found not guilty at trial, or the charges are  
21 dismissed, or the prosecution is terminated, that member or officer  
22 shall be reinstated to his position and shall recover all pay withheld  
23 during the period of suspension subject to any disciplinary proceedings  
24 of administrative action.

25

26 3. This act shall take effect immediately.

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STATEMENT

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31 Under current law (N.J.S.40A:14-155), municipalities are required  
32 to pay for the defense of any municipal law enforcement officer who  
33 is a defendant in any action or legal proceeding arising out of the  
34 performance of his duties. This requirement does not apply, however,  
35 to disciplinary or criminal proceedings. In those cases, the  
36 municipality is required to reimburse the law enforcement officer for  
37 the costs of his defense if the proceeding is either determined in his  
38 favor or dismissed.

39 In the case of law enforcement officers who have been suspended  
40 without pay because of charges arising out of the performance of their  
41 duties, or otherwise, but who are later acquitted of those charges or  
42 have those charges dismissed, the provisions of P.L.1973, c.270  
43 (C.40:14A-149.1 et seq.) require municipalities reinstate the  
44 suspended law enforcement officer and entitle the officer to recover all  
45 pay withheld during the period of suspension.

46 The provisions of this bill would impose the same requirements on

**A829 IMPREVEDUTO, COHEN**

3

- 1 the State with regard to members and officers of the Division of State
- 2 Police.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 829

# STATE OF NEW JERSEY

DATED: JUNE 1, 1998

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 829.

Assembly Bill No. 829 supplements chapter 1 of Title 53 of the Revised Statutes to require the Attorney General to pay for the defense of any State Police officer or member who is a defendant in any action or legal proceeding arising out of the performance of his duties. This obligation, however, does not apply to disciplinary or criminal proceedings. In those cases, the Attorney General is required to reimburse the officer or member for the costs of his defense if the proceeding is either determined in his favor or dismissed.

The bill also supplements chapter 1 of Title 53 of the Revised Statutes to provide that whenever a State Police officer or member who has been suspended without pay because of charges arising out of the performance of their duties, or otherwise, but who later is acquitted of those charges or has those charges dismissed, that officer or member is to be reinstated and is entitled to the recovery of all pay withheld during the period of suspension.

Under current law, municipal police are afforded these protections. Pursuant to N.J.S.40A:14-155, municipalities are required to pay for the defense of any municipal law enforcement officer who is a defendant in any action or legal proceeding arising out of the performance of his duties. In cases involving disciplinary or criminal proceedings, the municipality is required to reimburse the law enforcement officer for the costs of his defense if the proceeding is either determined in his favor or dismissed.

County police and county park police are afforded the same protections under N.J.S.40A:14-117.

Municipal police officers who have been suspended without pay because of charges arising out of the performance of their duties, or otherwise, but who are later acquitted of those charges or have those charges dismissed are to be reinstated and entitled to recover all pay withheld during the period of their suspension under the provisions of section 1 of P.L.1973, c.270 (C.40A:14-149.1).

There is no comparable statute for county police and county park police.

This bill was pre-filed for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 829**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 15, 1998

The Assembly Appropriations Committee reports favorably Assembly Bill No. 829 with committee amendments.

Assembly Bill No. 829, as amended, requires that the Attorney General to pay for the defense of any State Police officer or member who is a defendant in any action or legal proceeding arising out of the performance of the officer's or member's duties. This obligation, however, does not apply to disciplinary or criminal proceedings. In those cases, the Attorney General is required to reimburse the officer or member for the costs of the officer's or member's defense if the proceeding is determined in favor of the officer or member or is dismissed.

The bill also provides that if a State Police officer or member has been suspended without pay because of charges (whether or not arising out of the performance of the officer's or member's duties) and is later acquitted of those charges or has those charges dismissed, then that officer or member shall be reinstated and entitled to the recovery of all pay withheld during the period of suspension.

Under current law, municipal police are afforded these protections. Pursuant to N.J.S.40A:14-155, municipalities are required to pay for the defense of any municipal law enforcement officer who is a defendant in any action or legal proceeding arising out of the performance of the officer's duties. In cases involving disciplinary or criminal proceedings, the municipality is required to reimburse the law enforcement officer for the costs of defense if the proceeding is either determined in the officer's favor or dismissed. (County police and county park police are afforded the same protections under N.J.S.40A:14-117.)

Municipal police officers who have been suspended without pay because of charges arising out of the performance of their duties, or otherwise, but who are later acquitted of those charges or have those charges dismissed are to be reinstated and entitled to recover all pay withheld during the period of their suspension under the provisions of section 1 of P.L.1973, c.270 (C.40A:14-149.1). (There is no comparable statute for county police and county park police.)

**FISCAL IMPACT:**

The Office of the Attorney General has not been able to provide an estimate of the costs of the defense of members and officers of the Division of State Police. Because of the potential for conflicts of interest, independent outside counsel would be required for defense. The Department of Law and Public Safety has provided the information that, since 1990, the number of State Police personnel suspended with out pay has ranged from four to 17annually. Information regarding how many of them were cleared of charges or the length of their suspensions is not readily available.

**COMMITTEE AMENDMENTS:**

The amendments make the bill retroactive to January 1, 1990.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

[First Reprint]

### ASSEMBLY, No. 829

# STATE OF NEW JERSEY

DATED: MARCH 15, 1999

The Senate Law and Public Safety Committee reports favorably Assembly Bill No. 829 (1R).

Assembly Bill No. 829 (1R) requires the Attorney General to pay for the defense of any State Police officer or member who is a defendant in any action or legal proceeding arising out of the performance of the officer's or member's duties. This obligation, however, does not apply to disciplinary or criminal proceedings. In those cases, the Attorney General is required to reimburse the officer or member for the costs of the officer's or member's defense if the proceeding is determined in favor of the officer or member or is dismissed.

The bill also provides that if a State Police officer or member has been suspended without pay because of charges (whether or not arising out of the performance of the officer's or member's duties) and is later acquitted of those charges or has those charges dismissed, then that officer or member shall be reinstated and entitled to the recovery of all pay withheld during the period of suspension.

Under current law, municipal police are afforded these protections. Pursuant to N.J.S.40A:14-155, municipalities are required to pay for the defense of any municipal law enforcement officer who is a defendant in any action or legal proceeding arising out of the performance of the officer's duties. In cases involving disciplinary or criminal proceedings, the municipality is required to reimburse the law enforcement officer for the costs of defense if the proceeding is either determined in the officer's favor or dismissed. (County police and county park police are afforded the same protections under N.J.S.40A:14-117.)

Municipal police officers who have been suspended without pay because of charges arising out of the performance of their duties, or otherwise, but who are later acquitted of those charges or have those charges dismissed are to be reinstated and entitled to recover all pay withheld during the period of their suspension under the provisions of section 1 of P.L.1973, c.270 (C.40A:14-149.1). (There is no comparable statute for county police and county park police.)

The bill is retroactive to January 1, 1990.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

### ASSEMBLY, No. 829

# STATE OF NEW JERSEY

DATED: NOVEMBER 15, 1999

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 829 (1R).

Assembly Bill No. 829, as amended, requires the Attorney General to pay for the defense of a State Police officer or member in any legal action “arising out of or incidental to the performance of his duties” and which is neither criminal nor disciplinary in nature. Presently, the Torts Claim Act requires the State to defend actions against State employees, including State Police personnel, provided the Attorney General determines the alleged act was within the employee’s scope of employment.

Under the bill, the Attorney General would be required to reimburse an officer or member in a disciplinary or criminal proceeding for the cost of his defense if the proceeding is dismissed or determined in his favor. Presently, the Tort Claims Act provides for such reimbursement in the case of criminal proceedings if the act was directly related to the lawful exercise of the officer’s duties or under the color of his authority.

The bill would also require reinstatement and the payment of withheld wages to State Police officers or members who are suspended without pay on charges that are later resolved in their favor. According to the Department of Law and Public Safety, back pay is not presently awarded to State Police officers or members for nondisciplinary suspensions, even when the officer is cleared of charges and later reinstated.

The obligation to provide for the reimbursement of the expense of an officer’s or member’s defense in a criminal proceeding, and the recovery of withheld pay in a disciplinary hearing, which are dismissed or finally determined in favor of the officer or member extends to dismissals and favorable determinations occurring on or after January 1, 1990.

#### FISCAL IMPACT:

There may be additional costs associated with the undetermined number of cases that would qualify for payment or reimbursement of defense costs under the change in the standard from that provided

under the Tort Claims Act to the standard of legal action “arising out of or incidental to the performance of the duties” of the State Police officer or member. A narrow interpretation of this provision would not impose on the State any greater obligation than is currently provided for under the Tort Claims Act. For instance, excessive force and illegal arrest cases, the most frequent charges alleged against police officers, already require advance provision of counsel. On the other hand, an expanded interpretation of this provision may require the State incur additional costs to defend against charges arising from acts outside the scope of police duties.

In addition, the bill’s provision requiring reimbursement for a disciplinary or criminal proceeding which is dismissed or resolved in favor of the State Police officer or member could result in additional costs to the State if the bill is interpreted to include cases that do not arise out of actions within the scope of the officer’s or member’s employment.

The bill’s requirement to restore back pay to personnel who are suspended without pay on certain charges that are later resolved would increase State costs by an undeterminable amount, according to information provided by the Department of Law and Public Safety. Since 1990, the estimated number of State Police personnel who were suspended without pay per year has ranged from four to 17. Information regarding how many of those personnel were cleared of charges or the length of their suspensions is not readily available. It is also not known what additional costs would be incurred for reimbursement of the expense of an officer’s or member’s defense in a criminal proceeding retroactive to January 1, 1990.

# LEGISLATIVE FISCAL ESTIMATE

## ASSEMBLY, No. 829

# STATE OF NEW JERSEY

## 208th LEGISLATURE

DATED: JULY 20, 1998

Assembly Bill No. 829 of 1998 requires the Attorney General to pay for the defense of a State Police officer or member in any legal action “arising out of or incidental to the performance of his duties” and which is neither criminal nor disciplinary in nature. Presently, the Torts Claim Act requires the State to defend actions against State employees, including State Police personnel, provided the Attorney General determines the alleged act was within the employee’s scope of employment.

Under the bill, the Attorney General would be required to reimburse an officer or member in a disciplinary or criminal proceeding for the cost of his defense if the proceeding is dismissed or determined in his favor. Presently, the Tort Claims Act provides for such reimbursement in the case of criminal proceedings if the act was directly related to the lawful exercise of the officer’s duties or under the color of his authority.

The bill would also require reinstatement and the payment of withheld wages to State Police officers or members who are suspended without pay on charges that are later resolved in their favor. According to the Department of Law and Public Safety, back pay is not presently awarded to State Police officers or members for nondisciplinary suspensions, even when the officer is cleared of charges and later reinstated.

The Office of Legislative Services (OLS) estimates that there may be additional costs associated with this bill, depending on the added number of cases that would qualify as “incidental to” a State Police officer’s employment. A narrow interpretation of this provision would not impose on the State any greater obligation than is currently provided for under the Tort Claims Act. For instance, excessive force and illegal arrest cases, generally the most frequent charges alleged against police officers, already require advance provision of counsel. On the other hand, an expanded interpretation of this provision may require the State incur additional costs to defend against charges arising from acts outside the scope of police duties.

In addition, the bill’s provision requiring reimbursement for a disciplinary or criminal proceeding which is dismissed or resolved in

favor of the State Police officer or member could result in additional costs to the State if the bill is interpreted to include cases that do not arise out of actions within the scope of the officer's or member's employment.

The bill's requirement to restore back pay to personnel who are suspended without pay on certain charges that are later resolved would increase State costs by an undeterminable amount, according to information provided by the Department of Law and Public Safety. Since 1990, the estimated number of State Police personnel who were suspended without pay per year has ranged from four to 17. Information regarding how many of those personnel were cleared of charges or the length of their suspensions is not readily available.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

# SENATE, No. 1316

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED SEPTEMBER 17, 1998

**Sponsored by:**

**Senator LOUIS F. KOSCO**

**District 38 (Bergen)**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**Co-Sponsored by:**

**Senators Kavanaugh, Ciesla, Matheussen, Martin, Kyrillos, Connors,  
Kenny and O'Connor**

**SYNOPSIS**

Provides for the legal defense of State troopers and officers; authorizes the reinstatement and recovery of wages in certain cases.

**CURRENT VERSION OF TEXT**

As introduced.





S1316 KOSCO, RICE

2

1 AN ACT concerning the State Police and supplementing chapter 1 of  
2 Title 53 of the Revised Statutes.

3

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

6

7 1. Whenever a member or officer of the Division of State Police is  
8 a defendant in an action or legal proceeding arising out of or incidental  
9 to the performance of his duties, the Attorney General shall provide  
10 that member or officer with necessary means for the defense of the  
11 action or proceeding, but not for his defense in a disciplinary or  
12 criminal proceeding instituted against him. If a disciplinary or criminal  
13 proceeding is dismissed or finally determined in favor of the member  
14 or officer, he shall be reimbursed for the expense of his defense.

15

16 2. Whenever a member or officer of the Division of State Police is  
17 charged under the laws of this State, another state, or the United  
18 States, and has been suspended without pay as a result of an action or  
19 legal proceeding arising out of or incidental to the performance of his  
20 duties, or otherwise, and is found not guilty at trial, or the charges are  
21 dismissed, or the prosecution is terminated, that member or officer  
22 shall be reinstated to his position and shall recover all pay withheld  
23 during the period of suspension subject to any disciplinary proceedings  
24 of administrative action.

25

26 3. This act shall take effect immediately and shall apply  
27 retroactively to a member or officer of the Division of State Police  
28 who has been subject to a disciplinary or criminal proceeding instituted  
29 against the officer or member and as to whom the disciplinary or  
30 criminal proceeding has been dismissed or finally determined in favor  
31 of the member or officer on or after January 1, 1990.

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STATEMENT

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36 This bill requires that the Attorney General to pay for the defense  
37 of any State Police officer or member who is a defendant in any action  
38 or legal proceeding arising out of the performance of the officer's or  
39 member's duties. This obligation, however, does not apply to  
40 disciplinary or criminal proceedings. In those cases, the Attorney  
41 General is required to reimburse the officer or member for the costs of  
42 the officer's or member's defense if the proceeding is determined in  
43 favor of the officer or member or is dismissed.

44

45 The bill also provides that if a State Police officer or member has  
46 been suspended without pay because of charges (whether or not  
arising out of the performance of the officer's or member's duties) and

**S1316 KOSCO, RICE**

1 is later acquitted of those charges or has those charges dismissed, then  
2 that officer or member shall be reinstated and entitled to the recovery  
3 of all pay withheld during the period of suspension.

4 Under current law, municipal police are afforded these protections.  
5 Pursuant to N.J.S.40A:14-155, municipalities are required to pay for  
6 the defense of any municipal law enforcement officer who is a  
7 defendant in any action or legal proceeding arising out of the  
8 performance of the officer's duties. In cases involving disciplinary or  
9 criminal proceedings, the municipality is required to reimburse the law  
10 enforcement officer for the costs of defense if the proceeding is either  
11 determined in the officer's favor or dismissed. (County police and  
12 county park police are afforded the same protections under  
13 N.J.S.40A:14-117.)

14 Municipal police officers who have been suspended without pay  
15 because of charges arising out of the performance of their duties, or  
16 otherwise, but who are later acquitted of those charges or have those  
17 charges dismissed are to be reinstated and entitled to recover all pay  
18 withheld during the period of their suspension under the provisions of  
19 section 1 of P.L.1973, c.270 (C.40A:14-149.1). (There is no  
20 comparable statute for county police and county park police.)

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE, No. 1316

# STATE OF NEW JERSEY

DATED: MARCH 15, 1999

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 1316.

This bill requires the Attorney General to pay for the defense of any State Police officer or member who is a defendant in any action or legal proceeding arising out of the performance of the officer's or member's duties. This obligation, however, does not apply to disciplinary or criminal proceedings. In those cases, the Attorney General is required to reimburse the officer or member for the costs of the officer's or member's defense if the proceeding is determined in favor of the officer or member or is dismissed.

The bill also provides that if a State Police officer or member has been suspended without pay because of charges (whether or not arising out of the performance of the officer's or member's duties) and is later acquitted of those charges or has those charges dismissed, then that officer or member shall be reinstated and entitled to the recovery of all pay withheld during the period of suspension.

Under current law, municipal police are afforded these protections. Pursuant to N.J.S.40A:14-155, municipalities are required to pay for the defense of any municipal law enforcement officer who is a defendant in any action or legal proceeding arising out of the performance of the officer's duties. In cases involving disciplinary or criminal proceedings, the municipality is required to reimburse the law enforcement officer for the costs of defense if the proceeding is either determined in the officer's favor or dismissed. (County police and county park police are afforded the same protections under N.J.S.40A:14-117.)

Municipal police officers who have been suspended without pay because of charges arising out of the performance of their duties, or otherwise, but who are later acquitted of those charges or have those charges dismissed are to be reinstated and entitled to recover all pay withheld during the period of their suspension under the provisions of section 1 of P.L.1973, c.270 (C.40A:14-149.1). (There is no comparable statute for county police and county park police.)

The bill is retroactive to January 1, 1990.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 1316

# STATE OF NEW JERSEY

DATED: NOVEMBER 15, 1999

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1316.

This bill requires the Attorney General to pay for the defense of a State Police officer or member in any legal action “arising out of or incidental to the performance of his duties” and which is neither criminal nor disciplinary in nature. Presently, the Torts Claim Act requires the State to defend actions against State employees, including State Police personnel, provided the Attorney General determines the alleged act was within the employee’s scope of employment.

Under the bill, the Attorney General would be required to reimburse an officer or member in a disciplinary or criminal proceeding for the cost of his defense if the proceeding is dismissed or determined in his favor. Presently, the Tort Claims Act provides for such reimbursement in the case of criminal proceedings if the act was directly related to the lawful exercise of the officer’s duties or under the color of his authority.

The bill would also require reinstatement and the payment of withheld wages to State Police officers or members who are suspended without pay on charges that are later resolved in their favor. According to the Department of Law and Public Safety, back pay is not presently awarded to State Police officers or members for nondisciplinary suspensions, even when the officer is cleared of charges and later reinstated.

The obligation to provide for the reimbursement of the expense of an officer’s or member’s defense in a criminal proceeding, and the recovery of withheld pay in a disciplinary hearing, which are dismissed or finally determined in favor of the officer or member extends to dismissals and favorable determinations occurring on or after January 1, 1990.

#### FISCAL IMPACT:

There may be additional costs associated with the undetermined number of cases that would qualify for payment or reimbursement of defense costs under the change in the standard from that provided under the Tort Claims Act to the standard of legal action “arising out of or incidental to the performance of the duties” of the State Police

officer or member. A narrow interpretation of this provision would not impose on the State any greater obligation than is currently provided for under the Tort Claims Act. For instance, excessive force and illegal arrest cases, the most frequent charges alleged against police officers, already require advance provision of counsel. On the other hand, an expanded interpretation of this provision may require the State incur additional costs to defend against charges arising from acts outside the scope of police duties.

In addition, the bill's provision requiring reimbursement for a disciplinary or criminal proceeding which is dismissed or resolved in favor of the State Police officer or member could result in additional costs to the State if the bill is interpreted to include cases that do not arise out of actions within the scope of the officer's or member's employment.

The bill's requirement to restore back pay to personnel who are suspended without pay on certain charges that are later resolved would increase State costs by an undeterminable amount, according to information provided by the Department of Law and Public Safety. Since 1990, the estimated number of State Police personnel who were suspended without pay per year has ranged from four to 17. Information regarding how many of those personnel were cleared of charges or the length of their suspensions is not readily available. It is also not known what additional costs would be incurred for reimbursement of the expense of an officer's or member's defense in a criminal proceeding retroactive to January 1, 1990.

# LEGISLATIVE FISCAL ESTIMATE

## SENATE, No. 1316

# STATE OF NEW JERSEY

## 208th LEGISLATURE

DATED: JANUARY 18, 2000

Senate Bill No. 1316 of 1998 requires the Attorney General to pay for the defense of a State Police officer or member in any legal action “arising out of or incidental to the performance of his duties” and which is neither criminal nor disciplinary in nature. Presently, the Torts Claim Act requires the State to defend actions against State employees, including State Police personnel, provided the Attorney General determines the alleged act was within the employee’s scope of employment.

Under the bill, the Attorney General would be required to reimburse an officer or member in a disciplinary or criminal proceeding for the cost of his defense if the proceeding is dismissed or determined in his favor. Presently, the Tort Claims Act provides for such reimbursement in the case of criminal proceedings if the act was directly related to the lawful exercise of the officer’s duties or under the color of his authority.

The bill would also require reinstatement and the payment of withheld wages to a State Police officer or member who is suspended without pay as the result of actions or legal proceeding that are later resolved in their favor.

According to the Department of Law and Public Safety, back pay is not presently awarded to State Police officers or members for nondisciplinary suspensions, even when the officer is cleared of charges and later reinstated.

The Office of Legislative Services (OLS) estimates that there may be additional costs associated with this bill, depending on the added number of cases that would qualify as “incidental to” a State Police officer’s employment. A narrow interpretation of this provision would not impose on the State any greater obligation than is currently provided for under the Tort Claims Act. For instance, excessive force and illegal arrest cases, generally the most frequent charges alleged against police officers, already require advance provision of counsel.

On the other hand, an expanded interpretation of this provision may require the State incur additional costs to defend against charges arising from acts outside the scope of police duties.

In addition, the bill’s provision requiring reimbursement of pay

withheld as the result of a suspension for an action or legal proceeding which is dismissed or resolved in favor of the State Police officer or member would increase costs to the State by an undeterminable amount. From 1990 through 1998, 185 State Police personnel were suspended without pay, according to information provided orally by the Office of the Attorney General. The average period of suspension was 52 days and 180 of the personnel were reinstated, according to the OAG. However, information was not available on the number of these cases which were later resolved in favor of the employee and in which the employee could recover withheld wages under the terms of this bill.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**ASSEMBLY BILL NO. 829**  
(FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 829 (First Reprint) with my recommendations for reconsideration.

**A. SUMMARY OF THE BILL**

This legislation changes the law regarding the rights of State Police members and officers to legal representation in actions and legal proceedings arising out of their duties. Specifically, this bill requires that the Attorney General provide for the defense of a State Police member or officer, or provide reimbursement for the expenses of a defense, in actions or legal proceedings arising out of or incidental to the performance of the duties of the member or officer. The bill also requires the reinstatement of members and officers who are suspended without pay and reimbursement of pay withheld, when an action or legal proceeding that prompted the suspension is resolved in favor of the member or officer. The intent of the bill is to provide members and officers of the State Police with some of the same benefits afforded to municipal police officers.

**B. RECOMMENDED ACTION**

I agree that State Police members and officers should be accorded the same protections as their fellow law enforcement officers in municipal police departments. State Police members and officers perform in the most perilous circumstances encountered by any public servant; no less than municipal police officers, they are entitled to the assurance of public support when they act lawfully within the scope of their duties. Therefore, I fully support this legislation. I have been advised by the Attorney General and my Chief Counsel, however, that certain technical changes are necessary so that the bill more precisely tracks the law applicable to municipal police officers. I have also added language to the bill to clarify that the bill is not intended to limit a benefit currently available to members of the State Police.

The current bill tracks language of a law regarding the defense of municipal police officers that was superseded by the Legislature in 1985. In that year, the Legislature amended the law to provide for reimbursement to municipal police officers in matters “arising out of or directly related to the lawful exercise of official duties,” to ensure that reimbursement is not made in cases arising from acts wholly outside of the scope of the law enforcement officer’s duties. I recommend that the bill use the language employed in the current law governing the defense of municipal police officers, so that the provisions of the bill comport with the bill’s purpose.

Also, while the provision that provides for reimbursement for expenses of defense has been interpreted by the courts in other contexts to be limited to reasonable expenses, I recommend adding language to clarify this point, so that the State will not be obligated to expend public funds for exorbitant or unjustified legal fees.

Additionally, I recommend deleting language in the second section of the bill in order to clarify that reinstatement and reimbursement benefits apply to suspensions resulting from virtually any action or legal proceeding, and not just those arising out of or incidental to the performance of duties, as to which the member or officer is ultimately vindicated. My recommendation in this regard is consistent with the law governing municipal police officers.

Another technical amendment is necessary to ensure that State Police members and officers do not lose a benefit potentially available to them. Under current law, the Attorney General can elect to represent members and officers of the State Police in criminal and disciplinary matters, when such representation would be in the best interest of the State. In such cases, the member or officer would avoid having to expend his or her own funds to retain private counsel, which would be reimbursed by the State only if the matter were concluded in favor of the member or officer.

Finally, I recommend that language be added to section three of the bill to clarify that benefits provided for in the legislation are not available to those members or officers of the State Police whose claims for relief were settled or adjudicated before the date of enactment.

Therefore, I herewith return Assembly Bill No. 829 (First Reprint) and recommend that it be amended as follows:



- Page 2, Section 1, Line 9: Delete “to the performance of his duties” insert “and directly related to the lawful exercise of police powers in the furtherance of official duties”
- Page 2, Section 1, Line 12: Delete “him” insert “the member or officer”
- Page 2, Section 1, Line 14: Delete “he” insert “the member or officer”
- Page 2, Section 1, Line 14: Delete “expense” and insert “reasonable expenses”
- Page 2, Section 1, Line 14: After “defense.” insert “Nothing in this section shall be construed to limit the Attorney General’s authority under section 3 of P.L.1972, c.48 (C.59:10A-3) to provide for the defense of a member or officer of the Division of State Police in any action or legal proceeding, if the Attorney General concludes that such representation is in the best interest of the State.”
- Page 2, Section 2, Line 19: Delete “arising out of or incidental to the performance of his”
- Page 2, Section 2, Line 20: Delete “duties, or otherwise”
- Page 2, Section 2, Line 24: Delete “of” insert “or”
- Page 2, Section 3, Line 31:After “1990” insert “, but shall not be construed to authorize reimbursement to or reinstatement of members or officers whose applicable claims for relief have previously been settled or adjudicated on or before the date of enactment”

Respectfully,

/s/ Christine Todd Whitman

Christine Todd Whitman  
Governor  
[seal]

Attest:

Richard S. Mroz  
Chief Counsel to the Governor

PO BOX 004  
TRENTON, NJ 08625

*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: January 14, 2000

**Governor Signs Bill Providing for Cost of Defense for State Police**

Governor Christie Whitman today signed legislation that provides legal representation for members of the State Police in actions and legal proceedings arising out of their duties.

"Our State Police force is one of the finest, most professional and most effective organizations in the country," said Gov. Whitman. "It's so important that our troopers, who have dedicated themselves to keeping all of us secure in New Jersey, have every protection that the local police forces have. My approval of this bill gives that safety net to them."

The Governor had conditionally vetoed the bill so that it offers the same protections already held by municipal police officers.

Specifically, the bill provides for the legal defense of State troopers and officers and authorizes the reinstatement and recovery of wages in certain cases. The bill puts troopers on an equal footing with municipal officers with regard to their right to be reimbursed for the costs of a defense, reinstatement and back pay.

The bill clarifies that it's not meant to limit a benefit already available to members of the State Police. Under current law, for instance, the Attorney General can provide for the defense of troopers in actions and legal proceedings where the Attorney General has determined that such representation would be in the public interest.

The bill, A-829, was sponsored by Assembly Members Anthony Impreveduto (D-Bergen/Hudson) and Neil M. Cohen (D-Union) and Senators Louis F. Kosco (R-Bergen) and Ronald L. Rice (D-Essex).